

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99817; File No. SR-FICC-2024-005)

March 21, 2024

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 11, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2024-005. On March 19, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the proposed rule change.³ The proposed rule change, as modified by Partial Amendment No. 1, is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibit 5. Specifically, as originally filed, the description of the proposed rule change made a reference to an incorrect section of the GSD Rules. Partial Amendment No. 1 corrects that reference. Additionally, as originally filed, the description of the proposed rule change and Exhibit 5 contained inconsistent references regarding whether FICC or its Board would be responsible for approving membership applications and related membership matters. Partial Amendment No. 1 clarifies and corrects those references. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below and Exhibit 5.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC’s Government Securities Division (“GSD”) Rulebook (“Rules”)⁴ to (1) re-name GSD’s correspondent clearing / prime broker services as the Agent Clearing Service and adopt provisions that are common in agent clearing models; (2) update the qualifications for certain membership categories and rules governing the operation of GSD’s access models; and (3) improve the transparency and clarity of the Rules in describing the types of memberships available to legal entities that want to access GSD’s central clearing services and the different ways both Members and, indirectly, legal entities that are not Members can access those services, as described below.

These proposed rule changes are primarily designed to ensure that FICC has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities in accordance with the requirements of Rule 17Ad-22(e)(18)(iv)(C) under the Act,⁵ as described below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any

⁴ Terms not defined herein are defined in the Rules, available at www.dtcc.com/~//media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁵ 17 CFR 240.17Ad-22(e)(18)(iv)(C). See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (“Adopting Release”, and the rules adopted therein referred to herein as “Treasury Clearing Rules”). FICC must implement the new requirements of Rule 17Ad-22(e)(18)(iv)(C) by March 31, 2025. FICC will file separate proposed rule changes to address other requirements applicable to it and adopted as part of the Treasury Clearing Rules.

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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

FICC is proposing rule changes designed to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities in accordance with recent amendments to the standards for clearing agencies set forth in Rule 17Ad-22(e) under the Act.⁶

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies, like FICC, that require such clearing agencies to have written policies and procedures reasonably designed to, among other things, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.⁷

FICC developed the proposed rule changes following a review of its existing direct and indirect participation models. That review examined whether FICC's models provide market participants with access to FICC's clearance and settlement services in as

⁶ 17 CFR 240.17Ad-22(e).

⁷ Supra note 5.

flexible a means as possible, consistent with FICC’s responsibility to provide sound risk management and comply with its regulatory risk management obligations under Rule 17Ad-22(e) and other parts of the Act.⁸ Among other things, FICC considered whether FICC’s existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution of a transaction, and other factors, and whether any such variation of treatment was necessary and appropriate in light of FICC’s regulatory risk management obligations.⁹

As part of this review, FICC consulted with a wide range of stakeholders, including indirect participants, to ensure that FICC considered a sufficiently broad set of perspectives.¹⁰ These consultations included one-on-one conversations with existing direct participants and indirect participants, industry associations representing buy- and sell-side market participants, and market participants that were considering becoming but had not yet become participants of FICC. Another aspect of this consultation was a survey conducted during the first half of 2023.¹¹

⁸ Such regulatory risk management obligations are generally set forth in Rule 17Ad-22(e). 17 CFR 240.17Ad-22(e).

⁹ 17 CFR 240.17Ad-22(e).

¹⁰ See also page 168 of the Adopting Release, available at <https://www.sec.gov/files/rules/final/2023/34-99149.pdf> (“To ensure that it considers a sufficiently broad set of perspectives, the U.S. Treasury securities CCA generally should consult with a wide-range of stakeholders, including indirect participants, as it seeks to comply with proposed rule 17ad-22(e)(18)(iv)(C).”).

¹¹ FICC discussed this survey and the key findings in a paper, available at <https://www.dtcc.com/-/media/Files/Downloads/WhitePapers/Accessing-Potential-Expansion-US-Treasury-Clearing-White-Paper.pdf>.

One of the key findings of this outreach was that FICC’s existing participation models are not broadly understood among market participants, and a majority of current Members are unsure which of the available access models they prefer to use for indirect participant activity. In addition, FICC identified that certain instances where it treated transactions differently based on the identity of the participant submitting the transaction or the identity of the participant party to the transaction were not necessary to ensure sound risk management and comply with its regulatory risk management obligations. Based on the results of its review of its access models, FICC has concluded that certain changes to the Rules would facilitate greater access to clearance and settlement of secondary market transactions in U.S. Treasury transactions, including by indirect participants.

First, as noted above, FICC’s review found that many market participants are not familiar with the correspondent clearing / prime broker services. In particular, FICC found that market participants were not aware of the similarities between the services and other agent clearing models, such as those through which market participants in the cleared derivatives markets can execute commodity derivatives with third parties and then give them up to their futures commission merchant (“FCM”) for clearing. Market participants also did not appear to understand the agent clearing services as a workable “done away” model that allows indirect participants to access clearing through multiple direct participants.

Therefore, FICC is proposing to provide clarity by, among other things, re-naming its correspondent clearing / prime brokerage services as a single “Agent Clearing Service” and deleting and replacing the current provisions in Rule 8 with a rule that

elaborates on the functioning and requirements of the agent clearing service. FICC believes that these changes, described in greater detail below, will allow Netting Members and their customers to recognize the similarities between FICC's indirect access model and FCM agent clearing models and to identify the agent clearing service as a workable "done away" model.

Second, FICC has concluded that certain modifications to its membership criteria would facilitate open access and ensure that any variation in the Rules' treatment of transactions or members is indeed necessary and appropriate to meet the minimum standards regarding operations, governance, and risk management set forth in the SEC's regulations and the Act. These proposed rule changes would update certain qualifications for GSD's membership categories. Currently, FICC imposes a number of qualification requirements that, based upon its review, may not be necessary or appropriate to ensure compliance with applicable requirements under the Act. In particular, banks wishing to become Sponsoring Members are categorized as Category 1 Sponsoring Members and must meet certain capitalization requirements, while other Netting Members wishing to be Sponsoring Members are categorized as Category 2 Sponsoring Members and are subject to financial requirements based on FICC's assessment of the Sponsoring Member's anticipated activity and risk. Additionally, in order to be a Sponsored Member, a firm must currently be a "qualified institutional buyer" as such term is defined by Rule 144A under the Securities Act of 1933 or satisfy the financial requirements necessary to be a qualified institution buyer.¹² Based upon its review and general

¹² 17 CFR 230.144A.

experience with the growth of the sponsored membership service¹³ since the current tiered membership qualifications were first instituted, FICC has determined that such requirements are no longer relevant or appropriate for the purposes of facilitating access to clearance and settlement transactions of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.

FICC's proposed rule changes would aim to address these issues by eliminating the two categories of Sponsoring Members, applying the qualifications applicable to the current Category 2 Sponsoring Members to all Sponsoring Members, and removing the requirement that Sponsored Members either be qualified institutional buyers or satisfy the financial requirements of such definition. FICC believes that these changes would eliminate differential treatment of categories of indirect participants and direct participants that are not necessary for risk management or other regulatory purposes, and otherwise act as a limitation upon participants' access to GSD's central clearing services. These changes would thus enable access to FICC's clearing and settlement services for a variety of direct and indirect participants who may not currently be able to access those services. These changes would also facilitate greater understanding of FICC's membership qualifications and thereby support FICC's continued maintenance of objective, risk-based and publicly disclosed participation criteria.

Lastly, FICC has determined that providing a public road map of access models and simplifying certain definitions would allow both buy- and sell-side market participants to understand those models and thereby allow them to consider how to offer

¹³ See Rule 3A, supra note 4. The service described in Rule 3A is referred to herein as the "Sponsored Service".

and price those models so as to ensure indirect participants can access central clearing. These proposed rule changes aim to achieve these goals. In particular FICC is proposing to amend the Rules to (a) provide a public road map of the different models for accessing the GSD services that are available to both Members and, indirectly, their customers; and (b) simplify the definitions of the different types of membership and other related definitions. FICC believes these clarifications would enhance the ability of market participants to understand the GSD access models that are available, thereby allowing them to determine how to offer and price FICC's currently available models to ensure that indirect participants can access central clearing.

Background

FICC, through GSD, serves as a central counterparty and provides real-time trade matching, clearing, risk management and netting for cash purchases and sales of U.S. Treasury securities as well as repurchase and reverse repurchase transactions involving U.S. Treasury securities ("repos").¹⁴ GSD's central counterparty services are available directly to entities that are approved to be Netting Members and indirectly to other market participants through its indirect access models – the Sponsored Service¹⁵ or correspondent clearing / prime broker services.¹⁶

¹⁴ GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

¹⁵ See Rule 3A, supra note 4.

¹⁶ See Rule 2 (Members) (providing that FICC shall make its services available to entities that are approved to be Members of GSD); Rule 3A (Sponsoring Members and Sponsored Members) (describing the Sponsored Service) and Rule 8 (Executing Firm Trades) (currently describing the correspondent clearing / prime broker services), supra note 4.

Currently, there are different Netting Member application categories based upon the type of legal entity (*i.e.*, Bank Netting Member, Dealer Netting Member, Inter-Dealer Broker Netting Member) and whether an entity is incorporated in the United States or not (*i.e.*, a Foreign Netting Member). Netting Member applicants must meet both financial and operational minimum eligibility requirements¹⁷ and, as Members of GSD, must adhere to ongoing minimum membership standards.¹⁸ Furthermore, both the minimum eligibility requirements and ongoing standards vary depending on the relevant Netting Membership category. However, in general, all Netting Member categories may access the services available through GSD's Comparison System¹⁹ and Netting System²⁰.

Market participants may also access GSD's clearing services indirectly through a Netting Member. There are currently two indirect participation models to facilitate this – the Sponsored Service²¹ and the correspondent clearing / prime broker services.²² Each of these indirect participation models gives market participants different options to consider in accessing FICC's clearance and settlement services, and the benefits of its central counterparty guaranty, multilateral netting and centralized default management.

¹⁷ See Rule 2A, supra note 4.

¹⁸ See Rule 3, supra note 4.

¹⁹ See Rule 5, supra note 4. GSD also has a limited membership that permits Comparison-Only Members to participate only in its Comparison System. FICC does not act as a central counterparty for activity processed through its Comparison System and the services offered through its Comparison System are not guaranteed by FICC.

²⁰ See Rule 11, supra note 4.

²¹ See Rule 3A, supra note 4.

²² See Rule 8, supra note 4.

However, the primary difference between the two models is that an indirect participant who becomes a Sponsored Member must establish an indirect, limited purpose membership with FICC, whereas the correspondent clearing / prime broker services do not require an indirect member to establish any relationship with FICC.

