

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100417; File No. SR-FICC-2024-009)

June 25, 2024

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement

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 June 12, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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”)³ to (1) adopt a requirement that each Netting Member submits all eligible secondary market transactions, both for repurchase agreements and certain categories of cash transactions, to which it is a counterparty to FICC for clearance and settlement and define the scope of such trade submission requirement; (2) adopt ongoing membership requirements and other measures that would facilitate FICC’s ability to identify and monitor Netting Members’ compliance with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Terms not defined herein are defined in the Rules, available at www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

trade submission requirement, and adopt fines and other disciplinary actions to address a Netting Member’s failure to submit transactions in compliance with that requirement; (3) enhance the Rules relating to the initial qualifications and ongoing standards for membership to improve FICC’s ability to manage the credit risks presented by Netting Members; and (4) make other revisions to the Rules to clarify, conform and enhance the disclosures of the Rules, as described below.

These proposed rule changes are primarily designed to comply with the requirements of Rule 17ad-22(e)(18)(iv)(A) and (B) under the Act, as described below.⁴

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 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

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions

⁴ 17 CFR 240.17ad-22(e)(18)(iv)(A) and (B). 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”).

in U.S. Treasury securities, including FICC.⁵ These amendments require, among other things, that FICC establish objective, risk-based, and publicly disclosed criteria for participation that (i) require FICC’s Netting Members submit for clearance and settlement all of the eligible secondary market transactions to which they are a counterparty; and (ii) identify and monitor Netting Members’ submission of eligible secondary market transactions to which they are a counterparty, including how FICC would address a failure to submit transactions in accordance with this requirement.⁶

Therefore, under the Treasury Clearing Rules, FICC must require its Netting Members, as direct participants, to submit all eligible secondary market transactions to which they are a counterparty to it for central clearing. FICC is also obligated to adopt provisions that would facilitate its monitoring of Netting Members’ compliance with the trade submission requirement and how it would address a Member’s failure to comply. As described below, the proposed rules are designed to comply with those requirements.

First, the proposed changes would adopt an ongoing membership requirement that all Netting Members submit to FICC for clearance and settlement eligible secondary market transactions to which they are a party in a new GSD Rule 5 and would specify the scope of this requirement by defining “Eligible Secondary Market Transactions”. The proposed rules would adopt the definition of Eligible Secondary Market Transactions and related definitions from the Treasury Clearing Rules,⁷ and would conform certain aspects of those defined terms to the GSD Rules to provide Netting Members with clarity on the

⁵ Supra note 4.

⁶ Id. 17 CFR 240.17ad-22(e)(18)(iv)(A), (B).

⁷ Supra note 4. See also 17 CFR 240.17ad-22(a).

scope of this trade submission requirement. FICC would also incorporate language into the defined terms that provides further clarification of the scope of this requirement, as described in greater detail below.

Second, the proposed changes would adopt provisions to enable FICC to identify and monitor Netting Members' ongoing compliance with the proposed trade submission requirement. These provisions would include affirmative obligations of Netting Members to notify FICC of non-compliance and confirm their ongoing compliance with this requirement. These provisions would also provide FICC with the authority to request information or review a Netting Member's books and records to monitor and verify, as needed, such compliance. Therefore, FICC's proposal would require Netting Members to utilize their existing frameworks for monitoring adherence to applicable regulatory obligations – specifically, their compliance and independent audit functions – to monitor and affirm their ongoing compliance with the trade submission requirement. FICC's authority to request information and examine a Netting Member's books and records would allow FICC to take affirmative action when it deems such action necessary to fulfill its requirement to identify and monitor Netting Members' compliance with the requirement.

The proposed rule changes would also adopt disciplinary measures FICC would take if a Netting Member fails to meet its obligations under the new rules, which would include continuing fines until the failure has been remediated and notifications to applicable regulatory authorities. This fine would be incorporated into the GSD Fine Schedule.

In adopting the Treasury Clearing Rules, the Commission recognized the benefits central clearing brings to the markets served by a central counterparty, like FICC, and, consequently, the importance of the risk management measures employed by central counterparties.⁸ Therefore, in connection with adopting the trade submission requirement, these proposed rule changes would also include enhancements to the initial qualifications for direct membership with GSD and the ongoing membership obligations of Netting Members. The proposed enhancements would improve the clarity and transparency of the GSD Rules regarding the standards for membership and would provide FICC with additional measures to strengthen its ability to manage the counterparty credit risks that are presented by its Netting Members.

Finally, the proposed rule changes would include non-substantive revisions to re-organize, clarify and conform the GSD Rules, as described below.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. 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 Service or correspondent clearing / prime broker services.⁹ FICC's direct

⁸ Supra note 4.

⁹ 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 3. FICC has separately proposed enhancements to its access models, including revisions to rename the correspondent clearing / prime broker service as the Agent Clearing Service, designed to facilitate greater

participants include brokers, dealers, inter-dealer brokers and both U.S. and non-U.S. banks. Currently, other market participants, including investment funds, pension plans and other buy-side institutions, generally access GSD's central counterparty services through one of its indirect access models.

Through GSD, FICC provides real-time trade matching, clearing, risk management and netting for cash purchases and sales of eligible securities, as well as repurchase and reverse repurchase transactions involving eligible securities ("Repo Transactions"). Eligible securities include securities issued by the U.S. Treasury Department ("U.S. Treasury Securities") and securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.¹⁰

In its role as central counterparty, FICC novates eligible transactions that are submitted to it for clearance and settlement. Novation is defined in the Rules as the termination of deliver, receive, and related payment obligations between Netting Members and the replacement of such obligations with identical obligations to and from FICC, pursuant to the provisions of the Rules, and occurs at the time a submitted transaction is compared by FICC.¹¹ As recognized by the Commission in the Adopting Release, by "novating transactions (that is, becoming the counterparty to both sides of a transaction), [FICC] addresses concerns about counterparty risk by substituting its own

access to its services. See Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362 (Mar. 27, 2024) (SR-FICC-2024-005).

¹⁰ See definition of "Eligible Securities" in Rule 1, supra note 3.

¹¹ See definition of "Novation" in Rule 1, supra note 3.

creditworthiness and liquidity for the creditworthiness and liquidity of the counterparties.”¹²

The Adopting Release identifies the important operational, risk management and other benefits of central clearing, which include the reduction in counterparty credit risk through novation of trades by the central counterparty, centralized default management, and efficiencies provided by multilateral netting.¹³ The efficacy of FICC’s own risk management framework is critical to its ability to provide these benefits to the market it serves. This framework includes initial and ongoing participation criteria and requirements relating to financial resources, creditworthiness and operational capability.

These membership standards are designed to limit the risks a Netting Member may present to FICC and the other Netting Members by ensuring, among other things, that applicants to be Netting Members have the financial and operational capabilities to meet the obligations of membership on an ongoing basis. The Rules also provide FICC with the ability to monitor Netting Members’ adherence to continued suitability for membership. These requirements are designed to balance appropriate risk management with providing fair and open access by market participants; they are objective, risk-based, and are set forth in Rules 2A and 3.

Description of Proposed Rule Changes

1. *Adopt Trade Submission Requirement and Define Scope of Requirement*

The proposed rule changes would adopt an ongoing membership obligation that each Netting Member submit to FICC for clearance and settlement all “Eligible

¹² Supra note 4, at 8-9.

¹³ Supra note 4, at 14-17.

Secondary Market Transactions” to which it is a counterparty. This requirement would be added to a new Rule 5¹⁴ and would be adopted to comply with the amendments to Rule 17ad-22(e)(18)(iv)(A) under the Act.¹⁵

Rule 5 would also provide that Netting Members are permitted, but not required, to submit to FICC transactions that are outside the scope of the new trade submission requirement.

a. Scope of Trade Submission Requirement

The proposed rule changes would specify the scope of the trade submission requirement by adopting the definition of “Eligible Secondary Market Transactions” and other related definitions from the Treasury Clearing Rules.

