SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90736; File No. SR-FICC-2020-803)

December 21, 2020

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice to Include Same-Day Settling Trades in the Risk Management, Novation, Guarantee, and Settlement Services of the Government Securities Division's Delivery-Versus-Payment Service, and Make Other Changes

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on November 19, 2020, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of amendments to the FICC Government Securities Division ("GSD") Rulebook (the "Rules")[4] in order to (i) include Same-Day Settling Trades (as defined below) in the risk management, Novation, guarantee, and settlement

---

1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(1)(i).

3 On November 19, 2020, FICC filed this advance notice as a proposed rule change (SR-FICC-2020-015) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. A copy of the proposed rule change is available at http://www.dtcc.com/legal/sec-rule-filings.aspx.

4 Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/legal/rules-and-procedures.

services of GSD's delivery-versus-payment service ("DVP Service"), (ii) provide that FICC would attempt to settle, on a reasonable efforts basis, any Same-Day Settling Trades that are compared in the timeframe specified by FICC in notices made available to Members from time to time[5] to the extent described below, (iii) introduce an optional service that would allow GSD to systematically pair-off certain Members' failed Securities Settlement Obligations between approximately 3:32 p.m. and 4:00 p.m., (iv) change the time of intraday funds-only settlement ("FOS") processing from 3:15 p.m. to 4:30 p.m., and (v) make certain technical changes, as described in further detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice 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.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

[5] The initial timeframe would be after 3:01 p.m. If the FRB announces an extension of the Fedwire Securities Service, FICC would match the duration of the extension. All times herein are ET.

Nature of the Proposed Change

The proposed rule change would amend the Rules in order to (i) include Same-Day Settling Trades (as defined below) in the risk management, Novation, guarantee, and settlement services of GSD's DVP Service, (ii) provide that FICC would attempt to settle, on a reasonable efforts basis, any Same-Day Settling Trades that are compared in the timeframe specified by FICC in notices made available to Members from time to time to the extent described below, (iii) introduce an optional service that would allow GSD to systematically pair-off certain Members' failed Securities Settlement Obligations between approximately 3:32 p.m. and 4:00 p.m., (iv) change the time of intraday FOS processing from 3:15 p.m. to 4:30 p.m., and (v) make certain technical changes, as described in further detail below.

(i) Proposed Change to Include Same-Day Settling Trades in the Risk Management, Novation, Guarantee, and Settlement Services of GSD's DVP Service.

GSD provides comparison, risk management, Novation, netting, guarantee, and settlement of netting-eligible trades executed by its Netting Members and Sponsored Members in the U.S. government securities market. In GSD's DVP Service, GSD provides these services for Repo Transactions.[6] The DVP Service encompasses all non-

[6] In addition to the DVP Service, GSD also provides such services in its GCF Repo® Service and CCIT Service. The GCF Repo Service and the CCIT Service are not part of this proposal. The GCF Repo Service is primarily governed by Rule 20 and enables Netting Members to trade general collateral finance repurchase agreement transactions based on rate, term, and underlying product throughout the day with Repo Brokers on a blind basis. The CCIT Service is governed by Rule 3B and enables tri-party repurchase agreement transactions in GCF Repo Securities between Netting Members that participate in the GCF Repo Service and institutional cash lenders (other than investment companies registered under the Investment Company Act of 1940, as amended). Rule 20 and Rule 3B, supra note 4.

GCF Repo activity (both repo and buy-sell activity). All delivery obligations are made against full payment.

Currently, with respect to same-day starting Repo Transactions, GSD only risk manages, novates, nets, and settles the End Leg, except in instances where GSD assumes the fail on the Start Leg of a Brokered Repo Transaction.[7] If a same-day starting Repo Transaction is a Brokered Repo Transaction and the Start Leg of such transaction fails to settle on its original Scheduled Settlement Date, FICC will assume responsibility for settlement of such Start Leg from the Repo Broker on the evening of the day the Start Leg was due to settle. This may involve the receipt of securities from the repo dealer for redelivery to the reverse dealer, or the settlement of the Start Leg may be effected by netting of the settlement obligations arising from the Start Leg against the settlement obligations arising from the End Leg of the same or another repo. FICC does so in these instances (and has been doing so since the inception of its blind brokered repo service) in order to decrease settlement risk by centralizing the settlement of these failed Start Legs and including them in the netting process with the End Legs (which already settle at FICC). The Repo Broker acts as an intermediary and expects to net out of every transaction and not have a settlement position from the settlement process. By assuming the fail, FICC replaces the Repo Broker so that FICC becomes the central counterparty for settlement of these transactions and thereby, FICC decreases settlement risk. In all

---

[7] See Rule 19, Section 5, supra note 4. A same-day starting Repo Transaction consists of a Start Leg and End Leg where the initial Scheduled Settlement Date of the Start Leg is scheduled to settle on the Business Day on which it is submitted to GSD (typically referred to in the industry as a same-day settling start leg).

cases where FICC assumes a fail from a Repo Broker, the counterparty remains responsible to FICC for its obligations with respect to the transaction.