The Sponsored Service permits Netting Members, approved by FICC as “Sponsoring Members,” to sponsor certain institutional firms, referred to as “Sponsored Members”, into GSD membership.²³ The Sponsoring Member is permitted to submit to FICC for comparison, novation and netting certain types of eligible transactions either between itself and its Sponsored Members (*i.e.*, “done with”), or between the Sponsored Members and other third-party Netting Members (*i.e.*, “done away”). For operational and administrative purposes, a Sponsored Member appoints its Sponsoring Member to act as processing agent with respect to the Sponsored Member’s satisfaction of its securities and funds-only settlement obligations.

A Sponsored Member is a GSD member and the legal counterparty to FICC for any submitted transactions. However, the Sponsoring Member unconditionally guarantees to FICC the Sponsored Member’s performance under a Sponsoring Member Guaranty, which guarantees to FICC the payment and performance of a Sponsored Member’s obligations to FICC. Therefore, FICC relies on the financial resources of the Sponsoring Member in relying upon the Sponsoring Member Guaranty. If a Sponsoring Member fails to perform under the Sponsoring Member Guaranty, FICC may cease to act for the Sponsoring Member both as a Sponsoring Member as well as a Netting Member.

²³ See Rule 3A, *supra* note 4. An entity that chooses to become a Sponsoring Member still retains its status as a Netting Member and can continue to submit any non-Sponsored Member activity to FICC as such.

Netting Members may also submit to FICC eligible activity on behalf of their customers through the correspondent clearing / prime broker services. Here, the Netting Member is referred to as the “Submitting Member” and the customer is referred to as the “Executing Firm”.²⁴ Unlike the Sponsored Service, FICC has no relationship with the Executing Firm and all obligations (i.e., margin and settlement) under the Rules remain with the Submitting Member. Executing Firms may execute trades with any Netting Member, including their submitting Netting Member, or a customer of any other Netting Member in clearing. In addition, Submitting Members have the option of either netting Executing Firm activity with other activity they submit to FICC (i.e., Submitting Member proprietary activity) or segregating Executing Firm activity in separate accounts. In all cases, however, the Submitting Member must identify the relevant Executing Firm(s) on the FICC transaction submission file.

Summary of Proposed Rule Changes

First, FICC is proposing to re-name GSD’s existing correspondent clearing / prime broker services as the Agent Clearing Service, which would continue to allow Netting Members to submit, on behalf of their customers, transactions to FICC for novation. As such, this proposal would provide that for a Netting Member to continue to offer its customers access to GSD’s services via the current correspondent clearing/prime

²⁴ See Rule 8, *supra* note 4. There are no operational differences between the current correspondent clearing service and the prime broker service. FICC provides a report to prime brokers that identifies margin calculation for their customers transactions and does not provide such report to Members using the correspondent clearing service. FICC would provide consistent reporting to all Agent Clearing Members under the proposal.

broker services, it must apply to use the Agent Clearing Service by becoming an Agent Clearing Member.

This proposed change would improve the transparency of the Rules regarding the availability of this service to both Netting Members and, indirectly, their customers. This proposed change would enhance the ability of indirect participants to identify the correspondent clearing / prime broker services as a workable “done away” model that allows indirect participants to access clearing through multiple direct participants. Under these proposed rule changes, FICC would require Netting Members (in their new capacity as Agent Clearing Members) to process and record their customers’ activity in separate “Agent Clearing Member Omnibus Accounts” to facilitate FICC’s ability to monitor and, ultimately, risk manage that activity appropriately. These proposed changes would also provide that a Netting Member must apply to use the Agent Clearing Service and, as an Agent Clearing Member, shall be required, pursuant to the existing ongoing membership requirements in the Rules, to provide FICC with information regarding the customers for which it is acting. This information sharing would allow FICC to better identify and manage the risks posed by these indirect participants and would support FICC’s compliance with the requirements of Rule 17Ad-22(e)(18)(iii) under the Act to monitor compliance with its participation requirements on an ongoing basis.²⁵

Second, the proposed rule changes would update certain qualifications for GSD’s membership categories. These proposed rule changes would (a) eliminate the two Sponsoring Member categories and apply to all Sponsoring Members the qualifications applicable to the current Category 2 Sponsoring Members; (b) remove the requirement

²⁵ 17 CFR 240.17Ad-22(e)(18)(iii).

that Sponsored Members either be “qualified institutional buyers” as such term is defined by Rule 144A under the Securities Act of 1933,²⁶ or satisfy the financial requirements of such definition; (c) clarify the eligibility criteria for non-U.S. Netting Member applicants; and (d) describe how FICC may consider Netting Member applicants that do not qualify under an existing Netting Member category. These proposed changes would support FICC’s continued maintenance of objective, risk-based and publicly disclosed participation criteria and, therefore, facilitate open access to GSD’s clearing services. The proposed rule changes would also improve the clarity of the Rules regarding the ways Members can access its services, while updating certain qualifications for membership.

Third, FICC is proposing to further disclose to the public, through the Rules, the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD’s clearing services. These proposed rule changes would simplify and, therefore, clarify the criteria and related descriptions of the different models for accessing GSD’s services by (a) providing to both Members and, indirectly, their customers a public road map of the different membership types, Netting Member categories and models for accessing GSD’s services; and (b) simplifying the definitions of the different types of membership and other related definitions, and clarifying the eligibility criteria for different categories of Netting Members. These simplifications and clarifications, in turn, should enhance the ability of market participants, and in particular indirect participants, to understand and evaluate the comparative tradeoffs of using GSD’s central clearing services depending on the relevant access model.

²⁶ 17 CFR 230.144A.

Finally, the proposed rule changes would make other technical corrections and updates to the Rules, as described below.

Description of Proposed Rule Changes

1. *Re-name the Correspondent Clearing / Prime Broker Services as the Agent Clearing Service*

The proposed rule changes would re-name and consolidate the existing correspondent clearing / prime broker services into a single Agent Clearing Service and adopt additional provisions governing the use of this service. The proposed changes would provide market participants with an understanding of the operation of this service, the rights and obligations of the firms that access the GSD facilities through this participation model, and how this service otherwise replaces and continues the access and functions currently available under the correspondent clearing / prime services. To these ends, the proposed rule changes would primarily amend Rule 8, which currently describes the correspondent clearing / prime broker services, to describe the Agent Clearing Service with more specificity. This new terminology and specificity are intended to demonstrate how this particular GSD access model operates similarly to the way market participants in the cleared derivatives markets can execute derivatives with third parties and then give them up to their FCM for clearing. Thus, the proposed changes to Rule 8 described herein are designed to be comparable to the terms of FCM-style agent clearing models.²⁷

²⁷ Many of the provisions that are being proposed to be added to Rule 8 are similar to provisions recently adopted to Rule 2D (Agent Clearing Members) of the Rules & Procedures of FICC's affiliate, National Securities Clearing Corporation ("NSCC"), available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf. In developing the agent clearing model, NSCC solicited input from market participants, including agent

As described above, the existing correspondent clearing / prime broker services permit Submitting Members to submit activity to FICC for clearing on behalf of their customers, the Executing Firms. To do this, a Submitting Member must establish a relationship with one or more Executing Firms and provide FICC with notice of each customer confirming the Executing Firm relationship. However, in contrast with the Sponsored Service, FICC has no relationship with the Executing Firms.

Submitting Members are not currently required to, but can, segregate the Executing Firm activity in their submissions to FICC. In all instances, Submitting Members are responsible to FICC for all obligations, financial or otherwise, for that Executing Firm activity. While both Executing Firm activity and other Submitting Member activity (i.e., Submitting Member proprietary activity) are generally processed in the same manner by FICC, Executing Member trade data must include an executing firm symbol for identification purposes.

While the proposed rule changes would change the terms used and otherwise enhance FICC's disclosures regarding the operation of the historical correspondent clearing / prime broker access models, most of the changes entailed by the shift to a single Agent Clearing Service would not alter in practice how Netting Members and their customers use this model to access GSD's services. Like the correspondent clearing / prime broker models, the Agent Clearing Service would continue prior models' facilitation of agent-style trading by allowing Netting Members, which would be referred to in the Rules as "Agent Clearing Members" for this purpose, to act as processing agent

lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. See id.

and credit intermediary for their customers in clearing, to be referred to as “Executing Firm Customers” under the proposed changes.

As described below, the proposal also entails changes that would provide FICC with the ability to monitor activity submitted through this indirect access model, thereby managing the risks that this activity could present to FICC and the GSD membership. For example, as described in greater detail below, FICC would require that Netting Members (including Netting Members who are Submitting Members today) submit an application to become Agent Clearing Members and provide additional information regarding each Executing Firm Customer beyond what is required for Executing Firms today, such as a Legal Entity Identifier (“LEI”). Agent Clearing Members would also be required to submit activity on behalf of their customers through separate Agent Clearing Member Omnibus Accounts, as opposed to the optional segregated submission approach provided for today. For both initial and ongoing membership purposes, the proposal would require Agent Clearing Members to provide FICC with information related to their use of the Agent Clearing Service, as may be requested by FICC from time to time, as described in greater detail below.

a. Rule 8 – Agent Clearing Service

Rule 8 currently describes the correspondent clearing / prime broker services at a high level. The proposed rule changes would delete and replace Rule 8 with a more detailed description of the correspondent clearing / prime broker services as a single Agent Clearing Service. These proposed changes would provide Netting Members and other market participants with a clearer description of the operation of this service and a better understanding of the availability of this indirect access model, as described below.

(i) *Section 1 – General*

The proposed changes to Section 1 of Rule 8 would provide a general overview of the purpose and availability of the Agent Clearing Service. The proposed rule changes would update the information currently in Section 1 of Rule 8 to replace updated defined terms and to correctly identify the Members and other parties who can participate in this indirect model (*i.e.*, replace “Submitting Member” with “Agent Clearing Member”).

(ii) *Section 2 – Agent Clearing Member Qualifications and Application Process*

Section 2 would provide that a Netting Member, other than an Inter-Dealer Broker Netting Member, shall be eligible to apply to become an Agent Clearing Member. Inter-Dealer Broker Netting Members are currently not permitted to use the existing correspondent clearing / prime broker services because, pursuant to Section 8(e) of Rule 3, these firms are required to limit their business to acting exclusively as a Brokers, and therefore this limitation continues to apply.²⁸

Section 2 would also provide that an applicant to be an Agent Clearing Member shall complete and deliver to FICC an application and any other information that FICC may request. FICC currently does not require a Netting Member to apply, or provide any additional information, to FICC to use the correspondent clearing / prime broker services. To strengthen its ability to identify, monitor and manage the material risks that indirect participants may present through their access to GSD’s clearing services, FICC is proposing to require that Netting Members apply to be Agent Clearing Members by

²⁸ This limitation that Inter-Dealer Broker Netting Members are not eligible to use the existing correspondent clearing/prime broker services is currently in the definition of “Submitting Member” in Rule 1 and would be moved to this Section 2 of Rule 8. Supra note 4.

completing and submitting an application to FICC. Section 2 of Rule 8 would specify that the application would require information about the applicant's customers, past and/or projected volumes of applicant customer activity, and the applicant's controls for monitoring and mitigating risks, including customer risks. Section 2 would also state that an applicant must provide any other information that FICC reasonably requests for purposes of this initial application process.

