

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73389; File No. SR-FICC-2014-01)

October 17, 2014

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the Government Securities Division Rulebook in Order to Establish an Early Unwind Intraday Charge in Connection with the Inclusion of GCF Repo® Positions in GSD's Intraday Participant Clearing Fund Requirement, and GSD's Hourly Internal Surveillance Cycles

I. Introduction

On August 11, 2014, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2014-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on August 29, 2014.³ The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4. FICC also filed a proposed change as an advance notice concerning GSD's inclusion of GCF® repo positions in its intraday participant clearing fund requirement calculation and its hourly internal surveillance cycles under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Payment, Clearing and Settlement Supervision Act”). 12 U.S.C. 5465(e)(1). Securities Exchange Act Release No. 71469 (February 4, 2014), 79 FR 7722 (February 10, 2014) (SR-FICC-2014-801). FICC subsequently amended the advance notice to establish the Early Unwind Intraday Charge described herein. Securities Exchange Act Release No. 73187 (September 23, 2014), 79 FR 58007 (September 26, 2014) (SR-FICC-2014-801).

³ Securities Exchange Act Release No. 72908 (August 25, 2014), 79 FR 51630 (August 29, 2014) (SR-FICC-2014-01).

II. Description

FICC proposed to amend the Government Securities Division (“GSD”) Rulebook (the “Rules”) in order to establish an Early Unwind Intraday Charge (“EUIC”) to protect against the exposure that may result from a member’s intraday substitution of cash for securities that were used as collateral for a GCF Repo® position the prior day (“Cash Substitution”) or a clearing bank unwind of the cash lending side of the transaction for an inter-bank GCF Repo transaction at 7:30 a.m. (ET) (“Early Unwind”)⁴ in connection with including the underlying collateral pertaining to the GCF Repo®⁵ positions in GSD’s noon intraday⁶ participant Clearing Fund requirement (“CFR”) calculation, and its hourly internal surveillance cycles.

Background

On January 10, 2014, FICC filed advance notice SR-FICC-2014-801⁷ (“Advance Notice”) with the Commission. This filing describes FICC’s proposal to include the

⁴ The Early Unwind refers to the automatic return of the collateral from the reverse repo side (cash lender) to FICC’s account at the repo side’s (cash borrower’s) settlement bank and the return of cash to the reverse repo side, which typically occurs before the opening of Fedwire.

⁵ The GCF Repo® service enables dealers to trade general collateral repos, based on rate, term, and underlying product, throughout the day without requiring intraday, trade-for-trade settlement on a Deliver-versus-Payment (“DVP”) basis. The service fosters a highly liquid market for securities financing. GCF Repo® is a registered trademark of The Depository Trust & Clearing Corporation.

⁶ Noon intraday refers to the routine intraday margining cycle which is based on a 12:00 p.m. (ET) position snap shot. Pursuant to Rule 4, FICC may request additional margin outside of the formal intraday margin calls.

⁷ See supra note 2.

underlying collateral pertaining to the GCF Repo® positions in its noon intraday participant CFR calculation, and its hourly internal surveillance cycles. FICC intended this enhancement to align GSD’s risk management calculations and monitoring with the changes that have been implemented to the tri-party infrastructure by the Tri-Party Repo Infrastructure Reform Task Force (“Task Force”),⁸ specifically, with respect to locking up of GCF Repo® collateral until 3:30 p.m. (ET) rather than 7:30 a.m. (ET). Subsequent to the initial Advance Notice filing, FICC discovered that under the proposed change, a potential exposure may result from a GCF Repo® participant’s Cash Substitutions and Early Unwinds. As a result, on August 11, 2014, FICC filed this proposed rule change.⁹

Specifically, FICC discovered that there were instances where exposure to FICC arose as a result of certain Cash Substitutions or Early Unwind. This is because the noon intraday underlying collateral pertaining to the GCF Repo® positions of impacted participants may exhibit a different risk profile than their same end-of-day (“EOD”)¹⁰ positions. The impact could be to increase or decrease the Value-at-Risk (“VaR”) component of the CFR.

⁸ The Task Force was formed in September 2009 under the auspices of the Payments Risk Committee, a private-sector body sponsored by the Federal Reserve Bank of New York. The Task Force’s goal is to enhance the repo market’s ability to navigate stressed market conditions by implementing changes that help better safeguard the market. DTCC, FICC’s parent company, has worked in close collaboration with the Task Force on their reform initiatives.

⁹ At the same time, FICC filed Amendment No. 1 to the Advance Notice with the Commission, which contains the same change. See supra note 2.

¹⁰ As used herein, “prior EOD” refers to the end of day cycle immediately preceding the current noon intraday cycle and “same EOD” refers to the end of day cycle immediately subsequent to the current noon intraday cycle.

In certain instances, Cash Substitutions, for repo and reverse repo positions and Early Unwinds for reverse repo positions, could result in higher cash balances in the underlying collateral pertaining to GCF Repo® positions at noon intraday than the same EOD, and could present a potential under-margin condition because cash collateral is not margined. In addition, FICC noted that it is likely that the cash will be replaced by securities in the next GCF Repo® allocation of collateral. The under-margin condition will exist overnight because the VaR on the GCF Repo® collateral in the same EOD cycle will not be calculated until after Fedwire is closed thus precluding members from satisfying margin deficits until the morning of the next business day.

(b) Proposed Change

FICC's rule change amends GSD's Rules to establish the EUIC to protect against the exposure that may result from a member's Cash Substitutions or Early Unwinds.¹¹ GSD will adjust the noon intraday CFR in the form of an EUIC to address this risk. In order to determine whether an EUIC should be applied, GSD will take the following steps:

1. At noon, GSD will compare the prior EOD VaR component of the CFR calculation with the current day's noon intraday VaR component of the CFR calculation.
2. If the current day's noon intraday VaR calculation is equal to or higher than the prior EOD's VaR calculation then GSD will not apply an EUIC.