The DVP Service did not include settlement of the Start Leg of same-day starting Repo Transactions at its inception, and these transactions have always been settled between the parties (i.e., outside of FICC). Recently, participants have expressed an interest in being able to settle the Start Leg of their same-day starting Repo Transactions through GSD. FICC believes that expanding its DVP Service in this way (hereinafter, "Same-Day Settling Service") could reduce market risk because the Start Legs as well as the End Legs of eligible Repo Transactions would be risk managed, novated, guaranteed, and settled through FICC. FICC also believes that the expansion of its DVP Service in this way could potentially reduce fails in the market by centralizing the settlement of the applicable Start Legs with FICC. FICC believes that this expansion of its DVP Service could increase settlement efficiencies and decrease settlement risk in the market and decrease operational risk with respect to Members. FICC believes that the Same-Day Settling Service could increase settlement efficiencies and decrease settlement risk because it would reduce the number of securities movements between Members by centralizing the settlement of the Start Legs with FICC even though the Start Legs are not netted. It would eliminate the number of bilateral movements because the Start Legs would settle through FICC. FICC also believes that the Same-Day Settling Service could decrease operational risk because FICC believes it could decrease the number of fails of the Start Legs as there would be fewer counterparties involved in the settlement of the Start Legs.

For example, assuming the following two Brokered Repo Transactions are executed on the same day: (i) Broker 1 executes an overnight same-day starting repo transaction with Dealer A and Dealer B ("Brokered Repo 1") and (ii) Broker 2 executes an overnight same-day starting repo transaction with Dealer A and Dealer B ("Brokered Repo 2").

- Brokered Repo 1 involves: (a) a repo transaction in CUSIP XYZ with a par and principal of $50 million with Dealer A and (b) a reverse repo transaction in the same CUSIP with a par and principal of $50 million with Dealer B.
- Brokered Repo 2 involves: (a) a repo transaction in CUSIP XYZ with a par of $50 million and principal of $51 million with Dealer B and (b) a reverse repo transaction in CUSIP XYZ with a par of $50 million and principal of $51 million with Dealer A.

Today, the Start Leg of both Transactions would settle away from FICC. Specifically, with respect to Brokered Repo 1, today, Dealer A would deliver securities with a par of $50 million to Broker 1, and Dealer A would receive $50 million in principal (cash) from the Broker 1. Broker 1 would then deliver securities with a par of $50 million to Dealer B, and Broker 1 would receive from Dealer B $50 million in principal (cash). With respect to Brokered Repo 2, today, Dealer B would deliver to Broker 2 securities with a par of $50 million and Dealer B would receive $51 million in principal (cash). Broker 2 would then deliver securities with a par of $50 million to Dealer A, and Broker 2 would receive $51 million in principal (cash) from Dealer A.

Today, Brokered Repo 1 and Brokered Repo 2 are submitted to FICC upon execution. The Start Leg and the End Leg of each of Brokered Repo 1 and Brokered Repo 2 are submitted for Demand Comparison to FICC by the Repo Brokers, who are considered Demand Trade Sources. Upon receipt of the trade data from the Demand Trade Source, FICC deems the trades compared. The dealer counterparties also submit matching trade data to FICC.

Today, on the Start Date, settlement of the Start Leg would occur over Fedwire (or on the books of the Clearing Bank(s) between the four counterparties referenced above). This has the potential to cause fails in the marketplace if one or more counterparties fail to meet their settlement obligations at any point in the process. As previously stated, on the evening of the day the Start Leg was due to settle, FICC would assume the Start Leg(s) if they failed versus the Repo Broker. These broker fails would go into that night's netting cycle and be marked-to-market. Because both Brokered Repo Transactions are overnight trades, the Close Leg of each trade would also be included in that night's netting cycle.

With this proposed expansion of the DVP Service, on Start Date, the Start Leg of each Brokered Repo Transaction would settle versus FICC upon submission of the trade data from the Demand Trade Source. The Repo Brokers would be removed from the settlement process. The settlement of the Start Leg of each Brokered Repo Transaction would settle over Fedwire (or on the books of FICC's Clearing Agent Bank (The Bank of New York Mellon) between the two dealer counterparties and FICC (acting as the central counterparty)).

Specifically, with the proposed expansion of the DVP Service, with respect to Brokered Repo 1, Dealer A would deliver securities in CUSIP XYZ of $50 million par to FICC, and Dealer A would receive $50 million in principal (cash) from FICC. FICC would then deliver to Dealer B securities in CUSIP XYZ of $50 million par, and FICC would receive $50 million in principal (cash) from Dealer B. With respect to Brokered Repo 2, Dealer B would deliver securities in CUSIP XYZ with a par of $50 million to FICC, and Dealer B would receive $51 million in principal (cash) from FICC. FICC would then deliver to Dealer A securities in CUSIP XYZ with a par of $50 million, and FICC would receive from Dealer A principal (cash) of $51 million.

If these same-day settling Securities Settlement Obligations failed to settle on their original Scheduled Settlement Date, and Dealer A and Dealer B have chosen to opt into the proposed Pair-Off Service (as described below), FICC would pair-down the failed Securities Settlement Obligations, resulting in a net money difference of $1 million debit to Dealer A and $1 million credit to Dealer B. To complete the settlement process on the same day that the Same-Day Settling Trade is executed, the money differences would settle through intraday funds-only settlement (FOS). If the dealer parties have not opted into the proposed Pair-Off Service, the failed same-day settling Securities Settlement Obligations would go into the night's net and the collection of any money differences would occur on the following Business Day through the start of day FOS.