In certain instances, FICC may find that a firm seeking to be an Agent Clearing Member may present risks that require further analysis and consideration by FICC before granting Agent Clearing Member status. Therefore, Section 2 of Rule 8 would introduce a new provision providing that FICC may require a firm to be a Netting Member for a period of time prior to applying for Agent Clearing Member status.

(iii) Section 3 – Executing Firm Customer Relationships

Section 3 of Rule 8 would describe how an Agent Clearing Member may establish a relationship with an Executing Firm Customer under the Agent Clearing Service.

First, Section 3 would define an Executing Firm Customer as an entity for which an Agent Clearing Member submits transactions to FICC pursuant to the requirements of Rule 8.

Second, Section 3 would identify the information that an Agent Clearing Member must provide to FICC for each of its Executing Firm Customers. Currently, Section 3 of Rule 8 requires that the Submitting Member provide FICC with a notice of each customer that the Submitting Member intends to submit trades on behalf of, and requires that such notice (1) be provided to FICC not less than 3 Business Days prior to the commencement of the Member's initial data submission on behalf of each such Executing Firm, and

(2) include “the types of eligible transactions that will be submitted for Comparison System and/or Netting System processing.”²⁹

Under the proposed rules, FICC would no longer require that the customer notice include the types of transactions that would be submitted because it would accept any Agent Clearing Transactions submitted on behalf of an Executing Firm Customer, pursuant to Section 4 of Rule 8, described below. Instead, FICC is proposing to require that Agent Clearing Members provide the following information from each Executing Firm Customer: (1) the name and executing firm symbol of the Executing Firm Customer; (2) written authorization from the Executing Firm Customer to act on its behalf; (3) a LEI for the Executing Firm Customer;³⁰ (4) confirmation that the Executing Firm Customer and the Agent Clearing Member have entered into an agreement that binds the Executing Firm Customer to the applicable provisions of the Rules, as would be required by Section 3, described below; and (v) confirmation that the Executing Firm Customer understands, acknowledges and agrees to each of the Executing Firm Customer Acknowledgments set forth in, and as would be required by Section 6 of Rule 8, described in greater detail below.

The requirement that Agent Clearing Members provide FICC with a written authorization from its Executing Firm Customers, which FICC collects today pursuant to Section 3 of Rule 8, enables FICC to confirm that an agent clearing relationship exists

²⁹ Supra note 4.

³⁰ Rule 1 defines a Legal Entity Identifier as “a 20-character reference code to uniquely identify legally distinct entities that engage in financial transactions. The Legal Entity Identifier is based on the ISO 17442 standard developed by the International Organization for Standardization and satisfies the standards implemented by the Global Legal Entity Identifier Foundation.” Supra note 4.

between the Agent Clearing Member and the Executing Firm Customer. This requirement would be expanded to permit FICC to collect other information regarding the Executing Firm Customer and its agent clearing relationship with the Agent Clearing Members. Consistent with this change, FICC would therefore no longer accept trade data on behalf of an Executing Firm customer if it has not yet received the required written authorization.³¹

The proposed rules would require that the above-specified information be provided in a form acceptable to FICC no later than 3 Business Days prior to the commencement of the Agent Clearing Member's initial data submission on behalf of an Executing Firm Customer. This timeframe, currently in Rule 8, provides FICC with the ability to confirm on a timely basis that the information provided is complete and accurate and to update its systems to reflect the agent clearing relationship. Additionally, to facilitate the ability of Agent Clearing Members to submit trades on behalf of their Executing Firm Customers as quickly as possible, FICC would provide to Agent Clearing Members a standardized Executing Firm Customer information form. By requiring each Executing Firm Customer to complete and execute this standardized form, FICC would be able to ensure that the required information is provided in a form acceptable to it, while also ensuring that such information is consistent and comprehensive across all Executing Firm Customers.

In addition to requiring that it receive a LEI for each Executing Firm Customer when a relationship is established in the Agent Clearing Service, Section 3 would also

³¹ For this purpose, FICC is also proposing to remove a statement from Section 4 of Rule 8 that FICC may accept data "on behalf of an Executing Firm even though a written notice ... has not been received" See supra note 4.

require that each Agent Clearing Member maintain, on ongoing basis, a current LEIs for each of its Executing Firm Customers. Each Agent Clearing Member would also be required to indemnify FICC for any losses, liabilities, expenses and legal actions that could arise as a result of that Agent Clearing Member's failure to meet these requirements. The proposed requirement that Agent Clearing Members both provide and maintain a current LEI on file with FICC for each of its Executing Firm Customers and provide an indemnification related to this requirement are identical to existing requirements on Netting Members and Sponsoring Members, with respect to their Sponsored Members.³²

As noted above, Section 3 of Rule 8 would require that an agreement between the Agent Clearing Member and the Executing Firm Customer bind the latter to the applicable provisions of the Rules. However, beyond this specific requirement the proposed changes would also acknowledge such an agreement may otherwise be on any terms and conditions mutually agreed to by the parties and confirm that the Rules do not prohibit any reimbursement or other payments sharing arrangements that may be established between those parties, away from FICC.

³² Applicants to be Netting Members are also required to (i) provide FICC with a LEI as part of their application under Section 5 of Rule 2A, (ii) maintain a current LEI on file with FICC at all times under Section 2 of Rule 3, and (iii) indemnify FICC for any losses, liabilities, expenses and legal actions incurred as a result of its failure to maintain a current LEI on file with FICC under Section 2 of Rule 3. Supra note 4. Under Section 2(d) of Rule 3A, Sponsoring Members have an identical obligation to (i) provide FICC with a LEI for each of its Sponsored Members when onboarding those Sponsored Members, (ii) maintain a current LEI for each of its Sponsored Members on file with FICC at all times, and (iii) indemnify FICC from any losses resulting from a failure to adhere to these requirements. Id.

Finally, Section 3 would provide that Agent Clearing Members may, but are not required to, provide to FICC a written notice that it will no longer submit trades on behalf of an Executing Firm Customer. Section 3 of Rule currently requires Submitting Members to provide such notice to FICC. However, FICC does not see a need to mandate such notice because an Agent Clearing Member that terminates its agent clearing relationship with a customer may just cease to submit trades to FICC for processing. In any case, if an Agent Clearing Member chooses to submit such written notice to FICC, FICC would remove that relationship from its systems.

(iv) *Section 4 – Agent Clearing Transactions*

Section 4 of Rule 8 would define Agent Clearing Transactions as transactions that are eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm Customers. The existing scope of this definition would not change and would continue to exclude “Netting Eligible Auction Purchases”, “Brokered Transactions”, “GCF Repo Transactions” and “CCIT Transactions”, as such terms are defined in the Rules.³³

(v) *Section 5 – Rights and Obligations of Agent Clearing Members*

Section 5 of Rule 8 would specify the rights and obligations of Agent Clearing Members, expanding on the provisions currently provided in Section 4 of Rule 8.³⁴

³³ GCF Repo Transactions and CCIT Transactions are currently excluded due to system limitations, and Brokered Transactions are necessarily excluded because Inter-Dealer Broker Netting Members are not permitted to act as Agent Clearing Members, as discussed above. The exclusion of Netting Eligible Auction Purchases is driven by the specific processing rules applicable to auctions that are external to FICC. The laws and regulations applicable to U.S. Treasury auctions are available at <https://treasurydirect.gov/laws-and-regulations/>.

³⁴ Section 4 of Rule 8 currently provides, “A Submitting Member shall have the same rights, and incur the same responsibilities, as regards trade data by it to the

These provisions would provide that Agent Clearing Members have the right to submit Agent Clearing Transactions to FICC for clearing, subject to the applicable requirements set forth in the Rules, including, for example, the requirement that all such activity comply in all material respects with applicable laws. Section 5 would define the role of the Agent Clearing Members as processing agents of Executing Firm Customers and establish that Agent Clearing Members are liable to FICC for all obligations arising in connection with their Agent Clearing Transactions in the same manner as if the Agent Clearing Member had executed those trades. These proposed changes would also clarify that where an entity is both an Agent Clearing Member and a Netting Member, the obligations of that entity to satisfy all of the applicable obligations under the Rules and any other relevant arrangements with FICC across both types of membership apply comprehensively. Therefore, Section 5 would state that Agent Clearing Members' obligations to FICC in their capacity as Netting Members, both under the Rules and under any agreements between the Agent Clearing Member and FICC, also apply to them in their capacity as Agent Clearing Members, to their Agent Clearing Transactions and to their Agent Clearing Member Omnibus Accounts. The proposed changes to Section 5 would also explicitly clarify that FICC has no liability or obligations to any Executing Firm Customer.

Section 5 of Rule 8 would also provide for FICC's authority to obtain information from Agent Clearing Members on an ongoing basis. For example, this section would require Agent Clearing Members to provide FICC with information or reports that it may

Corporation on behalf of an Executing Firm as it does, pursuant to these Rules, regarding data submitted to the Corporation on its own trades." Supra note 4.

request pursuant to the existing, ongoing membership requirements in Section 2 of Rule 3, including information or reports related to their Agent Clearing Transactions.³⁵ In addition, FICC would have the right to request information that is similar to the information requested for Agent Clearing Member applications, for example, information regarding its customers, past and/or projected volumes of its customer activity, and its controls for monitoring and mitigating risks, including risks presented by those customers. These annual and ad hoc due diligence requests are key to FICC's ability to identify, monitor and manage the risks its Members may present to it and the broader GSD membership. The proposed changes would therefore support FICC's authority to request information from Agent Clearing Members regarding their Executing Firm Customers and their use of the Agent Clearing Service. By collecting this information at both the application process and through its regular due diligence requests, FICC would be able to identify, monitor, and, therefore, manage the risks posed by its Members' use of this service and the indirect participants.

(vi) *Section 6 – Executing Firm Customer Acknowledgements*

Next, Section 6 of Rule 8 would include specific Executing Firm Customer acknowledgements with respect to their participation in the Agent Clearing Service. Because Executing Firm Customers would continue to have no relationship to FICC, the proposed changes to Section 6 would provide that Agent Clearing Members are responsible for affirming that their Executing Firm Customers understand, acknowledge

³⁵ Section 2 of Rule 3 currently provides that, “Each Netting Member shall submit to the Corporation the reports, financial or other information set forth [in this Section 2] and such other reports, financial and other information as the Corporation from time to time may reasonably require.” Supra note 4.

and agree to the provisions in this Section of Rule 8. As noted above, the standardized authorization form that Agent Clearing Members would be required to provide to FICC would confirm that this requirement has been satisfied.

Like other proposed changes to Rule 8, these additions to Section 6 are common in other agent clearing models and, therefore, would be familiar to market participants looking to use the Agent Clearing Service.³⁶ These acknowledgements would include, for example, confirmation that the Agent Clearing Service is governed by the Rules, that FICC may deal exclusively with Agent Clearing Members and is not obligated to deal directly with Executing Firm Customers. The acknowledgements would also clarify that FICC does not have any obligations or liability to Executing Firm Customers.