The Commission’s definition of Eligible Secondary Market Transactions includes secondary market transactions in U.S. Treasury Securities where the transaction is of a type that is accepted by FICC for clearance and settlement and is one of three specified types of transactions. FICC would adopt this language as codified in the definition of “Eligible secondary market transaction” in Rule 17ad-22(a) under the Act,¹⁶ with revisions to conform the language of the definition to defined terms in the Rules. Specifically, FICC would adopt a new defined term for “U.S. Treasury Securities” in Rule 1 and would use this term in the definition. FICC would also replace reference to

¹⁴ The rules currently in Rule 5, describing the Comparison System, would be moved to a new Rule 6. References to Rule 5 would be updated throughout the Rules to reflect this change. See definitions of “Novate” and “Yield Comparison Trade” in Rule 1; Sections 6 and 7 of Rule 3A; and Section 9 of Rule 3B. Supra note 3.

¹⁵ 17 CFR 240.17ad-22(e)(18)(iv)(A).

¹⁶ 17 CFR 240.17ad-22(a).

“clearance and settlement” in the definition with its defined term for “Novation”, which, as described above, encompasses its central counterparty role in the clearance and settlement process.

Rule 5 would further provide, as required by the Treasury Clearing Rules, that Eligible Secondary Market Transactions that meet the initial criteria must also be one of three types of transactions: (1) any Repo Transaction collateralized by U.S. Treasury Securities in which at least one counterparty is a Netting Member; or (2) purchase or sale cash transactions in U.S. Treasury Securities between a Netting Member and (a) any counterparty if the Netting Member brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; or (b) a Broker or Dealer. Again, FICC would adopt this language from the statutory definition of Eligible Secondary Market Transactions, with revisions only to incorporate defined terms from the Rules. For example, FICC would replace references to “direct participant” in the statutory definition of Eligible Secondary Market Transactions with “Netting Member” and would use the defined terms for “Broker” and “Dealer” from Rule 1.

FICC would also adopt new defined terms to improve the clarity of the scope of the trade submission requirement. Such revisions would not change the scope or applicability of the statutory definition of Eligible Secondary Market Transactions and would be intended only to provide clarity regarding the applicability of this term within the Rules.

First, FICC would define “Treasury Repo Transaction” in Rule 1 to mean a Repo Transaction collateralized by Eligible Treasury Securities. FICC would use this new

defined term in the definition of Eligible Secondary Market Transactions. Second, FICC would define “Buy/Sell Transactions” in Rule 1 to mean a Transaction that is either the purchase or sale of an Eligible Netting Security in exchange for cash for which the trade data is submitted to FICC for Novation. FICC would use this term in the definition of Eligible Secondary Market Transactions.¹⁷

The statutory definition of Eligible Secondary Market Transactions also specifically excludes four types of Repo Transactions. FICC would similarly adopt these exclusions, updating the language only to incorporate defined terms to improve the clarity of the requirement. For example, FICC would use the proposed definition of “Treasury Repo Transaction” in each of the four exclusions from the definition of Eligible Secondary Market Transactions.

The statutory exclusions to the trade submission requirement that FICC would include in Rule 5 are (1) Treasury Repo Transactions and Buy/Sell Transactions in which one of the counterparties is a central bank, a sovereign entity, an international financial institution, or a natural person; (2) Treasury Repo Transactions in which one of the counterparties is either a U.S. covered clearing agency, a derivatives clearing organization or a foreign central counterparty; (3) Treasury Repo Transactions in which one of the counterparties is a state or local government; and (4) Treasury Repo Transactions in which one of the counterparties is an “Affiliated Counterparty” of the

¹⁷ The term “Buy/Sell Transaction” would also be used in the definition of “Bilateral Transaction” and “Brokered Transaction” in Rule 1 to clarify the meaning of those terms and would replace lowercase uses of this term in other places in the Rules with the proposed defined term. Supra note 3.

Netting Member, provided that the affiliate submits to FICC for Novation all other Treasury Repo Transactions to which it is a counterparty.

For the first exclusion, FICC would adopt the statutory definitions of “Central Bank”, “Sovereign Entity”, “International Financial Institution” and “Local Government” into Rule 1 from Rule 17ad-22(a) under the Act, without any alteration to these definitions.¹⁸

For the fourth exclusion from the trade submission requirement, FICC would adopt the statutory definition of “Affiliated Counterparty” but would include in this definition additional language to allow the definition to interoperate with the Commission’s application and interpretation of this particular exclusion. Specifically, FICC would provide that an “Affiliated Counterparty” means a counterparty that meets the specified criteria “*or as otherwise may be provided for by the SEC pursuant to the Exchange Act*”. FICC is proposing to include this language to make clear that this defined term is intended to incorporate the Commission’s own application and interpretation of this exclusion from the scope of the trade submission requirement.¹⁹ The additional language proposed to the defined term would allow FICC to continue to apply

¹⁸ 17 CFR 240.17ad-22(a).

¹⁹ Additionally, the Adopting Release discusses how the exclusion for Affiliated Counterparties is conditioned on the affiliate submitting all Treasury Repo Transactions to which it is a counterparty for central clearing. However, the Adopting Release also specifies that “[b]y referring to all other repos or reverse repos, the exemption clarifies that the requirement does not encompass transactions between the [Netting Member] and the [Affiliated Counterparty], *i.e.*, the transactions that are excluded, and also does not encompass the [Affiliated Counterparty’s] transactions that would otherwise be excluded” from the trade submission requirement under other exclusions described above. Supra note 4, at 86.

the Commission's interpretation of this definition, including any further interpretation that the Commission may provide through future rulemaking.

FICC is also proposing to clarify language in the Rules to make clear that a bank and its branches must all apply under the same membership, as one Bank Netting Member. This proposed revision would clarify that a branch and its parent bank are considered the same legal entity under the GSD Rules and not separate affiliates. The proposed changes would remove reference to a bank applying for membership through its branch or agency from various places in Rules 2A and 3, including (1) updating eligibility to be a Bank Netting Member to remove the limitation that non-U.S. banks participate through a U.S. branch in Section 3(a)(i) of Rule 2A; (2) updating the description of financial requirements applicable to Foreign Persons that are banks to remove reference to an application for membership through a U.S. branch in Section 3(b)(ii)(E)(2) of Rule 2A; and (3) removing reference to a bank's branch in the description of the annual attestation that must be provided by non-U.S. bank Netting Members in Section 2(iii)(a) of Rule 3.

b. Remove Existing Trade Submission Requirements

In connection with adopting this trade submission requirement, FICC would remove the existing trade submission requirements from the GSD Rules. These requirements are currently set forth in Section 3 of Rule 11, Section 2 of Rule 15, and Section 2 of Rule 18.

Section 3 of Rule 11 requires Netting Members to submit data on all of that Netting Member's trades other than Repo Transactions (i) with other Netting Members that are eligible for netting and (ii) executed by a Covered Affiliate (as defined in Rule 1)

that meet certain criteria. Section 2 of Rule 18 includes an identical trade submission obligation with respect to trade data on Netting Members' Repo Transactions. Both Rules exclude certain trades from the submission requirement, including trades executed between Netting Members and their Affiliates (defined in these Rules as "Affiliate Trades"). Section 2 of Rule 15 requires that certain broker Netting Members submit to FICC trade data regarding their brokered activity upon FICC's request.