¹¹ If, however, a member is assessed an EUIC under circumstances that were not initially contemplated and the EUIC charge is deemed unnecessary, FICC management has the discretion to waive such charge.

If however, the current day's noon calculation is lower, then GSD will proceed to the step 3 below.

3. GSD will review the GCF Repo® participant's DVP and GCF Repo® portfolio to determine whether the reduction in the noon calculation may be attributable to Cash Substitutions or Early Unwinds. If so, then GSD will apply the EUIC.
4. At the participant level, the EUIC¹² will be the lesser of (i) the net VaR decrease that may be deemed to be attributable to either cash substitutions and/or early unwind of interbank allocations or (ii) the prior EOD VaR minus the noon intraday VaR.¹³

The EUIC for Cash Substitutions will apply to the repo side (cash borrower) and the reverse repo side (cash lender) of the transaction. As such, the reverse repo side is subject to the EUIC notwithstanding its inability to control the Cash Substitutions. The

¹² The EUIC will be included in the noon intraday participant CFR, but not the same EOD CFR. This is because the risk associated with cash lockups exists at intraday, that is, at any time before at EOD. At EOD in the normal course of business, GCF Repo® positions consist of 100% eligible non-cash securities. GCF Repo® is used for overnight financing of securities inventory. Absent extraordinary circumstances, participants do not use cash to collateralized overnight cash loans. Cash Substitutions occur at intraday as participants substitute in cash to withdraw securities they need for intraday deliveries.

¹³ In the event that a Cash Substitution or Early Unwind impacts the CFR, the prior end of day CFR is used as a proxy for the same end of day CFR for the portion of the portfolio that is impacted by such Cash Substitutions or Early Unwind of interbank allocations. The EUIC is designed to prevent the impact of Cash Substitutions and Early Unwind of interbank allocations from unduly reducing noon intraday CFR relative to the prior EOD CFR calculation, thus the EUIC will not increase the noon intraday CFR above the prior EOD CFR calculation. (But the noon intraday CFR calculation exclusive of EUIC could be higher than the prior EOD CFR calculation).

EUIC for Cash Substitutions applies to the reverse repo side because although they do not initiate the Cash Substitutions, the Cash Substitutions change the participant's risk profile and as a result, their noon intraday CFR could be unduly reduced. The EUIC for Early Unwinds will only apply to the reverse repo side (cash lender) since it is only the reverse side whose lockup is unwound early. The securities subject to the Early Unwind are not returned to the repo side (cash borrower) in connection with Early Unwinds. Early Unwinds are performed on the reverse repo side to ensure that the underlying collateral is available to the repo side at its settlement bank. As such, the reverse repo side is subject to the EUIC notwithstanding its inability to control the Early Unwind as their noon intraday CFR could be unduly reduced as a result of such Early Unwinds. GSD has discussed the EUIC with the participants that are likely to be materially impacted by this proposed charge. These participants did not express any concerns about the EUIC.

There is no automatic unwind (return of securities) to the repo side. If the repo side needs its securities before the 3:30 p.m. (ET) scheduled unwind, it may perform a securities-for-securities substitution or a cash-for-securities substitution (in which case it may be subject to the EUIC).

III. Discussion

Section 19(b)(2)(C) of the Act¹⁴ directs the Commission to approve a self-regulatory organization's proposed rule change if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and

¹⁴ 15 U.S.C. 78s(b)(2)(C).

regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act¹⁵ requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

The Commission finds that the proposed rule change to establish the EUIC to protect against the exposure that may result from intraday Cash Substitutions and Early Unwinds in connection with FICC's proposal to include the underlying collateral pertaining to the GCF Repo® positions in GSD's noon intraday participant CFR calculation and hourly internal surveillance cycles is consistent with Section 17A(b)(3)(F) of the Act.¹⁶ Although the inclusion of GCF Repo® positions into intraday participant CFR calculations and hourly surveillance cycles may better reflect the actual risk in its members' portfolios, the inclusion of the EUIC may allow FICC to use even more accurate and current position information in its margin calculations and mitigate the effects of Cash Substitutions and Early Unwinds that occur during the intraday period. This more accurate margin calculation may allow FICC to better safeguard and secure securities and funds which are in its custody or control or for which it is responsible

The proposed change is also consistent with Rule 17Ad-22¹⁷ of the Clearing Agency Standards which establishes the minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22.

Specifically, Rule 17Ad-22(b)(1) requires a clearing agency that performs CCP services to establish, implement, maintain, and enforce written policies reasonably designed to measure its credit exposures at least daily and to limit exposures to potential losses from defaults by participants under normal market conditions so that the operations of the clearing agency should not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.¹⁸ Rule 17Ad-22(b)(2) requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements.¹⁹ To these ends, the change may provide FICC with a more accurate measurement of daily credit exposure using a risk-based model and is designed to address exposures that may occur from intraday activity. In sum, FICC's more accurate and timely calculations around and monitoring of GCF Repo® activity should better enable FICC to respond in the event that a member defaults.

¹⁸ 17 CFR 240.17Ad-22(b)(1).

¹⁹ 17 CFR 240.17Ad-22(b)(2).

IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act,²⁰ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-FICC-2014-01) be and hereby is APPROVED.²²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²³

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Deputy Secretary

²⁰ 15 U.S.C. 78q-1.

²¹ 15 U.S.C. 78s(b)(2).

²² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ 17 CFR 200.30-3(a)(12).