Under Section 7 of Rule 12, if FICC has delivered Eligible Netting Securities to a Netting Member with a Net Long Position (Dealer B in our example), such Member shall be obligated to accept delivery of all such securities at the Settlement Value for the Receive Obligation or Receive Obligations that comprise such Position. If such Member

fails to do so, it shall be obligated to pay, or to reimburse FICC for, all costs, expenses, and charges incurred by FICC as the result thereof, and it may be subject to a fine by FICC if FICC, in its sole discretion, determines that such failure to accept securities was done without good cause.[8]

In addition, in the event Dealer B's failure to pay the principal amount is due to financial difficulties, FICC would also have the right to suspend a Member from any service provided by FICC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Member with respect to access to services offered by FICC and/or to cease to act for such Member.[9]

FICC proposes to include the following transactions in the risk management, Novation, guarantee, and settlement services of GSD's DVP Service: (i) a Start Leg of a Netting Member's Repo Transaction where the Scheduled Settlement Date of the Start Leg is the current Business Day, (ii) an As-Of Trade of a Netting Member where the Scheduled Settlement Date of the Start Leg is the previous Business Day and the End Leg is the current Business Day or thereafter, [10] and (iii) a Sponsored Member Trade within

---

8 Rule 12, Section 7, supra note 4.

9 Rule 21 and Rule 22A, supra note 4.

10 FICC has added As-Of Trades in this proposal in order to reasonably include as many variations of Same-Day Settling Trades as possible. This addition of As-Of Trades in this proposal covers scenarios in which a Member submits a DVP repo transaction for comparison on the day after the Scheduled Settlement Date for the Start Leg (i.e., where a trade compares on the day after the Scheduled Settlement Date of the Start Leg). Members may occasionally need to submit As-Of Trades due to human or operational errors.

Although this scenario is not frequently observed, FICC believes that inclusion of these transactions in the Novation and settlement process under this proposal would provide Members with consistent processing in terms of settlement of their

the meaning of section (b) of that definition that meets the requirements of either (i) or (ii) above (hereinafter, collectively, "Same-Day Settling Trades"). Same-Day Settling Trades would not go through FICC's netting process. This is because GSD netting occurs the night before the Scheduled Settlement Date for such transactions, and these Same-Day Settling Trades would not be submitted for settlement until after this time.

FICC-cleared DVP Repo Transactions, irrespective of whether those transactions are submitted as As-Of Trades or Same-Day Settling Trades.

Under this proposal, from an operational and risk management perspective, As-Of Trades would be risk managed and settled in the same manner as all other eligible Same-Day Settling Trades. FICC would settle both the Start Leg and the End Leg of an As-Of Trade on a bilateral basis between FICC and the Member that submitted the trade. The End Leg of an As-Of Trade would not be netted unless the Scheduled Settlement Date of the End Leg is later than the current Business Day that the trade was submitted.

For purposes of clarity, Securities Settlement Obligations generated for the purposes of settlement of the Start Leg and End Leg of an As-Of Trade that is eligible for settlement under this proposal would be generated based on the Scheduled Settlement Date (i.e. contractual settlement date) for each leg of the As-Of Trade. However, the generation of such obligation(s) on the Scheduled Settlement Date for each leg of an As-Of Trade does not mean that such obligation(s) would actually settle on such date.

Today, the Start Leg of an As-Of Trade settles outside of FICC, and if the Scheduled Settlement Date of the End Leg is the current Business Day, the End Leg would also settle outside of FICC.

Under this proposal, if an As-Of Trade is an overnight repo that is submitted on the current Business Day (so the Start Date would be as of the prior Business Day) and the Scheduled Settlement Date of its End Leg is the current Business Day, then FICC would settle each leg independently at Contract Value with the Member.

If an As-Of Trade is a term repo that is submitted on the current Business Day (so the Start Leg would be as of the prior Business Day) and the Scheduled Settlement Date of the End Leg is the next Business Day or thereafter, then the End Leg would go into the netting process and would settle at System Value. For As-Of Trades that are term repos, FICC would settle the Start Legs at Contract Value.

Same-Day Settling Trades would settle on a trade-for-trade basis at Contract Value unless such Same-Day Settling Trades fail to settle. Because Same-Day Settling Trades are not netted, they would settle at Contract Value (not at System Value). In the event that such Same-Day Settling Trades fail to settle, they would be netted for settlement on the next Business Day as is the case for current Securities Settlement Obligations that fail to settle. If such Same-Day Settling Trades fail to settle, the trade would be netted at Contract Value versus System Value, which all other Fail Deliver Obligations and Fail Receive Obligations would be netted at. Same-Day Settling Trades that fail to settle are netted with other transactions that fail in that security (i.e., the process for netting fails of Same-Day Settling Trades would remain the same). Those obligations that fail to settle would be subject to the fails charge (either a debit or a credit), the accrual of which would be included in the Member's monthly invoice.[11]

The Start Leg of an As-Of Trade (overnight and term) and a same-day starting repo (overnight and term) would settle at Contract Value. The End Leg of an As-Of Trade that is an overnight repo would settle at Contract Value. Both the Start Leg and End Leg of an As-Of Trade that is an overnight repo are Same-Day Settling Trades and, therefore, would settle at the Contract Value. Similarly, the Start Leg of a same-day starting repo (overnight or term) is also a Same-Day Settling Trade and would settle at Contract Value.