FICC is proposing to remove these provisions from the Rules.²⁰ The activity that would be required to be submitted to FICC pursuant to the trade submission requirement proposed to be added to Rule 5 pursuant to the Treasury Clearing Rules would include activity that is covered by these existing requirements. Therefore, FICC believes it is unnecessary to retain these trade submission requirements in the Rules with the adoption of the new requirements to Rule 5.

In connection with this change FICC would delete the defined term "Covered Affiliate" from Rule 1.

c. Retain Prohibition Against Pre-Netting Trade Data

FICC is proposing to move and consolidate the existing restriction against pre-netting practices from Section 3 of Rule 11 and Section 2 of Rule 18 into Section 4 of the new Rule 5. These provisions provide that any trade data that is required to be submitted to FICC must be submitted on a trade-by-trade basis with the original terms of the trade unaltered, and specifically prohibits pre-netting practices. The receipt of unaltered trade

²⁰ FICC has separately proposed to remove Section 1 of Rule 15, see Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362 (Mar. 27, 2024) (SR-FICC-2024-005). Therefore, with the proposed removal of Section 2 of Rule 15, Rule 15 will be revised to be reserved for future use.

data permits FICC’s market risk management processes to monitor trades closer to the time of execution and manage the risk exposures of those trades earlier in the day. Maintaining the prohibition against pre-netting practices for trades that are required to be submitted to FICC will, therefore, support the application of the risk management benefits of central clearing to this trading activity and support the goals of the Treasury Clearing Rules.

In moving and consolidating these provisions into Rule 5, FICC would also update the disciplinary action it may take if a Netting Member fails to comply with these requirements. Currently, Rules 11 and 18 provide that a Netting Member that violates this requirement “may be reported to the appropriate regulatory body, placed on the Watch List and/or subject to an additional fee” and that FICC may further discipline the Netting Member pursuant to Rule 48.²¹ FICC is proposing to remove these disciplinary measures and instead provide that a Netting Member that has violated the prohibition against pre-netting practices pursuant to the new Section 4 of Rule 5 may be subject to an existing provision in the Rules that requires, in certain circumstances, an additional charge to a Netting Member’s Required Fund Deposit, which would, as part of this proposed rule change, be defined as a “Credit Compliance Charge”.

FICC currently has the authority to collect an additional charge as part of a Netting Member’s Required Fund Deposit if the Member fails to comply with applicable continuing membership standards, pursuant to Section 8 of Rule 3.²² This additional

²¹ Section 3 of Rule 11, Section 2 of Rule 18, supra note 3. See also Rule 48 (addressing FICC’s general authority to discipline any Member for violation of the Rules), id.

²² Supra note 3.

amount is currently calculated as equal to the greater of either: (i) \$1,000,000, or (ii) 25 percent of the normal calculation of the Netting Member's Required Fund Deposit. FICC proposes to define this existing additional charge as the "Credit Compliance Charge" and replace the description of this charge in Rule 3 with a defined term in Rule 1 and in the Margin Component Schedule.²³ Because the prohibition against pre-netting practices is designed to support FICC's risk management of trades submitted for clearance and settlement, FICC believes this charge is an appropriate disciplinary measure for a violation of the requirement. This proposed change would apply a disciplinary measure that is consistent with the disciplinary measure applicable when a Netting Member fails to comply with other membership obligations that are also designed to mitigate risk presented to FICC and its other Netting Members.

In connection with this proposed change, FICC would also delete the defined term for "Pre-Netting of Trades" from Rule 1 as that term would be incorporated into the new Section 4 of Rule 5.

2. *Adopt Provisions to Monitor and Enforce the Trade Submission Requirement*

The proposed changes would adopt provisions to facilitate FICC's ability to identify and monitor the trade submission requirement. These proposed changes would specify FICC's ability to request information from both the Netting Member and from its applicable regulatory authority, and to review Netting Members' books and records, as

²³ FICC recently proposed changes to the Rules that would move the margin calculation methodology, including the relevant defined terms currently located in Rules 1 and 4, into a new Margin Component Schedule. See Securities Exchange Act Release No. 99844 (Mar. 22, 2024), 89 FR 21603 (Mar. 28, 2024) (SR-FICC-2024-007). Therefore, FICC is proposing to also describe the calculation of the Credit Compliance Charge in the proposed Margin Component Schedule.

and when FICC deems it necessary to monitor Members' compliance with the requirement. The proposed changes would also adopt affirmative, ongoing membership obligations of Netting Members to monitor their own continuous compliance with the requirement, proactively report any instances of non-compliance with the requirement, and periodically affirm ongoing compliance to FICC, as described below.

While FICC would adopt provisions that would allow it to request information from Netting Members and their applicable regulatory authority, and to inspect Netting Members' books and records when it deems such review necessary, given that Netting Members' internal operations, organizational structures and trading practices vary greatly, FICC believes it is also appropriate to apply an approach that entails some degree of Netting Member self-monitoring and self-reporting under the general obligation to comply with FICC's ongoing membership requirements. Therefore, and as recommended in the Adopting Release,²⁴ FICC is proposing to require that Netting Members monitor their own compliance with the requirement and affirm such compliance to FICC through a written attestation and report, as described in detail below.

a. FICC's Authority to Request Information and Inspect Books and Records

FICC would describe in Section 2 of Rule 5 its authority to take certain actions, and Netting Members' agreement to comply with such actions, in connection with its monitoring of Netting Members' ongoing compliance with the trade submission

²⁴ Supra note 4, at 129 (“... U.S. Treasury securities CCA could require direct participants to submit to the CCA information regarding their U.S. Treasury securities transactions or to require attestations from senior officials of the CCA's direct participants as to their submission of the required transactions and compliance with their obligations to submit such transactions.”)

requirement. FICC currently has the authority to take each of these actions under Rules 2A and 3 in connection with its monitoring of Members' compliance with the requirements of membership generally. Therefore, FICC is not proposing to expand its authority to request information, or review the books and records of its Members, but would clarify that it may exercise these existing rights in connection with its monitoring of the trade submission requirement.

First, Netting Members would be required to submit to FICC any reports or other information that FICC may reasonably request, as also set forth in Section 2 of Rule 3, which requires that Netting Members submit to FICC "the reports, financial or other information set forth below and such other reports, financial and other information as the Corporation from time to time may reasonably require." The proposed rule change would specify that this information could include, for example, reports of trading activity, trade data, and the Netting Member's policies, procedures or other controls related to its compliance with the trade submission requirement. Second, Netting Members would agree that FICC may inspect their books and records, as also set forth in Section 10 of Rule 3. Finally, Netting Members would authorize FICC to request information regarding a Netting Member from that firm's Designated Examining Authority or Appropriate Regulatory Agency, which FICC may also do under Rule 2A, Section 6 in evaluating an applicant to be a Netting Member. This provision would incorporate a suggestion in the Adopting Release that reviewing information from regulatory organizations would be an appropriate method for FICC to assess its Netting Members'

compliance with the requirement.²⁵ The proposed rule would specify that the information that FICC may request from such authority or agency could include, for example, information related to such authority or agency's examination of the Netting Member's trading practices, trading reports and other records.

As noted above and described below, FICC would primarily rely on Netting Members to monitor their own compliance with the trade submission requirement. However, these proposed changes to clarify FICC's existing rights to request information and examine Netting Members' books and records would allow FICC to verify such compliance, for example, before it takes action to enforce the requirement.

b. Requirement to Notify FICC of Non-Compliance

Second, the proposed rule changes would require each Netting Member to notify FICC in writing within 2 Business Days from the date on which it learns that it is no longer in compliance with the trade submission requirement. Currently, under Section 7 of Rule 3, Members are required to notify FICC if they are no longer in compliance with the qualifications, standards or other requirements of membership.²⁶ This proposed rule change would clarify for Members the application of this existing requirement to a failure to comply with the trade submission requirement.