(vii) Section 7 – Agent Clearing Transactions Processing Rules

Finally, Section 7 of Rule 8 would describe certain rules regarding the processing of Agent Clearing Transactions.

First, Section 7 would provide that Agent Clearing Transactions would be recorded in accounts maintained by FICC on behalf of the Agent Clearing Member, defined as “Agent Clearing Member Omnibus Accounts”. This proposed requirement would facilitate FICC’s ability to identify, monitor and manage the risks that this activity may present. Currently, the existing correspondent clearing / prime broker services gives Netting Members discretion in choosing whether to record their customer activity in an account that is separate from their Netting Member account. Under this aspect of the proposal, that discretion would be removed by the new requirement under Section 7 that all Agent Clearing Transactions include an executing firm symbol that identifies the

³⁶ See supra note 27.

Executing Firm Customer. Section 7 would relatedly provide that Agent Clearing Transactions that do not contain an executing firm symbol be rejected by FICC.³⁷ Therefore, the proposed rule change would remove language currently in Section 2 of Rule 8 that states, if the Executing Firm is not included on the trade data submitted to FICC, then FICC would process the trades as if it was not a customer trade. While this new mandatory approach would enable FICC to track and monitor distinct Executing Firm Customer activity, for risk management purposes Agent Clearing Members would have the option to net all of that activity in the same Agent Clearing Member Omnibus Account.³⁸

Second, Section 7 would state that Agent Clearing Transactions would continue to be processed in the same way that FICC processes other transactions through the GSD netting, clearing and settlement systems, unless exceptions to that processing are specifically identified in Rule 8.

³⁷ FICC is proposing to remove a statement currently in Section 5 of Rule 8 that says, “The Corporation, in its sole discretion, may decline to accept trade data involving one or more Executing Firms, either generally for all trade data submitted to the Corporation or by Submitting Member.” This statement addresses FICC’s right to reject a trade if it does not meet trade submission criteria. The proposed changes to Rule 8 would address this right, making this statement no longer necessary. For example, as noted above, Section 2 would provide that FICC shall not act upon an instruction regarding an Executing Firm Customer until it obtains an authorization from that Executing Firm Customer and, as noted here, Section 7 would provide that FICC would reject any trade that does not include an executing firm symbol.

³⁸ Contemporaneously with this proposed rule change, FICC will propose additional rule changes to address how Agent Clearing Members and Sponsoring Members may elect to maintain separate accounts for clearing activity that satisfy the requirements described in Note H to Rule 15c3-3a, as it has been amended. See 15 U.S.C. 78s(b)(1). Such proposed rule changes would support FICC’s compliance with the requirements of Rule 17Ad-22(c)(6)(i), as adopted by the Treasury Clearing Rules. Supra note 5. See also 17 CFR 240.15c3-3a.

Third, Section 7 would include a description of how Agent Clearing Transactions are processed when the optional field identifying the contra-party is either omitted or does not match on the transaction file. Specifically, the Agent Clearing Transaction would be compared based on the executing firm symbol. This information is currently applicable to activity processed through the correspondent clearing / prime broker services and would be moved from Rule 10 to Rule 8.

Fourth, the proposed rule changes would move into Section 7 provisions from Section 2 of Rule 11, which describes the Netting System, and Section 11 of Rule 12, which describes processing of Same-Day Settling Trades.³⁹ These provisions are currently applicable to transactions processed through the correspondent clearing / prime broker services and would continue to be applicable to Agent Clearing Transactions. Specifically, both provisions permit an Agent Clearing Member to notify FICC if it does not want Agent Clearing Transactions of a particular Executing Firm Customer to be netted and settled, in which case the transaction would only be compared through the Comparison System.

Fifth, Section 7 would state that if a loss is allocated to Members pursuant to Section 7 of Rule 4, the Agent Clearing Member, as principal, would be responsible for satisfying the loss allocation obligations that are calculated for its Executing Firm Customers. Section 7 would also provide that the Clearing Fund obligations applicable to an Agent Clearing Members' Agent Clearing Transactions would be calculated separately from the obligations calculated with respect to other activity of the Agent Clearing

³⁹ See definition of "Same-Day Settling Trades" in Rule 1, supra note 4. Same-Day Settling Trades are not netted prior to settlement so are settled through the Comparison System, as described in this provision.

Member. However, FICC would have the right to apply any Clearing Fund deposits of an Agent Clearing Member to any obligations of that Member (including in their capacity as a Netting Member). As a substantive matter, the above two changes do not vary from how FICC calculates and applies loss allocation or Clearing Fund requirements under the correspondent clearing and prime broker services today. Therefore, these changes function more as conforming and clarifying disclosures with respect to these matters for Netting Members in their new capacity as Agent Clearing Members.⁴⁰

Sixth and finally, Section 7 would include and clarify a provision that is currently in Section 6 of Rule 8 notifying Agent Clearing Members that the comparison output provided by FICC would identify the Executing Firm Customer for any Agent Clearing Transactions.

(viii) Other Rule Changes to Address Agent Clearing Service

The proposed changes would also amend Rule 1 to replace several definitions: “Submitting Member” with “Agent Clearing Member” and “Executing Firm” with “Executing Firm Customer”. The Rule 1 changes would also add new definitions for “Agent Clearing Member Omnibus Account” and “Agent Clearing Transactions”. The proposed changes would also correct the definition of “GCF Counterparty” to remove a reference to a Submitting Member acting for an Executing Firm because, as noted above, Agent Clearing Transactions do not include GCF Repo Transactions, and, as such, Agent Clearing Members cannot be GCF Counterparties.

⁴⁰ As noted above, FICC will propose changes to this section under a separate proposal to address the calculation, collection and application of Clearing Fund requirements under the Rules for certain, designated accounts. Supra note 38.

The proposed rule changes would amend other Rules to reflect these updated defined terms or remove descriptions of how this service operates where those descriptions have been moved and restated in Rule 8. Revisions to other Rules include (i) Rule 2, to include Agent Clearing Members as an additional type of membership available to Netting Members, as described in greater detail below; (ii) Rules 5, 6A, 11 and 18, to replace references to “Executing Firms” with “Executing Firm Customers” and replace references to “Submitting Member” with “Agent Clearing Member”; (iii) Rule 6C, to correct an incorrect statement in this Rule by removing a parenthetical that indicates GCF Counterparties could be Submitting Members for Executing Firms, because the definition of Agent Clearing Transactions excludes GCF Repo Transactions, as such term is defined in the Rules; (iv) Section 2 of Rule 11 and Section 11 of Rule 12 to remove statements that would be moved into Section 7 of Rule 8, as described above; (v) Rule 15, to remove Section 1, which would be addressed in Section 5 of Rule 8; (vi) Rule 24, to address the responsibility of Agent Clearing Members to pay all fees that are related to the Agent Clearing Member activity that is submitted pursuant to Rule 8, including any expenses that are incurred directly or indirectly by such Member; (vii) the Schedule of Required Data Submissions, to correct statements in this Schedule and clarify that Agent Clearing Members are required to include an executing firm symbol on the submission of all Agent Clearing Transactions; and (viii) the Fee Structure, to remove an incorrect statement from Section I(G) that indicates GCF Counterparties could be Members submitting trades for non-Members, because the definition of Agent Clearing Transactions excludes GCF Repo Transactions, as such term is defined in the Rules and

to revise Section VI to address fees applicable to Agent Clearing Members to use the revised defined terms.

2. Update Certain Membership Qualifications to Facilitate Access to GSD's Services

FICC is proposing changes to certain membership qualifications that would improve FICC's ability to service a wide variety of market participants for both direct and indirect membership. These proposed changes are designed to facilitate open access to the clearance and settlement services offered by GSD and, therefore, would support FICC's compliance with the Treasury Clearing Rules.

a. Eliminate the Separate Categories of Sponsoring Members

FICC is proposing to eliminate the separate categories of Sponsoring Members and apply the standards applicable to Category 2 Sponsoring Members to all Sponsoring Members.

When FICC established the Sponsored Service in 2005, it limited Sponsoring Member eligibility to only Bank Netting Members that met the criteria set out in Rule 3A.⁴¹ In 2019, FICC expanded Sponsoring Member eligibility to also include Tier One Netting Members, other than Inter-Dealer Broker Netting Members, or Non-IDB Repo Brokers with respect to activity in its Segregated Repo Account.⁴² At that time, FICC established two categories of Sponsoring Members – Category 1 Sponsoring Members

⁴¹ Securities Exchange Act Release No. 51896 (June 21, 2005), 70 FR 36981 (June 27, 2005) (SR-FICC-2004-22).

⁴² See Securities Exchange Act Release No. 85470 (Mar. 29, 2019) 84 FR 13328 (Apr. 4, 2019) (SR-FICC-2018-013) (creating two categories of Netting Members to be eligible to be Sponsoring Members, expanding the eligibility of the service to other types of Netting Members in addition to Bank Netting Members).

are Bank Netting Members that meet the eligibility criteria described in Section 2(a) of Rule 3A, and Category 2 Sponsoring Members are all other eligible Netting Members.⁴³

While Bank Netting Members are subject to certain capitalization requirements as Sponsoring Member applicants,⁴⁴ Category 2 Sponsoring Member applicants are instead subject to financial requirements that are greater than the financial requirements applicable in their capacity as Netting Members.⁴⁵ Moreover, these increased financial requirements do not solely relate to an applicant's capitalization, but instead are based on the applicant's anticipated use of the Sponsoring Service in relation to their financial condition. Thus, this tiered category structure created differing applicant criteria based on the type of entity seeking Sponsoring Member status.

This differentiated approach continues for ongoing Sponsoring Member requirements. For example, a Category 1 Sponsoring Member may be subject to an increase in its Required Fund Deposit, as calculated pursuant to Section 2(h) of Rule 3A, if it fails to meet the applicable capitalization requirements.⁴⁶ Alternatively, Section 2(h) of Rule 3A provides that Category 2 Sponsoring Members may be subject to a limit on

⁴³ See *id.* See also Rule 3A, Section 2, *supra* note 4.

⁴⁴ Under Section 2(a) of Rule 3A, Bank Netting Members applying to be a Sponsoring Member must (i) have equity capital of at least \$5 billion, (ii) be "Well-Capitalized", as such term is defined in the Rules, and (iii) have a bank holding company that is registered under the Bank Holding Company Act of 1954, as amended and that such bank holding company also be "Well Capitalized". "Well Capitalized" is defined in Rule 1 to have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. *Supra* note 4.

⁴⁵ See Section 2(b)(ii) of Rule 3A, *supra* note 4.