The End Leg of an As-Of Trade that is a term repo, same-day starting repo that is an overnight repo, and same-day starting repo that is a term repo would settle at System Value. The End Leg of an As-Of Trade that is a term repo, the End Legs of a same-day

---

[11] Rule 11, Section 14, supra note 4.

starting repo (overnight and term), and the Start Legs and End Legs of a forward starting repo (overnight and term) would settle at System Value because these legs would go through FICC's netting process.

Below is a chart that describes whether the Start Legs and End Legs of As-Of Trades, same-day starting repos, and forward starting repos would settle at Contract Value or System Value:

Trade Type	Start Leg Settles at	End Leg Settles at:
As-Of Overnight Trade	Contract Value	Contract Value
As-Of Term Trade	Contract Value	System Value
Same-Day Starting Overnight Repo	Contract Value	System Value
Same-Day Starting Term Repo	Contract Value	System Value
Forward Starting Overnight Repo	System Value	System Value
Forward Starting Term Repo	System Value	System Value

The proposed Same-Day Settling Service would be voluntary for Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers with Segregated Repo Accounts (collectively, "Repo Brokers"). Because Repo Brokers tend to provide a suite of services to their clients where facilitating the settlement of a Same-Day Settling Trade is one of those services, FICC did not want to cause any disruption to Repo Brokers and their clients by bifurcating the existing set of services whereby FICC does the settlement of the Same-Day Settling Trade and the Repo Broker continues to provide the rest of their existing services to their clients. FICC believes that providing optionality will allow Repo Brokers and their clients to determine how and when a Repo Broker should participate in the proposed Same-Day Settling Service. GSD would discontinue

assuming fails for Repo Brokers who choose to participate in this proposed Same-Day Settling Service, because such assumption would be replaced by the FICC Novation that would occur upon comparison of the Same-Day Settling Trades. As described above, today, FICC assumes the fails for Repo Brokers (and has been doing so since the inception of its blind brokered repo service) in order to decrease risk. By assuming the fail, FICC removes the Repo Broker, who acts as an intermediary and who expects to net out of every transaction and not have a settlement position, from the settlement process. In all cases where FICC assumes a fail from a Repo Broker, the counterparty remains responsible for its obligations with respect to the transaction.

The proposed Same-Day Settling Service would be mandatory for all other Netting Members and for Sponsored Members who execute transactions with Netting Members other than their Sponsoring Member because GSD must have a balanced set (both a Repo and a Reverse Repo) on all transactions. Specifically, if a Member (other than a Repo Broker[12]) that is a party to a Same-Day Settling Trade could choose to opt out of the Same-Day Settling Service, FICC would not be able to create equal and opposite Securities Settlement Obligations for the two counterparties, which would require them to settle away from FICC. This would create uncertainty among Members as to who to settle their transactions with (i.e., FICC or bilaterally outside of FICC). By

---

12 Repo Brokers submit a side for each of their two counterparties. Therefore, if a Repo Broker participates in the proposed Same-Day Settling Service, then FICC would settle the two trades (i.e., a Receive Obligation and a Deliver Obligation with the two counterparties). However, if a Repo Broker does not participate in the proposed Same-Day Settling Service, the two trades would settle away from FICC as they do today (except in the instance of a broker fail where FICC would assume the broker fails).

requiring these Members to participate, Members would have certainty that their compared transactions would settle with FICC as their settlement counterparty.

To implement these changes, FICC is proposing to revise Rule 1 by: (1) adding a new definition for "Same-Day Settling Trade" and (2) revising the definitions of "Deliver Obligation," "Receive Obligation," "Settlement Value," and "System Value."

"Same-Day Settling Trade" would mean (i) a Start Leg of a Netting Member's Repo Transaction where the Scheduled Settlement Date of the Start Leg is the current Business Day, (ii) an As-Of Trade of a Netting Member where the Scheduled Settlement Date of the Start Leg is the previous Business Day and the End Leg is the current Business Day or thereafter, or (iii) a Sponsored Member Trade within the meaning of subsection (b) of that definition[13] that meets the requirements of either (i) or (ii) above.

The definitions of Deliver Obligation and Receive Obligation would be amended to include references to Same-Day Settling Trades. Similarly, the definition of Settlement Value would be amended to specify that, with respect to a Deliver Obligation or a Receive Obligation for a Same-Day Settling Trade, Settlement Value means the Contract Value for such obligation. In addition, FICC would amend the definition of System Value to exclude Same-Day Settling Trades because Same-Day Settling Trades would settle at the Contract Value (not the System Value). Members are currently settling their Same-Day Settling Trades at the Contract Value, so FICC would not be

---

13 "Sponsored Member Trade" means a transaction that satisfies the requirements of Section 5 of Rule 3A and that is (a) between a Sponsored Member and its Sponsoring Member or (b) between a Sponsored Member and a Netting Member. Rule 1, supra note 4.

changing the way such Members are settling these transactions, consistent with what is occurring today.

FICC would revise Section 8(c) of Rule 3A to reference new Section 11 of Rule 12 (described below).