The proposed rule change would also specify that notification of non-compliance shall include all relevant facts that are known to the Netting Member at the time of the

²⁵ See *id.*, (“The Commission further agrees that a U.S. Treasury securities CCA also could review publicly available information and information made available to it by regulatory and self-regulatory organizations as part of its assessment of its direct participants’ compliance.”).

²⁶ Section 7 of Rule 3, *supra* note 3.

notification and would identify examples of such information. Examples of such relevant facts would include (i) the approximate duration of the non-compliance with the trade submission requirement; (ii) either the time when non-compliance with the trade submission requirement was remediated or the anticipated steps to be taken to remediate such non-compliance and the approximate time when non-compliance is expected to be remediated; and (iii) identification and contact information of the member of the Netting Member's Controlling Management (as such term is defined in the Rules)²⁷ that is overseeing the matter.

FICC believes this information would assist it in assessing the status and extent of the Netting Member's non-compliance with this requirement and the appropriate, applicable disciplinary measures. As discussed below, FICC would provide Netting Members that self-report non-compliance with the trade submission requirement with a cure period before applying disciplinary measures. Finally, by requiring that a Netting Member identify a member of its Controlling Management that is overseeing the matter, the proposed rule change would ensure that the Netting Member has appropriately escalated the non-compliance internally and that the matter is being addressed by its senior management.

²⁷ See Rule 1 ("The term "Controlling Management" shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant or Member or such other individuals or entities with direct or indirect control over the applicant or Member; provided that with respect to a Registered Investment Company Netting Member or an applicant to become a Registered Investment Company Netting Member, the term "Controlling Management" shall include the investment manager."), supra note 3. See discussion below regarding a proposed change to include a Netting Member's Chief Risk Officer to this definition.

c. Annual Trade Submission Attestation

Third, the proposed changes would require each Netting Member to provide FICC with an annual attestation regarding its ongoing compliance with the trade submission requirement. The requirement to provide this attestation would be included in Section 2 of Rule 5, and the attestation would be described in Section 2(iii)(c)(1) of Rule 3, as an ongoing requirement of membership. FICC would also adopt a definition of the “Annual Trade Submission Attestation” in Rule 1.

The Annual Trade Submission Attestation would be required to be submitted to FICC by each Netting Member no less than annually, and FICC would set the date such attestations are due on an annual basis. Such an attestation would be signed by the Netting Member’s Chief Compliance Officer or most senior authorized officer of the Netting Member who performs a similar function. FICC believes that a Netting Member’s Chief Compliance Officer, or similar senior officer, is the appropriate level of authority to sign and deliver this attestation as such officers are typically responsible for monitoring a firm’s compliance with applicable laws, regulations, and other ongoing requirements.

Each Annual Trade Submission Attestation would be required to be on a form that is provided by FICC and would include the following attestations, as would be set forth in Rule 3: (i) the attesting officer has read and understands the trade submission requirement set forth in Rule 5; (ii) the Netting Member has established, maintains and enforces policies, procedures or other controls that are reasonably designed to ensure ongoing and continued compliance with the trade submission requirement; (iii) such controls are reasonably designed to promptly identify and remediate any occurrences of

non-compliance with the trade submission requirement; and (iv) the Netting Member has, at all times during the 12 months prior to the date of the attestation, complied with the trade submission requirement set forth in Rule 5.

Netting Members have an existing similar requirement to submit an annual attestation with respect to their obligations to the Capped Contingency Liquidity Facility under Rule 22A. Therefore, while this attestation covers a different area of ongoing membership requirements, the requirement will not be unfamiliar to existing Netting Members.

FICC would adopt a fine in the Fine Schedule that would apply when a Netting Member fails to submit the Annual Trade Submission Attestation on time and in the form required. The fine would be \$10,000, would apply on the Business Day following the day on which the attestation was required to be provided to FICC and would continue to be applied every 10 Business Days until the completed and correct attestation is provided to FICC. By setting this fine at a relatively higher value than other existing fines and by structuring the fine to be applied periodically until this requirement has been fulfilled, FICC believes this continuing fine would be an appropriate and effective measure to deter non-compliance and signal to Netting Members that the delivery of the attestation is an important obligation of membership.

d. Triennial Independent Trade Submission Review and Report

FICC is proposing to require that each Netting Member conduct an independent review of its ongoing compliance with the trade submission requirement on a triennial basis and provide a report of that review to both FICC and the Netting Member's most senior governing body. FICC believes that a more comprehensive review of a Netting

Member's compliance, performed by an independent body on a less frequent basis would be an important mitigant to any contravention of the trade submission requirement. The requirement to conduct a review and provide a report of the review to FICC would be included in Section 2 of Rule 5, and the review and report would be described in Section 2(iii)(c)(2) of Rule 3, as an ongoing requirement of membership. FICC would also adopt definitions of the "Triennial Independent Trade Submission Review" and the "Triennial Independent Trade Submission Report" in Rule 1.

The Triennial Independent Trade Submission Review would be required to be conducted following procedures and standards that each Netting Member has established to ensure the review is comprehensive and adequate to sufficiently assess and confirm the Netting Member's ongoing compliance with the trade submission requirement for the three-year period prior to the review. Because each Netting Member's review would need to be appropriate for its own business practices and organization, FICC would permit each Netting Member to establish its own procedures and standards for conducting this review. FICC would have the authority, as discussed above, to review such procedures and standards when it deems necessary to confirm they are designed to ensure an appropriate assessment of compliance pursuant to the Rules.

The proposed rule would permit Netting Members to engage either an internal independent group or an external third party to conduct this review. An independent external third party could include, for example, an auditor, consultant, or other independent firm that has experience providing independent attestations, certifications or opinions in the securities market industry. Netting Members that choose to engage an external independent third party to conduct the Triennial Independent Trade Submission

Review would need to receive FICC's prior approval of that third party. In approving an independent third party, FICC would verify that the third party has the requisite expertise, as set forth in the Rules, to conduct the triennial review. If a Netting Member chooses to use an internal independent group to conduct the triennial review, such group must report directly to the Netting Member's board of directors, a committee of that board or to the equivalent senior most governing body. Such requirement would ensure the independence of this group from the business areas that are subject to the review.

Allowing Netting Members to choose to use either an internal group or an external third party to conduct the Triennial Independent Trade Submission Review provides flexibility and acknowledges the different internal capabilities and resources of different Netting Members.

Each Netting Member would be required to complete a report of the Triennial Independent Trade Submission Review, in a form that would be prescribed by FICC, that is signed by the individual who oversaw the review and, similar to the annual attestation, by the firm's Chief Compliance Officer or most senior officer who performs a substantially similar function. FICC would require that Netting Members provide the Triennial Independent Trade Submission Report to its board of directors or equivalent senior most governing body, before delivering the report to FICC. FICC believes that involving the senior leaders at a Netting Member in the triennial review and report would allow for appropriate oversight and would signal the criticality of compliance with this trade submission requirement to senior levels of a Netting Member's organization.

Proposed Section 2(iii)(c)(2) of Rule 3 would identify the components of the Triennial Independent Trade Submission Report, which would (i) describe the

procedures, methodology and/or standards employed in conducting the Triennial Independent Trade Submission Review, (ii) identify the books, records, processes, operations and/or controls of the Netting Member that were examined in conducting the triennial review; and (iii) state the conclusions of the review, including whether the Netting Member has complied with the trade submission requirement on an ongoing basis during the period covered by the review.

FICC would adopt a fine in the Fine Schedule that would apply when a Netting Member fails to complete the triennial review and submit the triennial report to FICC by the time and in the form prescribed by FICC. The fine would be \$15,000 and would apply on the Business Day following the day on which the attestation was required to be provided to FICC and would continue to be applied every 10 Business Days until the completed and correct attestation is provided to FICC.