⁴⁶ *Supra* note 4.

the activity that they can submit through the Sponsoring Service if their VaR Charges, as calculated and collected pursuant to Rule 4, exceed their Netting Member Capital.⁴⁷

The Sponsored Service has continued to grow since its implementation. As discussed above, FICC has conducted a review of its access models to consider whether (i) its existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution, and other factors, and (ii) this variation of treatment continues to be necessary and appropriate in furtherance of the requirements under Rule 17Ad-22(e) and other parts of the Act applicable to FICC.⁴⁸ In light of this review and the general experience FICC has acquired in overseeing the expansion of the Sponsored Service membership, FICC believes that now is the appropriate time to make further enhancements so that this service can facilitate broader access to clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants who may seek to use the Sponsored Service as Sponsored Members. Therefore, FICC believes it is appropriate to eliminate the two categories of Sponsoring Members and make all Sponsoring Members subject to the same eligibility and ongoing requirements that are currently applicable to Category 2 Sponsoring Members. In practice, this proposed rule change would therefore affect only Bank Netting Members that are or will apply to be Sponsoring Members by removing the

⁴⁷ A “VaR Charge” is a component of the Required Fund Deposit and defined in Rule 1, and “Netting Member Capital” is defined in Rule 1 to mean “Net Capital, net assets or equity capital as applicable, to a Netting Member based on its type of regulation”. Supra note 4.

⁴⁸ See 17 CFR 240.17Ad-22(e). See supra note 11.

above-mentioned capitalization requirements and instead applying to such Members (and therefore all Sponsoring Members) the activity limits and financial condition factors used today for Category 2 Sponsoring Members. More broadly, the proposal would create applicant and ongoing Sponsoring Membership parity among all Sponsoring Members and applicants, which in turn should give indirect participants a wider range of Sponsoring Members to consider should they choose to access GSD's central clearing services via this particular indirect access model. At the same time, the preservation and broader application of activity limits and financial condition monitoring will allow FICC to continue to manage the risks that could be presented by any activity cleared through the Sponsored Service.

First, the proposed changes would eliminate the capitalization requirements that Bank Netting Members must meet to be eligible Sponsoring Members applicants. This proposed change would therefore put Bank Netting Member applicants on equal footing with other types of Sponsoring Member applicants and would expand the availability of the Sponsored Service to additional Bank Netting Members. However, FICC does not believe this proposed change would increase the risks presented to it by Bank Netting Members' participation in the Sponsored Service as Sponsoring Members because FICC would continue to manage those risks through other existing risk management tools. For example, rather than apply capitalization requirements to every Bank Netting Member applicant, FICC would continue to have the authority, as it does today for other types of applicants, to impose greater and additional financial requirements on a Bank Netting Member applicant based on information available through the Sponsoring Member

application and ongoing surveillance of the applicant as a Netting Member.⁴⁹ FICC is also able to use the Excess Capital Premium to manage instances where a Sponsoring Member presents heightened default risk because of lower capital levels.⁵⁰ Finally, as described more below, the proposal would impose upon Bank Netting Members the same activity limit used for other types of Sponsoring Members today, thereby giving FICC an additional risk management tool to address any risks that may arise because of a Bank Netting Member's capital levels.

Second, the proposed changes would eliminate FICC's right to increase the Required Fund Deposit of a Category 1 Sponsoring Member if it fails to meet the capitalization requirements, instead relying upon an activity limit under the circumstances described in Section 2(h) of Rule 3A on all Sponsoring Members (including, as discussed above, those that are Bank Netting Members).⁵¹ The activity limit, which currently only applies to Category 2 Sponsoring Members, restricts a Sponsoring Member from submitting additional activity into its Sponsoring Member Omnibus Account(s) if its capital levels exceed the sum of its VaR Charge component of

⁴⁹ See Rule 3A, Section 2(b)(ii) (describing the factors that FICC may consider when determining whether to impose additional financial requirements on a Sponsoring Member), supra note 4. For the purposes of illustration only, such financial requirements could include, without limitation, additional reporting requirements, including reporting of parent company financials, or a higher minimum deposit to the Clearing Fund.

⁵⁰ See Rule 3, Section 14 (the Excess Capital Premium is an additional Clearing Fund deposit that may be required if a Member's capital levels drop below a threshold relative to its other margin requirements), supra note 4.

⁵¹ See Rule 3A, Section 2(h), supra note 4.

the Clearing Fund.⁵² Based upon its experience with the activity limit tool since it was first applied in 2019, FICC believes the activity limit has been an appropriate and effective risk management measure for its Sponsoring Members, and will continue to operate as such with the expanded application to Bank Netting Members. As noted earlier, Sponsoring Members are unconditionally liable to FICC for the obligations of its Sponsored Members under the Sponsoring Member Guaranty, and FICC relies on the financial resources of the Sponsoring Members to ensure that their funds and securities settlement obligations will still be met if the Sponsored Members default. Therefore, the activity limit aligns more neatly with this risk by giving FICC the proactive ability to mitigate Sponsoring Member exposures in prohibiting concerning participants from continuing to submit activity that they may not be able to cover. Like the changes to the eligibility requirements discussed above, this proposed change would also harmonize the conditions of membership across all types of Sponsoring Members, thereby increasing the potential pool of Sponsoring Member applicants to the benefit of both direct and indirect participants seeking expanded access to GSD’s central clearing services.

To implement these proposed changes, FICC would make the following changes to the Rules: (1) delete the definitions of “Category 1 Sponsoring Member” and “Category 2 Sponsoring Member” from Rule 1; (2) revise the definition of “Sponsoring Member” in Rule 1 to remove reference to the two categories; and (3) amend Section 2(a), (b) and (h) of Rule 3A to remove the capitalization eligibility requirements currently applicable to Category 1 Sponsoring Members and clarify that the Category 2 Sponsoring Member eligibility requirements apply to all applicants to be a Sponsoring Member.

⁵² See *id.* See *supra* note 42.

b. Remove the QIB Requirement Applicable to Sponsored Members

FICC is proposing to remove the eligibility requirement that Sponsored Members either be “qualified institutional buyers” as such term is defined by Rule 144A under the Securities Act of 1933, or otherwise satisfy the financial requirements of such definition.⁵³ As noted above, FICC has progressively expanded the eligibility of both Sponsoring Members and Sponsored Members to facilitate greater access to this indirect participation model and based on its experience over time with the Sponsored Service believes this change is now appropriate.⁵⁴ Upon implementation of this proposal, the only qualification for a Person (as such term is defined in Rule 1)⁵⁵ applying to be a Sponsored Member would be that it is sponsored by at least one Sponsoring Member. Therefore, this proposed change would make the Sponsored Service available to additional market participants, thereby facilitating those firms with access to GSD’s clearing services. Expanding eligibility to become a Sponsored Member supports the goals of the Treasury Clearing Rules to facilitate increased central clearing of transactions involving U.S. Treasury securities.⁵⁶

⁵³ 17 CFR 230.144A. See Rule 3A, Section 3(a), supra note 4.

⁵⁴ See Securities Exchange Act Release No. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR-FICC-2017-003) (removing a requirement that a Sponsored Member be a registered investment company, as such term is defined in Rules). See also supra note 42.

⁵⁵ Supra note 4.

⁵⁶ See page 12 of the Adopting Release (referring to the revisions to Rule 17Ad-22(e)(18) as being designed to “bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby reducing the overall systemic risk in the market”). Supra note 5.

FICC believes that making this change is appropriate because, as described above, FICC risk manages the Sponsored Service primarily at the Sponsoring Member level, not the Sponsored Member level. For example, a Sponsoring Member is responsible under Section 10 of Rule 3A for posting to FICC the Required Fund Deposit for its sponsored activity and, while Sponsored Members are principally liable to FICC for their settlement obligations, the Sponsoring Member is also required under Section 2 of Rule 3A to provide a guaranty to FICC for such obligations.⁵⁷ This means that, in the event one or more Sponsored Members does not satisfy its settlement obligations, FICC is able to invoke the Sponsoring Member Guaranty. Finally, pursuant to Section 2(d) of Rule 3A and Section 2 of Rule 3, Sponsoring Members may be required to provide to FICC reports or other information that FICC may require, including, for example, responses to annual or ad hoc due diligence requests.⁵⁸ As described above, FICC utilizes these due diligence requests to identify, monitor and manage the risks Sponsoring Members and their Sponsored Members may present to it. Where FICC identifies risks, whether via the due diligence process or otherwise, as discussed previously FICC will be able to impose on a Sponsoring Member supplemental financial requirements, an Excess Capital Premium charge (where applicable), and activity limits. Therefore, FICC believes that its existing risk management practices with respect to the Sponsored Service, which do not directly rely on the QIB requirement, continue to facilitate effective risk management of exposures created through the Sponsored Service.

⁵⁷ See supra note 4.

⁵⁸ See supra note 4.

To implement this proposed change, FICC would amend Section 3(a) of Rule 3A to remove the requirement that a Sponsored Member be either a “qualified institutional buyer” as defined by Rule 144A under the Securities Act of 1933 as amended, or otherwise satisfy the financial requirements of that definition.⁵⁹

c. Clarify the Eligibility Criteria for Non-U.S. and Other Applicants to be Netting Members

FICC is proposing to revise the Rules addressing Netting Member eligibility criteria for applicants that are either (1) not incorporated or formed in the United States, currently referred to in the Rules as “Foreign Persons,”⁶⁰ and (2) applicants, including Foreign Persons, that do not meet the eligibility criteria of one of the categories of Netting Member.

(i) *Foreign Person Applicants.* FICC is proposing to improve the transparency of the Rules regarding the eligibility of Foreign Persons to become Netting Members. In connection with these proposed changes, the proposal would eliminate the category for “Foreign Netting Member” and simplify the related defined terms.

Currently, a Foreign Person applying to be a Netting Member must meet the eligibility criteria for a distinct Netting Member category, “Foreign Netting Members.” In contrast with the eligibility approach used for other Netting Member categories, the eligibility criteria for Foreign Netting Members in Section 3(a)(v) of Rule 2A do not

⁵⁹ 17 CFR 230.144A.

⁶⁰ “Foreign Person” is currently defined in Rule 1 to mean “a Person that is organized or established under the laws of a country other than the United States and does not include a foreign Bank Netting Member which is not deemed to be a Foreign Member pursuant to the definition of that term.” Supra note 4. Proposed revisions to simplify this defined term would not change it substantively.

specify or reference eligible types of legal entities. However, Section 4(b)(ii)(E) of Rule 2A does provide for minimum financial requirements and includes specific criteria for brokers, dealers and banks. This Section also provides FICC with the authority to set minimum financial requirements for other types of legal entities applying to be a Foreign Netting Member.

Section 3(b) of Rule 2A currently states that an entity can only be one category of Netting Member at a time.⁶¹ A Foreign Person that, for example, is the foreign equivalent to a Registered Investment Company⁶² would apply to be a Foreign Netting Member, and would be subject to the eligibility criteria, other membership qualifications, and ongoing minimum membership standards that are applicable to Foreign Netting Members.