In addition, FICC would amend Section 5 of Rule 5 to provide that settlement of Same-Day Settling Trades would be processed as per new Section 11 of Rule 12. This proposed addition is needed in that provision of Rule 5 because the prior sentence (that is, the current last sentence of that section) addresses the current process where trades that are not netted and settled with FICC are settled between the parties to the trades; with this proposal, Same-Day Settling Trades would be settled with FICC even though they are not netted.

FICC would revise Section 8 of Rule 5 to address the Novation and guaranty of Same-Day Settling Trades in a new subsection (b). Specifically, language would be added that each Same-Day Settling Trade that becomes a Compared Trade and was entered into in good faith would be novated to FICC, and that FICC would guarantee the settlement of each such Compared Trade at the time at which the comparison of such trade occurs pursuant to Rules 6A and 6B, as applicable. Such Novation would consist of the termination of the deliver, receive, and related payment obligations between the Netting Members and their replacement with identical obligations to and from FICC in accordance with the Rules.

FICC would amend Section 2 of Rule 11 to state that Same-Day Settling Trades would not be netted. As explained above, in GSD's DVP Service netting takes place the night before the Scheduled Settlement Date; Same-Day Settling Trades would settle after

the net is run (unless a settlement fail occurs). Because they will not be netted, Same-Day Settling Trades would settle on a trade-for-trade basis at Contract Value with FICC on their Scheduled Settlement Date unless such Same-Day Settling Trades fail to settle. If a Same-Day Settling Trade fails to settle, such Same-Day Settling Trade would be netted for settlement on the next Business Day as is the current process for Securities Settlement Obligations that fail to settle. Those that fail to settle would be subject to the fails charge.

FICC would amend Rule 11B to add a new subsection that would describe that FICC would guarantee the settlement of any Same-Day Settling Trade provided that certain requirements are met. Specifically, the data on such Same-Day Settling Trade must be submitted for Bilateral or Demand Comparison at the time that the comparison of such trade occurs pursuant to Rules 6A or 6B, respectively. Rules 6A and 6B discuss Bilateral Comparison and Demand Comparison, respectively. In order for FICC to settle the trades, the trades must be novated. In order to novate the trades, they must first be compared.

FICC would amend Rule 12 to add a section (new Section 11) stating that Same-Day Settling Trades must also meet the requirements of new Section 11(ii) of Rule 12 (which is a proposed section pursuant to this filing) and the trade must have been entered into in good faith. Proposed Section 11(ii) would state that a Same-Day Settling Trade would be eligible for settlement with FICC if it meets all of the following requirements: (a) the Same-Day Settling Trade is a Compared Trade, (b) the data on the Same-Day Settling Trade are listed on a Report that has been made available to Netting Members, (c) (i) the End Leg of the Same-Day Settling Trade meets the eligibility requirements for

netting in Rule 11, or (ii) the Repo Transaction is an As-Of Trade and its End Leg settles on the current Business Day or thereafter, and (d) the underlying securities are Eligible Netting Securities.

In addition, notwithstanding the above, a Same-Day Settling Trade eligible for settlement to which an Executing Firm is a party, the data on which has been submitted to FICC on behalf of such Executing Firm by a Submitting Member that is a Netting Member, would not be settled if the Submitting Member has provided FICC with notice that it does not wish to have trades submitted by it on behalf of that Executing Firm be settled through the Comparison System. Also notwithstanding the above, a trade would not be settled if either Submitting Member had submitted data on a side of the trade on behalf of an Executing Firm whose trades it had provided FICC with notice pursuant to the Rules that it did not wish to be settled. Pursuant to Section 1 of Rule 8, a Submitting Member must submit to FICC for comparison and/or netting data on any transaction calling for the delivery of Eligible Securities between an Executing Firm on whose behalf it is acting pursuant to these Rules and either another Member of the Netting System, Comparison System or another Executing Firm on whose behalf it or another Member is acting pursuant to these Rules. Therefore, a Same-Day Settling Trade submitted by such Submitting Member will be eligible to settle through the proposed Same-Day Settling Service unless the Submitting Member has provided notice to FICC in advance that it does not wish to have such trades settled through the Comparison System. This provision in proposed Section 11 of Rule 12 that discusses the eligibility for settlement through the

Same-Day Settling Service would also align with FICC's current rule on the eligibility for netting in Section 2 of Rule 11.[14]

Proposed Section 11 of Rule 12 would also state that, notwithstanding the above, FICC may, in its sole discretion, exclude any Same-Day Settling Trade or Same-Day Settling Trades from the Comparison System, by Netting Member or by Eligible Netting Security. For example, if a trade was submitted to the Comparison System because of an operational error or technological error and the client is unable to delete such trade, then FICC may exclude such trade from the Comparison System. In addition, with respect to Repo Transactions, if the Start Leg is excluded, then the corresponding End Leg would also be excluded. This provision of the new Section 11 of Rule 12 that discusses the eligibility for settlement through the Same-Day Settling Service would also align with FICC's current rule on the eligibility for netting in Section 2 of Rule 11.