Section 2(iii)(c)(2) of Rule 3 would address what would occur if FICC determines, in its sole discretion, that a Triennial Independent Trade Submission Review conducted on behalf of a Netting Member is incomplete, inadequate or otherwise does not meet the requirements of the Rule. If this were to occur, the Rule would provide that FICC shall require the Netting Member to complete a revised review that addresses the deficiencies of the prior review and would impose a fine on the Netting Member as if such firm had not submitted a Triennial Independent Trade Submission Report. Such fine would continue to apply until the revised report is provided to FICC.

e. Enforcement of Trade Submission Requirement

Finally, Section 3 of Rule 5 would provide that a Netting Member that fails to comply with the trade submission requirement would be subject to a fine under the Fine

Schedule and that the Netting Member's Designated Examining Authority or Appropriate Regulatory Agency, as applicable, and the Commission would be notified of that failure. FICC believes that notice of a Netting Member's failure to comply with the trade submission requirement to other appropriate regulatory organizations is an appropriate measure and would be an effective deterrent to non-compliance.

Within the Fine Schedule, FICC would adopt a fine of \$20,000 and, similar to the fines that would be imposed for a failure to submit a required attestation or triennial report, the fine would continue to be assessed until FICC has determined, in its sole discretion, that the failure to comply has been remediated. FICC would assess this fine on a longer timeframe – every 30 Business Days – to provide Netting Members with an appropriate period of time to remediate non-compliance.

Section 3 of Rule 5 would provide Netting Members who notify FICC of their non-compliance with the trade submission requirement with a cure period of 10 Business Days before the applicable disciplinary measures are taken. FICC believes it is appropriate to adopt this cure period to encourage Netting Members to effectively monitor their own compliance with the requirement and notify FICC when non-compliance is discovered.

3. *Adopt Enhancements to the Initial Qualifications and Ongoing Membership Standards Applicable to Netting Members*

The proposed revisions to the Rules would also enhance the membership standards for applicants and Netting Members subject to GSD's initial and ongoing requirements under Rules 2A and 3. These enhancements, described below, are designed to clarify and strengthen GSD's membership standards to help mitigate the credit

exposure that Netting Members present and, thus, continue to promote the safety and soundness of FICC, its Members, and the industry it serves.

These proposed changes are consistent with the authority provided to FICC under Section 17A(b)(4)(B) of the Act, which provides that a registered clearing agency such as FICC may, among other things, deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as prescribed by the rules of the registered clearing agency.²⁸ Furthermore, the registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.²⁹

First, FICC proposes to make several changes to Rule 2A, which addresses initial membership requirements. In addition to various technical, ministerial, supplemental, and other conforming and clarifying changes, FICC proposes the following changes to Rule 2A:

- Require applicants to always maintain adequate liquidity resources to meet their actual or projected funding obligations to FICC, as determined by FICC. Although already implicit in the Rules, explicitly stating this requirement would provide greater notice and transparency to applicants.
- In assessing the adequacy of an applicant's liquidity resources, authorize FICC to consider, for example, the source of liquidity and clearly state that FICC may deny membership to an applicant if the applicant is unable to

²⁸ 15 U.S.C. 78q-1(b)(4)(B).

²⁹ Id.

satisfactorily demonstrate to FICC, in FICC's judgement, that the applicant maintains adequate liquidity resources. Given the importance liquidity serves in supporting an applicant's resiliency, it is imperative that FICC be able to fully assess the quality and quantity of liquidity of its applicants.

- Update current language that addresses consideration of the financial resources of the applicant's parent company to more broadly address the financial resources of a Guarantor, as such term would be defined in Rule 1 by the proposal, since a guaranty may come from an entity other than the parent company, and allow such consideration to be made by FICC instead of its Board, as such a decision aligns better with FICC management than with the Board.
- When a guaranty is provided, (i) authorize FICC the option to engage external legal counsel to review the validity and enforceability of a Guarantor's guaranty, with the costs and expenses of such review being borne by the applicant or Member; and (ii) require a Guarantor to provide FICC the Guarantor's annual audited Financial Statements and such other information as FICC believes necessary or appropriate in order to assess the Guarantor's ability to guarantee the obligations of the applicant or Member to FICC for the duration of the guaranty. Given the importance that a Guarantor's guaranty plays in supporting an applicant, it is imperative that FICC be able to fully assess the validity of that guaranty and the Guarantor's financials.

- Clarify the concept of “business history” of an applicant to the “operating and management history and outlook” of the applicant, to more clearly encompass the scope of “business history” that FICC considers.
- Extend the required operating history of an applicant from six months to one year or, in the alternative, permit FICC to determine whether the applicant has not only personnel with sufficient operational background and experience, as currently allowed, but also sufficient financial background and experience as well, to conduct the business of the applicant. FICC believes one full year of operating history would be a better measure of the applicant’s wherewithal than merely six months, and that the financial background and experience of the applicant’s personnel are equally as important to consider as their operational background and experience.
- Require applicants to provide FICC with a business plan, supported by financial assumptions and projections that includes the applicant’s proposed use of GSD’s services that demonstrates, to the satisfaction of FICC, that the applicant has a viable plan to meet and sustain the financial and operational responsibility standards and financial obligations under the Rules. Absent a viable business plan, FICC could be exposed to greater risk from the applicant, if it were to become a Member.
- As part of an applicant’s membership application, allow FICC to require an assessment of the applicant’s business plan by an independent third-party consultant, at the expense of the applicant, to evaluate the reasonableness and viability of the plan, including its assumptions and projections, and explicitly

state that failure to provide such a plan, when requested, may result in denial of the application. Again, given the importance that a viable business plan can have in supporting an applicant's obligations to FICC, it is imperative that FICC be able to fully assess that plan.

- Explicitly authorize FICC to deny an applicant's application if FICC believes the applicant does not have individuals with relevant industry experience and appropriate history of compliance with laws and regulations staffed in the following senior management roles, as applicable, prior to activation of the applicant's membership: President and/or Chief Executive Officer, Chief Financial Officer, Chief Risk Officer (who would also be added to the current definition of "Controlling Management" in Rule 1), General Counsel, OFAC Officer and Cybersecurity Officer. Similar to having a viable business plan, it is important that Members are adequately staffed with key personnel to help manage the Member's obligations to FICC.
- Clarify, with respect to financial or other reports, opinions, or information (collectively, "information") that an applicant may be required to provide FICC, that (i) FICC may request such information as it deems not only appropriate but also necessary in order to evaluate the applicant's financial responsibility, operational, legal and regulatory capabilities, experience and competence; and (ii) such information may include, without limitation, documented risk management practices, liquidity stress tests, credit agreements, risk assessments, opinions of counsel and other independent professionals, audited financial statements (including, without limitation,

those of the applicant's Affiliates and/or Guarantor), consolidated and consolidating financial statements, financial projections, and organizational documents and charts (including, but not limited to, certificates of incumbency and the corporate structure of the applicant's Affiliates and/or Guarantor). Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to applicants.

- Clarify that if FICC determines to apply a limitation or restriction on an applicant in lieu of applying a membership standard, as FICC is currently authorized to do, that such limitations and restrictions also include conditions and, in addition to the examples already provided in the Rules, such limitations, restrictions, and conditions also may include increased or adjusted ongoing membership financial requirements or an ongoing requirement to provide additional information or reports to FICC. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to applicants.
- Clearly authorize FICC to deny membership to an applicant if FICC becomes aware of any factor or circumstance about the applicant or its Controlling Management that may impact the suitability of the applicant as a Member, such as, without limitation, (i) if the applicant would be placed on the Watch List upon admission; (ii) concerns relating to compliance with anti-money laundering or sanctions laws, rules, and regulations; (iii) concerns relating to the amount or degree of leverage maintained or proposed to be maintained by the applicant; and/or (iv) pending, adjudicated or settled regulatory or other

legal actions involving the applicant or its management, including the applicant being subject to a Statutory Disqualification, as such term is defined in Rule 1. Although already implicit in the Rules, explicitly stating this authority would provide greater notice and transparency to applicants.