However, the Rules also contain specific eligibility criteria, other membership qualifications, and ongoing minimum membership standards for Registered Investment Company Netting Members. Thus, in this example it is unclear whether the applicant entity would only be subject to the Foreign Netting Member standards or would also have to satisfy the Registered Investment Company Netting Member standards. This ambiguity can have meaningful implications. For example, Registered Investment Company Netting Members are excluded from the requirement that Netting Members purchase common

⁶¹ Supra note 4.

⁶² “Registered Investment Company” is currently defined in Rule 1 to mean “an Investment Company that is registered as such with the SEC”, where an “Investment Company is currently defined in Rule 1 to have “the meaning given that term in Section 3 of the Investment Company Act of 1940, as amended.” Supra note 4. Proposed revisions to simplify this defined term would not change it substantively.

shares of The Depository Trust & Clearing Corporation, pursuant to Rule 49.⁶³ If a Registered Investment Company that is a Foreign Person applied, and was approved, to be a Foreign Netting Member, it would not be clear if this exclusion from Rule 49 should be applicable to this Foreign Netting Member applicant.

To address these instances of ambiguity, the proposed rule changes would eliminate the category of “Foreign Netting Member” and would expand the qualifications for each category of Netting Member to include the foreign equivalent of the same legal entity types, as determined by FICC in its sole discretion. For example, the qualifications to be an Insurance Company Netting Member would continue to include an insurance company, as such term is defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended,⁶⁴ and would now also include an equivalent of such an entity in a non-U.S. jurisdiction, as determined by FICC in its sole discretion and meets the qualifications applicable to a Foreign Person in Rule 2A. In making the determination of whether a Foreign Person is an equivalent legal entity to the domestic legal entities that qualify for a category of Netting Member, FICC would consider, for example, the applicant’s business model and its regulatory framework and designated examining authority.

Thus, the proposal would then provide that a Foreign Person shall be eligible to apply to become a Netting Member if either (1) it qualifies for one of the existing categories of Netting Member, or (2) FICC determines that the applicant may apply in the

⁶³ Supra note 4.

⁶⁴ 15 U.S.C. 80a-2(a)(17).

same way as an applicant that does not qualify under an existing category of Netting Member, as described in greater detail below.

Foreign Persons that are eligible to apply to be a Netting Member would be subject to both the minimum membership standards of the applicable Netting Member category as well as the eligibility criteria currently applicable to Foreign Netting Members, currently set forth in Section 3(a)(v) of Rule 2A.⁶⁵ The proposed changes would also provide that, where an applicable Netting Member category is subject to membership qualifications that are inconsistent with the qualifications applicable to a Foreign Person, then the standards applicable to a Foreign Person shall apply. In some cases, this approach may lead to an outcome where a Foreign Person applicant remains subject to home jurisdiction requirements that are different from the requirements applicable to other Netting Members. FICC believes that this outcome is nevertheless acceptable because, as discussed further below in the section about Other Applicants, the Rules would still provide that FICC will continue to apply the membership standards that were designed specifically to address the risks that may be presented when an applicant is not domiciled in the U.S. and whose primary regulator is not U.S.-based.

⁶⁵ See Rule 2A, Section 3(a)(v) (providing that a person may be eligible to apply to be a Foreign Netting Member if it “(i) has a home country regulator that has entered into a memorandum of understanding with the SEC regarding the sharing or exchange of information, and (ii) maintains a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable in the Foreign Person’s business and can assist the Corporation’s representatives as necessary, and ensures that the Foreign Person will be able to meet its data submission, settlement, and other obligations to the Corporation as a Member in a timely manner.”) and Section 4(b)(ii)(E) (specifying the minimum financial requirements for an applicant to be a Foreign Netting Member).

In this way, the proposed changes would clarify that Foreign Persons may be eligible to be direct participants of FICC under any of the existing categories of Netting Members and, therefore, would facilitate access to GSD's clearance and settlement services through direct membership with FICC to these market participants.

To implement these proposed changes, FICC would amend the qualifications of each Netting Member category listed in Section 3(a) to include a foreign equivalent of the currently eligible legal entity types. The proposed changes would also move the eligibility criteria for Foreign Netting Members from Section 3(a)(v) of Rule 2A to a revised Section 3(b)(i) of Rule 2A. The proposed changes would remove the definitions of "Foreign Member" and "Foreign Netting Member" and revise the definition of "Foreign Person" in Rule 1. References to Foreign Netting Member would also be removed or replaced, as appropriate, in Section 4(b)(ii)(E) of Rule 2A and in Sections 2(f), 8(g) and 12(b)(i)(C) of Rule 3.

Because the defined term "Foreign Member" is currently only used in two places in the Rules, the proposed change to remove this term would simplify the Rules. Reference to "Foreign Member" would be removed from the definition of "Foreign Person" in the revisions to this definition described below. The other reference to "Foreign Member" in Section 7(g) of Rule 2A would be replaced with "a Member that is a Foreign Person".

In connection with these proposed changes, FICC is also proposing to move requirements that Foreign Persons applying to be a Netting Member and other applicants

that are referred to as “FFI Members”⁶⁶ make certain financial representations and certifications. These requirements would be moved from Section 3(a)(v) of Rule 2A to Section 5(c) of Rule 2A, which currently describes membership application documents, where such certifications would be included. This proposed change would improve the clarity of the Rules by including this membership requirement in the same place as similar membership requirements.

Finally, FICC is proposing to remove the requirement that an entity can only be one category of Netting Member at a time, but would retain the statement that, if an applicant qualified for multiple Netting Member categories, FICC would determine the category of Netting Member for which that applicant would be considered. This statement would be included in Section 3(a) of Rule 2A, just prior to the list of qualifications for each category of Netting Member.

(ii) *Other Applicants.* The proposed rule changes would provide a framework for FICC to consider an applicant, including a Foreign Person, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories. The intent behind these proposed changes is to facilitate FICC’s ability to provide access to GSD’s clearing services to a broader and more diverse range of market participants in a timely and efficient manner and, therefore, would support FICC’s

⁶⁶ “FFI Members” are defined as “any Person that is treated as a non-U.S. entity for U.S. federal income tax purposes. For the avoidance of doubt, FFI Member includes any Member that is a U.S. branch of an entity that is treated as a non-U.S. entity for U.S. federal income tax purposes.” Supra note 4.

compliance with its requirement to facilitate access to its clearance and settlement services.⁶⁷

Section 3(a) of Rule 2A lists each category of Netting Member, which are defined by different types of eligible legal entities, for example, Bank Netting Members, Dealer Netting Members and Futures Commission Merchant Netting Members. FICC does not have the authority to consider applicants to be a Netting Member if the applicant does not meet the eligibility criteria of one of these Netting Member categories. Therefore, FICC is proposing to expand its authority to consider any applicant, including Foreign Persons, to be a Netting Member. FICC believes it is both appropriate and consistent with its requirements to facilitate access to its services to allow other legal entity types to apply to be a Netting Member.

The proposed rule change would first require that an applicant demonstrate to FICC that its business and capabilities are such that it could reasonably expect material benefit from direct access to FICC's services.⁶⁸ An applicant would demonstrate this through its responses to the application questionnaire and other initial application materials. Next, the proposed rule would provide that FICC would apply minimum membership standards to an applicant that it deems reasonable and appropriate. Such minimum standards would be developed by FICC based on information provided by or

⁶⁷ 17 CFR 240.17Ad-22(e)(18)(iv)(C).

⁶⁸ This proposed change would harmonize the Rules with the rules of NSCC, which includes the same language. See Addendum B, Section 1(A)(vi) of NSCC's Rules and Procedures, which provides that, if an applicant does not qualify as one of the legal entity types specified in that rule, it may qualify if it "has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to [NSCC's] services." Supra note 27.

concerning the applicant and the applicant's risk profile. Such information would include, for example, (i) the applicant's business model, (ii) its regulatory framework and designated examining authority, (iii) its organizational structure and risk management framework, and (iv) its anticipated use of the Corporation's services. By describing the factors and information that FICC would consider in developing the applicant minimum standards, the proposed changes would require that FICC develop and apply minimum membership standards that are both objective and risk-based.

These rule changes would be added to new Section 3(b)(ii) of Rule 2A, following the proposed changes regarding applicants that are Foreign Persons, described above. In connection with these changes, the proposal would move a statement that any additional categories of Netting Member, including the applicable eligibility criteria and minimum membership standards, would be subject to approval of the Commission from Section 3(a)(x) to a new Section 3(c).

As noted above, these proposed changes would support FICC's compliance with its requirement to facilitate access to its clearance and settlement services. Following the adoption of the Treasury Clearing Rules, additional market participants will need to access FICC clearance and settlement services, either as direct Netting Members or as indirect participants. FICC cannot reliably predict which types of legal entities will apply for direct membership or predict the risk profiles of those entities in order to preemptively develop applicable qualifications and membership standards. Therefore, the proposed rule change would provide FICC with the necessary flexibility to consider any potential applicants, including legal entities that do not fit into its current Netting

Member categories, through a framework that is consistent with the rules of its affiliate, NSCC.

On an annual basis, FICC will review and conduct an assessment of GSD's access models, in compliance with the requirements of Rule 17Ad-22(e)(18)(iv)(C) under the Act.⁶⁹ In connection with this annual assessment, FICC would review the types and number of legal entities that have applied to be a Netting Member under the proposed provision over the prior 12 months. Based on that review, FICC would determine whether it would be appropriate to adopt, through a proposed rule change, a new category of Netting Member and the applicable qualifications and membership standards. FICC would address this annual review in its proposed amendments to the Clearing Agency Risk Management Framework, where the annual review of GSD access models would also be addressed.⁷⁰

3. *Improve Clarity of Public Disclosures Regarding Access Models and Membership Categories*

The proposed revisions to the Rules would also simplify and, therefore, improve the transparency and clarity of how FICC discloses to the public its criteria and other requirements for GSD's different participation models and membership categories. Collectively, these proposed changes would improve market participants' understanding

⁶⁹ 17 CFR 240.17Ad-22(e)(18)(iv)(C). Contemporaneously with this proposed rule change, FICC and its affiliates, NSCC and The Depository Trust Company, are proposing changes to the Clearing Agency Risk Management Framework to provide for the annual assessment and subsequent review of GSD's access models by the Board, as required by Rule 17Ad-22(e)(18)(iv)(C). See supra note 5.

⁷⁰ Id.

regarding the availability and the comparative tradeoffs across these services and, therefore, facilitate increased access to those services.

a. Create a Public Road Map for Access Models and Membership Types in Rule 2

First, the proposed changes would revise Rule 2 to provide a public road map for the types of available memberships and the different participation models. Rule 2 currently describes how FICC makes its services available to entities that are approved for membership, lists the different membership types (*i.e.*, Comparison-Only Members, Netting Members, Sponsoring Members) and identifies the different categories of Netting Member (*i.e.*, Dealer Netting Member, Bank Netting Member, Inter-Dealer Broker Netting Member). This Rule also references some of the other Rules that govern certain memberships and addresses the liability of Members for activity they process through FICC on behalf of entities that are not Members.