In addition to the above, in the new Section 11 of Rule 12, FICC would describe the settlement of Same-Day Settling Trades with FICC, including eligibility requirements for settlement and how the Deliver Obligations and Receive Obligations related to such transactions must be satisfied. FICC would also describe that if a novated Same-Day Settling Trade becomes uncompared or is cancelled pursuant to the Rules, the Novation and FICC's guaranty of settlement of such transaction would no longer apply, cancelling the deliver, receive, and related payment obligations between FICC and the applicable Members, created by such Novation. Furthermore, FICC would state that in the event that such transaction is cancelled after the satisfaction of the deliver, receive, and related payment obligations between FICC and the applicable Netting Members, FICC would

---

[14] Rule 8, Section 1, supra note 4.

establish reverse Securities Settlement Obligations in the form of a Receive Obligation or a Deliver Obligation for the amount of the Contract Value of the Same-Day Settling Trades that have become uncompared or cancelled between FICC and the applicable Members. If such Receive Obligation or Deliver Obligation fails to settle, then such obligations would be netted at Contract Value for settlement on the next Business Day. Those that fail to settle would be subject to the fails charge (either a debit or credit), the accrual of which would be included in the Member's monthly invoice.

FICC would make clear that Sections 6 (Finance Costs), 7 (Obligation to Receive Securities), 8 (Obligation to Facilitate Financing) and 9 (Relationship with Clearing Banks) of Rule 12 would be applicable in connection with the settlement of Same-Day Settling Trades with FICC.[15] These sections are part of GSD's securities settlement rule and do not require any changes to accommodate the settlement of Same-Day Settling Trades.

---

15 Section 6 (Financing Costs) addresses situations where if a Netting Member with a Net Short Position delivers eligible Netting Securities to FICC and FICC is unable, because the delivery was made near the close of Fedwire or for any other reason, to redeliver such securities on the same Business Day to a Netting Member or Members with Net Long Positions in such securities and, as a result, FICC incurs costs, expenses, or charges related to financing such securities (the "financing costs"), then the Netting Members, as a group, shall be obligated to pay, or to reimburse FICC, for such financing costs. Section 7 (Obligation to Receive Securities) covers the obligation of Members to accept delivery of securities regarding their Receive Obligations. Section 8 (Obligation to Facilitate Financing) sets forth FICC's ability to obtain financing necessary for the provision of securities settlement services contemplated by the Rules. Section 9 (Relationship with Clearing Banks) makes clear that no improper or unauthorized action, or failure to act, by a clearing bank acting on behalf of a Netting Member shall excuse or otherwise affect the obligations of a Netting Member to FICC pursuant to the Rules. Rule 12, supra note 4.

Furthermore, because the proposed Same-Day Settling Service would be voluntary for Repo Brokers, FICC would amend Section 5 of Rule 19 and Sections IV.A.5, IV.A.6, and IV.B.3 of the Fee Structure to state that the applicable section would only apply to Repo Brokers that do not elect to settle Same-Day Settling Trades with FICC. This is because these sections address the assumption of certain Start Legs by GSD that would be replaced by GSD's Novation, guaranty, and settlement of Same-Day Settling Trades of those Repo Brokers that elect to participate in the proposed service.

(ii) Proposed Change to Provide that FICC Would Attempt to Settle Same-Day Settling Trades that are Compared in the Timeframe Specified by FICC in Notices Made Available to Members From Time to Time on a Reasonable Efforts Basis

Today, Members occasionally execute Same-Day Settling Trades after the close of the Fedwire Securities Service. These Same-Day Settling Trades are settled between the Members (outside of FICC) as long as both parties to the trade settle such trades within the same Clearing Bank.

In order to accommodate this practice, FICC proposes to provide the proposed Same-Day Settling Service to late-day compared Same-Day Settling Trades (i.e., those Same-Day Settling Trades that are compared after 3:01 p.m.[16]). FICC would attempt to settle, on a reasonable efforts basis, such trades that are compared in the timeframe specified by FICC in notices made available to Members from time to time, provided (i) FICC is able to contact the counterparties to the trade and FICC's Clearing Agent Bank and (ii) FICC's Clearing Agent Bank and the counterparties to the trade agree to settle such trade. The foregoing sentence would only apply to Same-Day Settling Trades

16 As described above, if the FRB announces an extension of the Fedwire Securities Service, FICC would match the duration of the extension.

of Members that clear at FICC's Clearing Agent Bank. Reasonable efforts basis would mean that FICC would attempt to contact the counterparties to the trade and FICC's Clearing Agent Bank to confirm they agree to settle such trade. Specifically, FICC would continue to process securities movements between FICC's account at FICC's Clearing Agent Bank and Members' accounts at FICC's Clearing Agent Bank, on a reasonable efforts basis, in the timeframe specified by FICC in notices made available to Members from time to time, provided that (i) FICC is able to contact FICC's Clearing Agent Bank and (ii) FICC's Clearing Agent Bank and the counterparties to the trade agree to settle such trade.[17]

For those Members that do not have accounts at FICC's Clearing Agent Bank, FICC would attempt to settle, on a reasonable efforts basis, Same-Day Settling Trades that are compared after the time specified by FICC in notices made available to Members from time to time during the reversal period of the Fedwire Securities Service,[18] provided (i) FICC is able to contact FICC's Clearing Agent Bank, (ii) FICC is able to contact the counterparties to the trade to confirm that they agree to settle the trade, and (iii) FICC's Clearing Agent Bank, the Member's Clearing Agent Bank, and the Federal Reserve Bank