- If an applicant is denied membership, restrict the applicant from reapplying for membership until the applicant has demonstrated to the satisfaction of FICC that the applicant has adequately addressed the specific grounds upon which the application was denied. This change would help stop an applicant from immediately reapplying for membership and tying up FICC resources without first taking the time to address the underlying issue for the denial.

Second, FICC proposes to make several changes to Rule 3, which addresses ongoing membership requirements. In addition to various technical, ministerial, and other conforming and clarifying changes, FICC proposes the following changes to Rule 3:

- Expand the requirement that information provided to FICC under the Rules must be in English and move the requirement into Section 1 of Rule 3. Currently the requirement that information provided to FICC must be in English is at the end of Section 2 of Rule 3 and only applies to information that is provided to FICC under Rule 3. The proposed change would move this statement into Section 1, which addresses ongoing membership requirements generally, and would expand the requirement to apply to all information provided under the Rules.
- Update the type of financial information that FICC may, in its discretion, request from a Member's Affiliate and not just the Member's parent,

including Affiliates of Members that are a Broker or Dealer, U.S. bank or trust company, Futures Commission Merchant, or non-U.S. organized entity, to include the annual audited Financial Statements for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles, of the Affiliate, and if annual audited Financial Statements are not available, allow FICC, in its discretion, to accept unaudited Financial Statements, audited consolidated Financial Statements, or other financial information of the entity, as applicable.

- Require Members to provide accurate, complete and timely responses to FICC's annual and periodic due diligence information requests, which could include, for example, the delivery of additional reports and other information. Although already implicit in the Rules, explicitly stating this requirement would provide greater notice and transparency to Members.
- Subject Members to (i) a fine, pursuant to the Fine Schedule; (ii) require adequate assurances of their financial responsibility and operational capability as provided for in Section 7 of Rule 3; and/or (iii) if the requested information is outstanding for more than 60 calendar days and until such time that the information is received by FICC to FICC's satisfaction, a Credit Compliance Charge, calculated pursuant to the Margin Component Schedule, added to the Required Fund Deposit of such Member, if the Member fails to provide accurate, complete and timely information, including responses to due diligence requests, in the manner requested. Although already subject to fines

for failing to timely provide financial and related information, expanding such fines to explicitly include failing to respond to other information requests, particularly due diligence requests, and adding the ability to assess adequate assurances or a Credit Compliance Charge, would further support the importance of Members providing timely responses to requests for key information.

- Clarify the timing and manner in which Members must notify FICC if a Member is no longer in compliance with applicable membership standards or is the subject of an investigation or proceeding, including the Member's Controlling Management, that would cause it to no longer meet an applicable membership standard, and that failure to provide such notification shall subject the Member to a fine. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to Members.
- Authorize FICC to require Funds-Only Settling Bank Members to provide adequate assurances that could limit the number of Netting Members for which the Funds-Only Settling Bank Member provides settlement services. Given the significant risk that Funds-Only Settling Bank Members present to FICC and Netting Members in settling for Netting Members, it is imperative that FICC be able to adequately mitigate that risk exposure, when needed, by limiting the number of Netting Members for which such a bank can settle, when FICC deems such measure necessary to mitigate risk presented by the Funds-Only Settling Bank Member.

- Clarify that the ongoing monitoring of Members includes, without limitation, monitoring through annual and periodic due diligence requests. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to Members.

Third, FICC proposes to make several changes to the Fine Schedule. In addition to various technical, ministerial, and other conforming and clarifying changes to the Fine Schedule, FICC proposes the following changes:

- Replace the “Financial Reports” fine category and associated fines with a new category titled “Reports, Information and Due Diligence Requests,” where the first, second, third, and fourth occasions for failing to timely provide such information would result in \$5,000, \$10,000, \$15,000, and \$20,000 fines, respectively, and provide that for more than four occasions, fines will be determined by FICC with the concurrence of the Board of Directors. FICC believes that providing a broader fine category, with higher fines, would help improve Member’s compliance with the obligation.
- Provide notice that (i) the fine for failure to deliver timely and accurate responses to due diligence requests, in the form required by FICC, would be assessed on the 3rd Business Day following the day on which such responses are due; (ii) the fine for failure to deliver all other information would be assessed on the Business Day following the day on which such information is due; and (iii) in all cases, the applicable fine shall be assessed every 10 Business Days and shall increase by \$5,000 each time it is assessed, as shown in the Fine Schedule, until such responses have been delivered to FICC.

Providing better notice of when the fines will be assessed, and applying a continuing, meaningful fine for a Member's ongoing failure to comply, would help improve compliance with the obligation.

4. *Other Revisions and Clarifications to the Rules*

Finally, the proposed rule changes would make other revisions to clarify and conform provisions of the Rules to improve their accuracy and transparency.

First, the proposed rule changes would revise and clarify certain defined terms in Rule 1. The revisions would update the definition of "Affiliate" to replace a citation to a particular regulatory definition of this term set forth in rules promulgated under the Act, with the text of the particular regulatory definition of this term.³⁰ This revision would not change the meaning of this term as it is used in the Rules, but would provide further clarity by including the actual definition and not requiring a reader to find that definition in the cited regulation.

The proposed rule changes would also update the definition of "Designated Examining Authority" to include the appropriate regulatory bodies that may apply to other legal entity types and to permit FICC to choose the applicable regulatory body when a Member has multiple overseeing regulators. The additional regulatory authorities that would be included in this defined term are already listed along with the term Designated Examining Authority in Section 6 of Rule 3. Expanding the defined term to include these additional regulatory agencies in the defined term would allow FICC to remove that additional language from Rule 3 and simplify the uses of this term in other

³⁰ 17 CFR 230.405.

places in the Rules, including in Sections 2 and 3 of proposed Rule 5 regarding the monitoring and enforcement of the trade submission requirement.

The proposed rule changes would also update the defined term for “Eligible Treasury Security” to clarify the meaning of this term by using the new proposed defined term for “U.S. Treasury Security” and the existing defined term for “Eligible Security”.

Second, the proposed rule changes would reorganize the sections within Rules 2A and 3, regarding the initial and ongoing requirements of membership, to identify similar requirements together in the same sections and ensure members have a clear understanding of these obligations. In Rule 2A, these proposed changes would include adding subheadings to Section 5, which describes the various documents and other application requirements, to improve the transparency of this section and better identify these requirements to the reader.

These proposed changes would also rename Section 1 of Rule 3 “General” and move general statements that are applicable to the provisions of both Rule 3 and the Rules generally into this section. For example, Section 1 of Rule 3 would now include a statement that clarifies for Members which requirements apply when a firm qualifies for multiple types of Netting Member and would include and expand the requirement that information provided to FICC under the Rules generally must be in English, as discussed above.

The proposed changes to Rule 3 would also rename Section 2 “Financial Statements, Regulatory Reports and Other Reporting Requirements”, create subheadings to more clearly describe the types of information and reports that Netting Members must provide on an ongoing basis, and move other ongoing reporting requirements into new

Section 2(i). For example, Section 2(i) would include an existing ongoing requirement to provide regulatory reports that are submitted to a Member's regulatory supervisors and other authorities. The proposed changes would move all statements in Rule 3 regarding the timing of ongoing membership reporting requirements into a new Section 2(ii). The definition of "Financial Statements" would be moved out of Section 3 of Rule 3 and into Rule 1, with the other defined terms. The ongoing requirement that Members maintain a current Legal Entity Identifier would be moved into Section 3 of Rule 3.