The proposed changes would expand Rule 2 significantly to outline the various participation models available to market participants that allow for both direct and indirect access to GSD's clearance and settlement services. This outline would include descriptions of the services available to each membership type and provide a public road map for where those services are described in other Rules. These proposed changes are designed to address one of the key findings from FICC's outreach to market participants, that its various participation models are not well understood.⁷¹

⁷¹ See supra note 11.

Section 1 of Rule 2 would be revised to include a statement that GSD's services may be available directly or indirectly through either the Sponsored Service or a relationship with an Agent Clearing Member.

Section 1 of Rule 2 would be revised to remove a reference to FICC's Board of Directors approving membership applications. As provided in Rule 44, action by the Corporation may include action by the Board or by another authorized person as may be designated by the Board from time to time. This proposed change would permit the Board to either retain the authority to approve these applications or authorize management to do so, consistent with Rule 44 and the Board's authority under the FICC By-laws. Specifically, the Board's authority to empower management with certain responsibilities originates in the FICC By-laws, which have been filed as a rule of FICC.⁷² The FICC By-laws document the responsibilities of the Board in electing and appointing officers of FICC and prescribing and assigning to those officers their respective powers, authority and duties.⁷³ This revision would simplify the statement in Rule 2, consistent with Rule 44. Section 2 would list the different memberships that have direct access to GSD's services, which include Netting Members, CCIT Members, Funds-Only Settling Bank Members and Comparison-Only Members. Separate subsections would describe each of these membership types, including a general description of the types of firms that would qualify for these membership types and

⁷² See Securities Exchange Act Release Nos. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08); 82917 (Mar. 20, 2018), 83 FR 12982 (Mar. 26, 2018) (SR-FICC-2018-002).

⁷³ See Sections 3.2 through 3.9 of the FICC By-laws, available at www.dtcc.com/~media/Files/Downloads/legal/rules/FICC-By-Laws.pdf.

where those qualifications are described with more specificity in the Rules. These subsections would also generally describe which of GSD's services are available to each membership type and would identify the Rules where those available services are described in more detail. The subsection describing Netting Members would also include a description of the additional ways Netting Members may use GSD's services, as Agent Clearing Members in connection with the use of the Agent Clearing Service and Sponsoring Members in connection with the participation in the Sponsored Service.⁷⁴

In connection with these changes, the proposal would also move a statement regarding the designation of different categories of Netting Members as either Tier One Netting Member or Tier Two Member from Rule 2A and move it to Rule 2.⁷⁵ Rule 2A describes eligibility criteria for different membership types and these designations are not eligibility criteria, but relate to how FICC's loss allocation provisions, described in Rule 4, apply to a Netting Member.⁷⁶ This proposed change would make these designations easy to locate by Netting Members or market participants considering a direct membership by including them in the Rule where the different membership types are described.

Section 3 of Rule 2 would be revised to describe FICC's two indirect participation models that are available to Sponsored Members utilizing the Sponsored Service and Executing Firm Customers utilizing the Agent Clearing Service. Like the other sections

⁷⁴ See Rule 8 and Rule 3A, respectively, supra note 4.

⁷⁵ "Tier One Netting Member" and "Tier Two Member" are defined in Rule 1, supra note 4.

⁷⁶ Supra note 4.

of the revised Rule 2, this Section 3 would clarify how a market participant may utilize one of these models to access FICC’s clearance and settlement services as an indirect participant and would include a reference to the Rules that describe these indirect access models with more specificity.

The proposed changes would revise the existing statements in Rule 2 that describe the liability of Members who submit activity to FICC on behalf of entities that are not Members. These proposed changes would not alter that liability, but would improve the clarity of these statements, specifically by replacing reference to Members as being “liable in principal” to “fully liable for the performance of all obligations, financial or otherwise” This change would restate, without changing, the responsibility of Members with respect to activity submitted to FICC on behalf of other entities. By better explaining the Member’s obligations and replacing the reference to principal liability, the proposed change would address any confusion regarding the Member’s responsibility for a transaction away from FICC.

b. Simplify Definitions of Membership Categories and Other Related Definitions

The proposed rule changes would simplify the definitions of the different types of GSD membership, including the categories of Netting Members, and enhance the disclosures regarding eligibility qualifications for membership categories. By improving these statements and public disclosures in the Rules, the proposed changes would clarify the availability of different membership types and, therefore, improve the understanding of market participants regarding the availability of a direct clearing membership and of indirect participants in determining which of GSD’s indirect, intermediated access models they prefer to use.

Simplify Definitions of Netting Member Categories. Currently, the definitions of each category of Netting Member in Rule 1 refer to Section 3 of Rule 2A, where the qualifications for each category of Netting Member are described. Each subsection of Section 2 of Rule 2A includes a statement that defines each category of Netting Member as an entity that is admitted to membership in the Netting System as that category of Netting Member pursuant to the applicable qualifications and whose membership has not been terminated. The proposed rule changes would move these definitions of each category of Netting Member from Rule 2A to the defined terms in Rule 1. By moving the terms into Rule 1, the proposed change would simplify the descriptions of eligibility criteria in Section 3 of Rule 2A.

These proposed rule changes would also remove defined terms that are used only once in the Rules and replace the uses of those defined terms with the actual definitions. Some of these defined terms are used in the criteria for different categories of Netting Member. For example, the Rules include a definition of “Inter-Dealer Broker”, and this defined term is only used once in the Rules, in the qualifications to be an Inter-Dealer Broker Netting Member in Section 3 of Rule 2A. Therefore, the proposed changes would remove this defined term from the Rules and use the definition of an Inter-Dealer Broker in the eligibility criteria for that category of Netting Member, in Section 3(a)(iii) of Rule 2A. Similar changes would be made in connection with the relevant defined terms and eligibility criteria for Government Securities Issuer Netting Member and Insurance Company Netting Member. These proposed changes would provide clearer descriptions of the qualifications for different categories of Netting Member in Rule 2A, and would

not require a reader to refer back to the definitions in Rule 1 to understand those qualifications.

Other examples of these proposed changes include deleting the defined terms for “Registered Broker” and “Registered Government Securities Broker”, which are both only used in the definition of “Broker”, and instead use the definitions of these terms in the definition of Broker. FICC is proposing to make similar changes to the definition of “Dealer” which currently includes the only uses of the defined terms for “Registered Dealer” and “Registered Government Securities Dealer”.

The proposed changes would update the eligibility criteria for Futures Commission Merchant Netting Members to clarify that an applicant for this category of Netting Member must be a member, and subject to the regulatory supervision, of the National Futures Association. The Rules currently require that an applicant to this Netting Member category be a Futures Commission Merchant, as such term is defined in the Commodity Exchange Act and that it be registered with the Commodity Futures Trading Commission (“CFTC”).⁷⁷ Because any Futures Commission Merchant that is registered with the CFTC is also required to be a member of the National Futures Association,⁷⁸ the proposed rule change would just clarify, but would not add to, the qualifications for this category of membership.

Finally, the proposed rule changes would state in the introduction of Section 3(a) of Rule 2A that applicants can only be one category of Netting Member and that FICC would determine the appropriate category for applicants that meet the eligibility criteria

⁷⁷ 7 U.S.C. 1(a)(28).

⁷⁸ 17 CFR 170.15(a).

for multiple categories. This limitation is currently in Section 3(b) of Rule 2A, at the end of the list of categories of Netting Member. The proposed change would move this requirement more prominently to the top of this Section.

Simplify Other Defined Terms. In connection with, and related to, the proposed changes described above to simplify the definitions of the different categories of Netting Member, the proposed rule changes would also revise other defined terms to improve the clarity and transparency of the Rules.

The proposed changes would revise the defined term for “CCIT Member” and move a statement in this definition that Registered Investment Companies are not eligible to be CCIT Members to Section 2 of Rule 3B, where the rest of the eligibility and qualifications for CCIT Members are described. Similarly, the proposed changes would move a statement from the definition of “Funds-Only Settling Bank Member”, describing a requirement that these members be party to certain agreements, to Section 4 of Rule 13, where the requirements applicable to these members are described. These proposed changes would improve the transparency of the Rules by including all of the qualifications applicable to these different membership types in the same places in the Rules.

4. Other Corrections and Clarifications to the Rules

The proposed rule changes would make other revisions to correct, clarify and conform provisions of the Rules to improve their accuracy in describing GSD’s services and improve the transparency of the Rules.

First, the proposed rule changes would revise the definition of “Person” to clarify that this term was not intended to include individuals (*i.e.*, natural persons). The proposed

changes would also remove the defined term for “Non-Member” and replace this term in the Rules to use more descriptive terms appropriate to the context where the term is used. For example, Rule 15 would be revised to replace reference to “Non-Member” with the term “customer” in describing activity submitted to FICC by Repo Brokers. The proposed changes would also make immaterial, technical changes to simplify the definition of “Member” in Rule 1.

Finally, the proposed rule changes would amend the definition of “Sponsoring Member” in Rule 1, the first sentence of Section 4 of Rule 2A and Section 2 of Rule 3A to replace reference to the Board as being responsible for approving membership applications and related membership matters with reference to the Corporation, consistent with Rule 44. These changes would conform to the proposed changes being made to Rule 2, described above, to permit the Board to either retain the authority to approve these applications or authorize management to do so, consistent with Rule 44 and the FICC By-laws.

Implementation Timeframe

Subject to approval by the Commission, FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed change by an Important Notice posted to FICC’s website.

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with Section

17A(b)(3)(F) of the Act,⁷⁹ and Rules 17Ad-22(e)(18)(iii), (e)(18)(iv)(C), (e)(19) and (e)(23)(ii), each promulgated under the Act,⁸⁰ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁸¹ As described in greater detail below, the proposed changes to redefine the correspondent clearing / prime broker services as the Agent Clearing Service and the other proposed changes to the disclosures in the Rules regarding membership types and access models would clarify and improve public understanding of the ways a market participant may access FICC's clearance and settlement systems, thereby facilitating increased access to those systems. The proposed changes to eliminate the two categories of Sponsoring Members, remove the QIB requirement for Sponsored Members, and clarify the framework for both Foreign Persons and other applicants to be Netting Members would facilitate broader access to FICC's clearance and settlement systems.