---

17 Initially, this would apply to Same-Day Settling Trades that are compared after 3:01 p.m. until 5 p.m.

18 Initially, this time would be after 3:01 p.m. until 3:30 p.m. If the FRB announces an extension for the reversal period of the Fedwire Securities Service, FICC would match the duration of the extension for the reversal period. The Fedwire Securities Services closes at 3:30 p.m. for transfer reversals. See *Fedwire® and National Securities Service*, Federal Reserve Bank of New York (March 2015), available at https://www.newyorkfed.org/aboutthefed/fedpoint/fed43.html and *Fedwire Securities Service*, Board of Governors of the Federal Reserve System (July 31, 2014), available at https://www.federalreserve.gov/paymentsystems/fedsecs_about.htm.

of New York each permit settlement of the trade (Fedwire must be open for settlement). Reasonable efforts basis would mean that FICC would attempt to contact the counterparties to the trade and FICC's Clearing Agent Bank to confirm that they agree to settle such trade.

To implement this proposed rule change, FICC would include provisions in newly added Section 11 of Rule 12.

(iii) Proposed Change to Introduce an Optional Service that Would Allow GSD to Systematically Pair-Off Certain Members' Failed Securities Settlement Obligations Between Approximately 3:32 p.m. and 4:00 p.m.

FICC also proposes to introduce an optional service for Netting Members (other than Repo Brokers) and for Sponsored Member Trades (other than those between the Sponsored Member and its Sponsoring Member) whereby GSD would systematically pair-off such Members' failed Securities Settlement Obligations between approximately 3:32 p.m. and 4:00 p.m.

The failed Securities Settlement Obligations could include (i) Receive Obligations and Deliver Obligations resulting from the previous night's net and (ii) obligations that were created intraday in order to settle a Right of Substitution or a Same-Day Settling Trade. Fails that occur go into the net that evening.[19]

GSD would look at each Member's failing activity on a per CUSIP basis and pair-off their Receive Obligations and Deliver Obligations irrespective of the settlement amounts on those obligations; this could result in money differences. This proposed process would be structured so that the net par result of the pair-offs would be zero.

---

19 Fails occur because one party does not have the inventory to settle with the other party on the scheduled date.

Specifically, the proposed pair-off process ("Pair-Off Service") would consist of the matching and the offset of a participating Member's Fail Deliver Obligations and Fail Receive Obligations in equal par amounts of the same Eligible Netting Security. The participating Member would receive a debit or credit Pair-Off Adjustment Amount (which FICC may initially collect as a Miscellaneous Adjustment Amount), as applicable, of the difference in the Settlement Values of the applicable Fail Deliver Obligations and Fail Receive Obligations in the intraday funds-only settlement process. The proposed Pair-Off Service would start at approximately 3:32 p.m. The proposed rule change would provide FICC with the discretion to suspend or delay the Pair-Off Service in the event of an operational or market event. For example, FICC may delay the Pair-Off Service if the FRB extends Fedwire because extending the Fedwire would enable trades to potentially settle instead of fail. FICC believes that suspending the Pair-Off Service would not adversely affect Members because failed obligations would go into the net as they do today, and would continue to be risk-managed.

The proposed Pair-Off Service would allow the participating Member to settle their cash obligations today; the settlement process would be completed on the same day (via intraday FOS) rather than on the next day (via start of day FOS). As noted in the example in Item II(B)(i) above, if these obligations failed to settle, and Dealer A and Dealer B have chosen to opt into the proposed Pair-Off Service, FICC would pair-down the failed obligations, resulting in a net money difference of $1 million debit to Dealer A and $1 million credit to Dealer B. To complete the settlement process on the same day that the trade is executed, the money differences would settle through intraday funds-only settlement. The alternative to the proposed Pair-Off Service is to let the failed

obligations go into the net and collect any money differences on the following Business Day through the start of day FOS.

To implement the proposed Pair-Off Service, FICC would revise Rules 1, 3A, and 12. Specifically, FICC would amend Rule 1 by adding two definitions, "Pair-Off Service" and "Pair-Off Adjustment Payment." FICC would initially collect this amount as a Miscellaneous Adjustment Amount. Then, following development by FICC, this amount would be collected as a "Pair-Off Adjustment Payment."

FICC would also revise Rule 12 to describe the proposed Pair-Off Service, which would be a voluntary automated process. The proposed Pair-Off Service would consist of the matching and offset of a participating Netting Member's Fail Deliver Obligations and Fail Receive Obligations in equal par amounts in the same Eligible Netting Security. The participating Netting Member would receive either a debit or credit Pair-Off Adjustment Payment, as applicable, of the difference in the Settlement Values of the applicable Fail Deliver Obligations and Fail Receive Obligations in the FOS process under Rule 13. Any Securities Settlement Obligations remaining after the pair-off of eligible obligations would constitute a Fail Net Settlement Position.

Rule 12 would also state that FICC would have the discretion to suspend the Pair-Off Service on any Business Day due to FRB extensions and/or system or operational issues. FICC would notify Members of any such extension.

FICC would also revise Section 8 of Rule 3A to state that with respect to Section 1 of Rule 12, the optional Pair-Off Service would be available to Sponsored Member Trades within the meaning of section (b) of that definition.