The proposed changes to Rule 3 would also move the existing requirement that Members maintain or upgrade their systems into Section 6 of Rule 3, where other operational requirements are currently described. The proposed changes would add new subheadings to Section 7 of Rule 3, which describes the general continuance standards for membership, to make these standards easier to identify. The proposed changes would simplify the description of the requirement to notify FICC of events that impact a Member's compliance with applicable ongoing membership requirements in new Section 7(a) of Rule 3, and to specify that failure to provide this notification will result in a fine pursuant to the Fine Schedule. These proposed changes would not change Members' notification obligations or impose new disciplinary measures but would improve the clarity of these requirements in the Rules.

The proposed changes would move the description of the requirement that Netting Members that are Foreign Persons notify FICC if they become subject to disciplinary action by their home regulator to Section 9 of Rule 3, which already addresses the ongoing requirement that Members comply with applicable laws. Finally, the proposed changes would move the statement that a Netting Member may be required to provide

FICC with a legal opinion if FICC determines that the Member could be subject to “Legal Risk” (as such term is defined in the Rules) to Section 11 of Rule 3, which already addresses FICC’s ongoing monitoring of Members.

As noted above, these proposed changes are not intended to alter the requirements of Members or rights of FICC with respect to ongoing membership standards, but would re-arrange, clarify and simplify the descriptions in Rule 3 to improve the transparency of those provisions.

Third, the proposed rule changes would move descriptions of the ongoing and regular attestation, acknowledgement and certification requirements into new Section 2(iii) of Rule 3 and would amend the Fine Schedule to adopt fines that would be assessed for a failure to deliver such attestations when required. The attestations that would be included in this new subsection are (1) an existing requirement that Bank Netting Members that are Foreign Persons provide an attestation on at least an annual basis regarding their capital requirements and capital ratios, which is currently described in Rule 3; (2) the existing requirement that Netting Members, Sponsoring Members and CCIT Members deliver a “Cybersecurity Confirmation” (as such term is defined in Rule 1) at least every two years, as currently described in Section 2 of Rule 3; (3) the proposed Annual Trade Submission Attestation and the proposed Triennial Independent Trade Submission Review and Report requirements that are proposed to be added to new Rule 5, as described above; and (4) the existing requirement that Netting Members provide an annual attestation and periodic acknowledgements regarding their obligations under the

Capped Contingency Liquidity Facility (“CCLF”, as such term is defined in the Rules) pursuant to Rule 22A, which is currently described in Rule 22A.³¹

In connection with these proposed changes, FICC would delete the definition of “Required Attestation”, which currently refers to the attestation regarding a Netting Member’s CCLF obligations and replace that definition with a defined term for “CCLF Attestation” in Rule 1, to better reflect the nature of this required attestation. FICC would also amend Rule 22A to remove the descriptions of the CCLF attestation and acknowledgement requirements and replace those descriptions with a reference to Rule 3.

FICC would also specify in the Fine Schedule the applicable fines for a failure to provide the attestations that would be identified in Section 2(iii) of Rule 3. While FICC has the authority under Rule 48 to take disciplinary action, including imposing a fine, if a Netting Member violates any provision of the Rules, the proposed change to specify the applicable fines for failure to deliver the Cybersecurity Confirmation and the CCLF attestation and acknowledgements would improve the transparency of the Rules and permit Members to better anticipate the consequences of failing to comply with these requirements.

Finally, the proposed rule changes would amend Sections 4(b)(iii) and 6 of Rule 2A and Section 5 of Rule 3 to remove references to FICC’s Board of Directors as being responsible for approving or authorizing certain actions and replacing such references

³¹ FICC recently proposed changes to the Rules to require that each Netting Member provide certain acknowledgements to FICC concerning their understanding of and ability to meet their CCLF obligations. See Securities Exchange Act Release No. 100137 (May 14, 2024), 89 FR 43938 (May 20, 2024) (SR-FICC-2024-008). The changes proposed herein would move the separately proposed disclosures of those acknowledgements from Rule 22A to Rule 3.

with references to FICC. As provided in Rule 44, action by FICC 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 take the actions specified in these sections of the Rules or to authorize management of FICC 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.³² The 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.³³ This revision would simplify these statements in the Rules, consistent with Rule 44.

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 rule change by an Important Notice posted to FICC's website.

As provided for in the Treasury Clearing Rules, while the Rules would be updated to reflect the changes proposed by this filing by no later than March 31, 2025, Netting Members would not be obligated to comply with the trade submission requirement proposed by this filing until December 31, 2025, with respect to Buy/Sell Transactions that are considered Eligible Secondary Market Transactions, and June 30, 2026, with

³² 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).

³³ See Sections 3.2 through 3.9, id.

respect to Treasury Repo Transactions that are considered Eligible Secondary Market Transactions.

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) and (G) of the Act,³⁴ and Rules 17ad-22(e)(18)(ii), (iii), (iv)(A) and (B), and (e)(23)(ii), each promulgated under the Act,³⁵ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.³⁶

The proposed rule changes to require that each Netting Member submit to FICC for Novation all Eligible Secondary Market Transactions to which it is a counterparty would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, by ensuring that such transactions are subject to the risk mitigation benefits of central clearing at FICC. Such benefits are described by the Commission in the Adopting Release and include, for example, (1) reduction in overall counterparty credit risk when FICC Novates such transactions, becoming a counterparty to each transaction, as the buyer to every seller and

³⁴ 15 U.S.C. 78q-1(b)(3)(F) and (G).

³⁵ 17 CFR 240.17ad-22(e)(18)(ii), (iii), (e)(18)(iv)(A) and (B), and (e)(23)(ii).

³⁶ 15 U.S.C. 78q-1(b)(3)(F).

the seller to every buyer; (2) enhancing the efficiency of, and market confidence in, centralized default management at FICC if a Netting Member defaults; and (3) increasing multilateral netting of these transactions, thereby reducing operational and other risks associated with such transactions.³⁷ By implementing the trade submission requirement and adopting provisions to monitor and enforce Members' compliance with that requirement, as required by the Treasury Clearing Rules, the proposal would extend the benefits of central clearing to all Eligible Secondary Market Transactions and, thereby, promote the prompt and accurate clearance and settlement of securities transactions, as recognized by the Adopting Release. In this way, the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act.³⁸

As described above, FICC proposes changes that would enhance GSD's initial and ongoing membership standards provided under Rules 2A and 3, respectively. In particular, for Rule 2A, FICC proposes to, in summary, (i) explicitly require adequate liquidity through adequate resources; (ii) when an applicant or Member relies on a Guarantor, permit FICC to engage external counsel, at the applicant or Member's expense, to review the guaranty provided, and require the Guarantor to provide FICC with information FICC deems necessary or appropriate in assessing the guaranty; (iii) clarify that FICC considers "business history" to encompass more broadly the "operating and management history and outlook" of the applicant, and require that an applicant have at least one year of such history and outlook, or, absent one year, permit FICC instead of its Board, to determine whether the applicant has personnel with

³⁷ See supra note 4, at 14-18.

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

sufficient operational and financial background and experience; (iv) require applicants to provide FICC with a business plan, which FICC may require to be assessed by a third-party at the participant's expense, that, in FICC's judgement, demonstrates the applicant's ability to meet its requirements to FICC; (v) explicitly state that FICC can deny an application if the applicant does not have adequate personnel in key senior management roles; (vi) clarify what information FICC may require an applicant, or the applicant's Affiliates or Guarantor, to provide FICC; (vii) clarify that in addition to limitations and restrictions, conditions may also be placed on an applicant, and provide further examples of such; (viii) clearly authorize FICC to deny an applicant's membership under certain additional circumstances, and if membership is denied under any circumstance, not permit reapplication until the applicant has adequately addressed the reason for the denial, to FICC's satisfaction.