The collective impact of these proposed changes would be to permit an increase in diversity and scope of market participants able to utilize FICC's central counterparty services, which can reduce the costs of securities transactions through FICC's multilateral netting, its trade guaranty and centralized default management, and mitigate and manage counterparty risks. Therefore, the proposed changes would support FICC's compliance

⁷⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁰ 17 CFR 240.17Ad-22(e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

⁸¹ 15 U.S.C. 78q-1(b)(3)(F).

with Section 17A(b)(3)(F) of the Act by promoting the prompt and accurate clearance and settlement of securities through expanded access to its clearance and settlement systems.⁸² In making changes that clarify, simplify, and potentially expand the universe of intermediaries and access models that are available to market participants, including indirect participants, the proposed changes also would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Rule 17Ad-22(e)(18)(iii) under the Act requires that FICC monitor compliance with its participant requirements on an ongoing basis.⁸³ The proposed rule changes would allow FICC to assess the risk profiles of its Netting Members, in their capacity as Agent Clearing Members, through the information Netting Members would provide when they apply to use the Agent Clearing Service and through the subsequent due diligence requests. The collection of this information, which would include, for example, information regarding the controls the Agent Clearing Member has in place to monitor and mitigate its risks, would allow FICC to monitor its Members' compliance with the requirements of participating in the Agent Clearing Service. The proposed rule changes to eliminate the two categories of Sponsoring Member would expand FICC's ability to set appropriate activity limits to all Sponsoring Members. The activity limits allow FICC to monitor the activity and, therefore, the risks that this activity may present to FICC.

⁸² Id.

⁸³ 17 CFR 240.17Ad-22(e)(18)(iii).

Therefore, these proposed rule changes support FICC's compliance with the requirements of Rule 17Ad-22(e)(18)(iii).⁸⁴

Rule 17Ad-22(e)(18)(iv)(C) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.⁸⁵

FICC has conducted a review of its existing access models that, as described above, included consideration of whether FICC's existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution, and other factors and that included a survey of market participants.⁸⁶ Following this review, FICC believes that its existing direct and indirect participation models provide market participants with appropriate means to access its clearance and settlement services, including indirect participants. As described below, the proposed rule changes would clarify and, therefore, improve market participants' understanding of these participation models. Certain proposed changes would expand the availability of participation to more, and a wider variety of, market participants. Collectively, the proposed changes are designed to support FICC's continued compliance with the requirements of Rule 17Ad-22(e)(18)(iv)(C) under the Act by enhancing the Rules in

⁸⁴ Id.

⁸⁵ 17 CFR 240.17Ad-22(e)(18)(iv)(C).

⁸⁶ Supra note 11.

describing various means for accessing its clearance and settlement services, including those of indirect participants.

The proposed changes to re-name the correspondent clearing / prime broker services to a single Agent Clearing Service would better disclose to the public, through the Rules, the operation and availability of this indirect participation model, and the rights and obligations of both Netting Members that use this service and their customers, who use this service to indirectly access central clearing at FICC. As described above, the proposed changes to Rule 8 would more clearly define the service through a number of additional disclosures. Among other things, the proposed changes would describe how a Netting Member can apply to use this service as an Agent Clearing Member, specify the rights and obligations of Agent Clearing Members in their use of this service and define the transactions that are eligible to be cleared and settled through this service, in addition to addressing other key aspects of the service.

In this way, the proposed changes would provide a framework for Agent Clearing Members, their customers, and other market participants regarding how to access FICC's clearance and settlement services. By making these public disclosures clearer and more detailed, the proposed changes would improve market participants' understanding of the operation, availability, and comparative tradeoffs of this service, thereby facilitating access to FICC's clearance and settlement services for Executing Firm Customers as indirect participants.

The proposed rule changes to update the eligibility criteria for both direct and indirect membership are also designed to improve the availability of GSD membership to more, and a wider variety of, market participants. By eliminating the two categories of

Sponsoring Members, FICC would apply the same eligibility criteria and conditions for continued membership to all Sponsoring Members, without applying different standards based on the identity of the participant. This proposed rule change would also make more Bank Netting Members eligible to apply to be a Sponsoring Member, improving access to this indirect participation model by expanding the potential universe of Sponsoring Member intermediaries. The proposal to eliminate the QIB requirement for Sponsored Members would permit market participants that did not meet this eligibility criteria to participate in FICC's Sponsored Service and, therefore, access its clearance and settlement systems as indirect participants. The proposed changes to provide a framework for how additional Netting Member applicants, including Foreign Persons, may be eligible to apply to be Netting Members would allow additional market participants to be considered for direct membership. These rule changes clarify the process FICC would follow in considering an applicant for direct membership and, therefore, facilitate broader access to clearance and settlement services.

Finally, by revising the Rules to include a roadmap for the different categories of membership and various participation models, and to clarify and simplify the descriptions of membership types, these proposed rule changes, like the changes described above, would improve market participants' understanding of the available means for accessing FICC's clearance and settlement services.

As described above, while FICC is not proposing to materially change its existing access models, it is proposing to further disclose to the public, through the Rules, the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD's services through these participation models. By

doing so, the proposed changes would lead to better understanding of the available methods for accessing FICC's clearance and settlement systems, including by indirect participants in support of its compliance with Rule 17Ad-22(e)(18)(iv)(C).⁸⁷

Rule 17Ad-22(e)(19) under the Act requires that FICC identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.⁸⁸

The proposed rule changes would describe the various ways FICC would identify, monitor and manage the risks that may be presented to it through the Agent Clearing Service. When a Netting Member applies to use this service as an Agent Clearing Member, FICC would first collect information through an application, which would include information regarding its customers, past and/or projected volumes of its customer activity, and its controls for monitoring and mitigating risks, including risks presented by those customers. FICC would also continue to require Agent Clearing Members to identify their Executing Firm Customers, provide FICC with a current LEI for any customers, and confirm such customers' agent clearing relationship with the Agent Clearing Member before submitting trades on their behalf. The proposed rule changes to Rule 8 would also affirm FICC's existing authority to request reports and other information from Netting Members, in their capacity as Agent Clearing Member, through annual and ongoing due diligence requests. As described above, these

⁸⁷ Id.

⁸⁸ 17 CFR 240.17Ad-22(e)(19).

information requests are, and would continue to be, an important tool for FICC to identify and monitor the risks that arise from these indirect participation arrangements. As described above, FICC uses these risk profiles to determine when to take further risk management measures available under its Rules to manage any risks a Member may pose to it.

In this way, these proposed changes would support FICC's compliance with Rule 17Ad-22(e)(19) and the requirement that it identify, monitor, and manage the material risks that may arise from the Agent Clearing Service.⁸⁹

Rule 17Ad-22(e)(23)(ii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.⁹⁰ As described in detail above, the proposed rule changes are collectively designed to improve the public disclosures, in the Rules, describing the different types of membership, different categories of Netting Member and different participation models available to market participants.

By revising Rule 8 to describe the Agent Clearing Service with greater clarity and specificity, the proposed rule changes would provide both Agent Clearing Members and their Executing Firm Customers with sufficient information regarding the rights and obligations of all parties using this service. By defining the process by which a Netting Member may apply to use the Agent Clearing Service, the operation of that service, and

⁸⁹ Id.

⁹⁰ 17 CFR 240.17Ad-22(e)(23)(ii).

the rights and obligations of Agent Clearing Members, these additional disclosures would provide market participants with sufficient information to evaluate the risks, fees, and other costs they may incur through participation in this service.

For example, the proposed rule changes would specify in Section 5 of Rule 8 that the Agent Clearing Member is fully liable for the performance of all obligations, financial or otherwise, to FICC arising in connection with Agent Clearing Transactions. The proposed rule changes would also provide, in Section 3 of Rule 8, that nothing in the Rules prohibit an Agent Clearing Member from seeking reimbursement from an Executing Firm Customer for payments made by the Agent Clearing Member under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Executing Firm Customer.

The proposed rule changes to clarify the descriptions of the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD's services also would support FICC's compliance with the requirements of Rule 17Ad-22(e)(23). These proposed rule changes would simplify and, therefore, clarify the criteria and related descriptions of the different models for accessing GSD's services. As described above, the proposed changes include adding a public road map for the different models for accessing GSD's services, simplifying the definitions of the different types of membership, and clarifying the eligibility criteria for different categories of Netting Members. These proposed changes are designed to enhance the ability of market participants to understand GSD's access models that are available, thereby allowing them to determine, whether as direct or indirect participants, how to access, offer, and price those models to obtain access to central clearing. In this way, the

proposed rule changes would support FICC's continued compliance with the requirements of Rule 17Ad-22(e)(23).

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule changes described in this filing would promote competition by improving market participants' understanding of the different membership categories and various models for accessing its clearance and settlement services.

As stated above, while some of the proposed changes include enhancements to membership qualifications and use of indirect access models, in general, the proposed rule changes would not materially change how market participants can access GSD's services today. The proposed application process and ongoing due diligence requests that would be applicable to Agent Clearing Members are not currently required for use of the existing correspondent clearing / prime broker services. The proposed application process could prohibit a Netting Member from using the Agent Clearing Service if FICC determines, based on the information provided in the application, that the applicant does not, for example, have the proper risk management controls in place to submit trades to FICC on behalf of its customers. This could create a competitive disadvantage between such applicant and other Netting Members that are approved to use the Agent Clearing Service. The proposed due diligence requests could result in additional risk management measures, such as increased reporting obligations or Clearing Fund deposits, if FICC deems such measures appropriate to mitigate risks that are identified through the course of such due diligence. Such risk management measures could also create a competitive

disadvantage between the Agent Clearing Members that are subject to those measures and those that are not.

However, FICC believes the application process and the due diligence information requests are important tools for FICC to identify and monitor the risks that arise from these indirect participation arrangements. FICC believes these proposed changes are appropriate in allowing FICC to assess the risk profiles of its Netting Members either as applicants or in their capacity as Agent Clearing Members through the information they would provide when they elect to use the Agent Clearing Service and the subsequent due diligence requests. FICC also believes these proposed measures are necessary for it to comply with its requirements under Rule 17Ad-22(e)(19) under the Act, as described above.⁹¹

By providing Members and other market participants with more information regarding these different access models, the proposed changes would collectively promote competition by facilitating greater access to FICC's services by contemplating a more diverse and wider scope of market participants who could serve as intermediaries, thereby increasing the potential range of avenues by which indirect participants can seek to access GSD's clearing services. The proposed rule changes to eliminate the two categories of Sponsoring Members would also promote competition by applying the same eligibility criteria and ongoing risk management conditions to all Sponsoring Members. This proposed change and the proposal to eliminate the QIB requirement for Sponsored Members would promote competition further by permitting additional firms to participate in the Sponsored Service as either Sponsoring Members or Sponsored Members,

⁹¹ 17 CFR 240.17Ad-22(e)(19).

respectively. The proposed rule changes to provide a clear framework for how Foreign Persons can apply to be Netting Members and for how FICC may consider applicants, including Foreign Persons, that do not meet the eligibility criteria for an existing category of Netting Member. As such, these proposed rule changes would facilitate greater access to FICC's clearance and settlement systems and promote competition in the relevant markets.

FICC does not believe the proposal to make technical corrections and other clarification changes to the Rules would impact competition. These changes are being proposed to ensure the clarity and accuracy of the Rules. They would not change FICC's current practices or affect Members' rights and obligations. As such, FICC believes the proposal to make technical, clarifying and conforming changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right not to respond to any comments received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2024-005 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-2024-005. 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 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 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 (dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to File Number SR-FICC-2024-005 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹²

Sherry R. Haywood.

Assistant Secretary

⁹² 17 CFR 200.30-3(a)(12).