(iv) <u>Proposed Change to Change the Time of Intraday FOS Processing from 3:15 p.m. to 4:30 p.m.</u>

FICC proposes to change the time of intraday FOS processing from 3:15 p.m. to 4:30 p.m. because FICC proposes to start the proposed Pair-Off Service at approximately 3:32 p.m. and would provide Funds-Only Settling Banks with their intraday net FOS figures by 4:00 p.m. for acknowledgment by 4:30 p.m.. The proposed rule change would also provide that such time may be extended due to FRB extensions and/or system or operational issues. Moving this processing time from 3:15 p.m. to 4:30 p.m. would enable FICC to settle any net money differences that arise from the proposed Pair-Off Service.

To implement this change, FICC would amend the Schedule of Timeframes by deleting the 3:15 p.m. time and the related description, and adding a 4:30 p.m. time and a description that would state that intraday FOS debits and credits would be executed via the FRB's National Settlement Service for Netting Members.

(v) Proposed Technical Changes

FICC also proposes to make certain technical changes. Because a subsection would be added to Section 8 of Rule 5 to describe the comparison, Novation, and guarantee of Same-Day Settling Trades (as described in detail above), FICC would also renumber subsections that follow the proposed section for consistency and accuracy.

Implementation Timeframe

FICC would implement the proposed rule changes within 90 days after the later of the no objection to the advance notice and approval of the related proposed rule change[20] by the Commission. FICC would announce the effective date of the proposed changes by Important Notice posted to its website.

---

20 Supra note 3.

Expected Effect on Risks to the Clearing Agency, its Participants and the Market

FICC believes that the proposed changes in Items II(B)(i) through II(B)(iv) above could increase settlement efficiencies in most instances and decrease settlement and operational risk because participants would have one settlement counterparty, FICC, for this activity. FICC believes that the proposed changes described in Items II(B)(i) and II(B)(ii) above could potentially reduce settlement fails by centralizing the settlement of the Same-Day Settling Trades with FICC.

FICC also believes that the proposed changes described in Items II(B)(iii) and II(B)(iv) above could provide FICC with the ability to potentially complete securities movements after the close of the Fedwire Securities Service. FICC believes these proposals could improve market risk to FICC because the settlement process would be completed on the same day rather than on the next Business Day.

Management of Identified Risks

The Same-Day Settling Trades that are the subject of the proposed rule changes in Items II(B)(i) and II(B)(ii) above are currently being submitted to FICC today. To the extent that they are unsettled during the times at which FICC runs its risk management processes, they are margined accordingly. Such Same-Day Settling Trades are also captured in FICC's liquidity risk processes today.

As such, FICC is not proposing any changes to its risk management processes in order to accommodate the activity that would be submitted to FICC in connection with the proposed rule changes described in Items II(B)(i) and II(B)(ii) above. The risk management is based on the outstanding settlement obligations regardless of where the Start-Leg cash payments are exchanged. The activity would be measured, monitored,

margined and provisioned for potential market and liquidity exposure in the same way as netting eligible trades are currently.

In order to risk manage the proposed changes described in Item II(B)(iii) above, FICC is proposing in this filing the changes discussed in Item II(B)(iv) above. Specifically, FICC would move the intraday FOS processing time to later in the day in order to include the results of the proposed Pair-Off Service in the FOS process.

Consistency with the Clearing Supervision Act

FICC believes that the proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.[21] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[22]

FICC believes that the proposed changes described in Items II(B)(i) and II(B)(ii) above would promote robust risk management and promote safety and soundness. This is because the proposed changes would enable Members' Same-Day Settling Trades in Eligible Netting Securities, including Brokered Repo Transactions, to be included in the risk management, Novation, guarantee, and settlement services of the DVP Service. FICC does not settle such trades today (with the exception of assumed Broker fails). These proposed changes would enable the settlement of these trades to be centralized with FICC. FICC believes these proposed changes could increase settlement efficiencies and decrease settlement risk in the market and operational risk with respect to its

---

21 12 U.S.C. 5464(b).

22 Id.

Members because the participants would have one settlement counterparty, FICC, for this activity. As such, FICC believes that the proposed changes described in Items II(B)(i) and II(B)(ii) above would promote robust risk management and promote safety and soundness, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

FICC believes the proposed changes described in Items II(B)(iii) and II(B)(iv) above are designed to promote robust risk management and promote safety and soundness. Specifically, the proposed changes described in Items II(B)(iii) and II(B)(iv) above could reduce market risk to FICC because additional settlements would be completed on the same day rather than on the next Business Day. As such, FICC believes that the proposed changes described in Items II(B)(iii) and II(B)(iv) above, taken together, would promote robust risk management and promote safety and soundness, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

FICC believes the proposed technical changes described in Item II(B)(v) above are designed to provide clear and coherent Rules regarding the proposed expanded DVP Service described above for Members. FICC believes that clear and coherent Rules would enhance the ability of FICC and its Members to more effectively plan for, manage, and address the risks related to the proposed expanded DVP Service. As such, FICC believes that the technical changes would promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2020-803 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-2020-803. 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, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 website 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 website (http://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2020-803 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

By the Commission.

J. Matthew DeLesDernier
Assistant Secretary