Also as described above, for Rule 3, FICC proposes to, in summary, (i) require Affiliates of a Member to provide FICC, at FICC's discretion, certain financial statements; (ii) explicitly state that Members are required to provide accurate, complete and timely responses to FICC's annual and periodic due diligence information requests, which are used for ongoing monitoring of a Member, and that failure to do so could subject the Member to fines, adequate assurances, or a Credit Compliance Charge; (iii) clarify the time and manner in which a Member must notify FICC if the Member breaches its GSD membership standards, or whether it or its Controlling Management are the subject of an investigation or proceeding that may cause the Member to breach its membership standards; and (iv) include an adequate assurances condition on Funds-Only

Settling Bank Members that could limit the number of Netting Members for which the bank provides settlement services.

Finally, as described above, FICC also proposes to update the Fine Schedule by replacing the current “Financial Reports” category and associated fines with a new “Reports, Information and Due Diligence Requests” category, which would include more meaningful fine amounts, as well as notices regarding when fines would be charged and what continuing fines would be levied if the Member does not provide the outstanding information.

FICC believes these proposed enhancements to GSD’s membership standards would clarify, streamline, and improve FICC’s ability to assess and manage applicants and Members, as applicable. FICC also believes the level of detail and clarity offered by the proposed changes provides greater transparency and notice to all applicants and Members that are or would be subject to Rules 2A and 3. By enhancing the authority and tools available to FICC to assess and manage applicants and Members, FICC would better position itself to identify and mitigate the credit risk presented to it and, thus, promote the safety and soundness of FICC, its Members, and the industry it serves, all of which helps assure the safeguarding of securities and funds in the custody or control of FICC, consistent with Section 17A(b)(3)(F) of the Act.³⁹

Section 17A(b)(3)(G) of the Act requires that the rules of FICC provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

operations, fine, censure, or any other fitting sanction.⁴⁰ The proposed rule changes would adopt measures in Rule 5 and in the Fine Schedule to address a failure to comply with the trade submission requirement. Under these provisions, FICC would impose a continuing fine and notification to the applicable Netting Members' Designated Examining Authority or Appropriate Regulatory Agency and to the Commission. The disciplinary action would be clearly described in Rule 5 and the proposed fine amounts would be set forth in the Fine Schedule. FICC is also proposing to adopt a cure period of 10 Business Days before it takes disciplinary measures if a Netting Member self-reports a failure to comply with the requirement. FICC believes these measures, including the cure period that would be available to Members who self-report a failure to comply with the trades submission requirements, are appropriate deterrents to non-compliance and are consistent with the requirements of Section 17A(b)(3)(G).⁴¹

Additionally, the proposed rule changes would define a broader category for fines applicable when a Netting Member fails to timely submit required reports, information and responses to due diligence requests, and would increase the applicable fines. The proposed fine amounts were determined in consideration of, and in alignment with, the other existing fines applicable. The proposed rule changes are designed to apply meaningful and appropriate disciplinary action that would signal to Netting Members the criticality of these risk management requirements. As such, the proposed rule changes are also consistent with the requirements of Section 17A(b)(3)(G).⁴²

⁴⁰ 15 U.S.C. 78q-1(b)(3)(G).

⁴¹ Id.

⁴² Id.

Rule 17ad-22(e)(18)(ii) and (iii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which... (ii) require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and (iii) monitor compliance with such participation requirements on an ongoing basis.⁴³

As described above, FICC proposes several changes to GSD's initial and ongoing membership requirements under Rules 2A and 3. FICC believes each of those proposed changes is objective, risk-based, and, of course, would be publicly disclosed as part of the Rules. FICC also believes the proposed changes support fair and open access to GSD services, as the proposed changes are agnostic to any individual or group of applicants or Members but, instead, are simply designed to clarify and strengthen GSD's current membership standards. Additionally, with respect to the specific proposed changes to (i) enhance FICC's ability to consider, assess, and require adequate liquidity of an applicant or Member; (ii) require applicants to have personnel with adequate experience and background; and (iii) explicitly require responses to due diligence requests, which are a key tool to assessing a Member's credit risk, FICC believes that those changes would help ensure that applicants and Members have sufficient financial resources and robust operational capacity to meet their obligations to FICC. For those reasons, FICC believes the proposed changes are consistent with Rule 17ad-22(e)(18)(ii) and (iii) under the Act.⁴⁴

⁴³ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁴⁴ Id.

Rule 17ad-22(e)(18)(iv)(A) 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, require that any direct participant of such covered clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty.⁴⁵ The proposed rule changes would adopt a requirement that all Netting Members submit to FICC for clearing and settlement all Eligible Secondary Market Transactions to which they are a party, and would adopt the definition of Eligible Secondary Market Transactions and other related terms from the Treasury Clearing Rules in defining the scope of this requirement. The proposed changes to adopt this requirement, and related defined terms, into Rules 1 and 5 would directly comply, and, therefore, be consistent, with the requirements of Rule 17ad-22(e)(18)(iv)(A).⁴⁶

Rule 17ad-22(e)(18)(iv)(B) 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, identify and monitor its direct participants' submission of transactions for clearing as required by Rule 17ad-22(e)(18)(iv)(A), including how FICC would address a failure to submit transactions in accordance with Rule 17ad-22(e)(18)(iv)(A).⁴⁷ FICC is proposing to adopt provisions that would specify its authority to request information and inspect its Netting Members' books and records in connection with monitoring their compliance with the trade submission requirement.

⁴⁵ 17 CFR 240.17ad-22(e)(18)(iv)(A).

⁴⁶ Id.

⁴⁷ 17 CFR 240.17ad-22(e)(18)(iv)(B).

FICC is also proposing to adopt ongoing membership requirements that would require each Netting Member to (1) report to FICC if the Netting Member is not in compliance with the trade submission requirement; (2) deliver an annual attestation regarding its ongoing compliance with the trade submission requirement; (3) conduct an independent review of its ongoing compliance with the trade submission requirements on a triennial basis; and (4) submit a report of that review to its senior most governing body and FICC. As discussed above, FICC believes it is appropriate to identify and monitor Netting Members' submission of transactions for clearing by adopting both provisions that Netting Members take specific affirmative actions to review their compliance and affirm such compliance to FICC, and provisions that specify FICC's own authority to inspect and verify such compliance. Collectively, these provisions provide a comprehensive framework for identifying and monitoring compliance with the trade submission requirements and are consistent with the requirements of Rule 17ad-22(e)(18)(iv)(B).⁴⁸

FICC is also proposing to adopt measures in Rule 5 to specify how FICC would address a failure to comply with the trade submission requirement. Under these provisions, FICC would impose a continuing fine and notification to the applicable Netting Members' Designated Examining Authority or Appropriate Regulatory Agency and to the Commission. FICC is also proposing to adopt a cure period of 10 Business Days before it takes disciplinary measures if a Netting Member self-reports a failure to comply with the requirement. FICC believes these measures, including the cure period,

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Id.

are appropriate deterrents to non-compliance and are consistent with the requirements of Rule 17ad-22(e)(18)(iv)(B).⁴⁹

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.⁵⁰ As described above, FICC is proposing a number of clarifications and revisions to the Rules that do not create new rights or obligations, but are designed instead to improve the clarity and transparency of the Rules. For example, by reorganizing the sections of Rule 3, which addresses the ongoing membership requirements, these proposed changes create clearer disclosures and improve Netting Members' ability to identify and evaluate the material costs they incur by participating in membership. Similarly, by moving all of the required attestations, certifications and acknowledgments that are required of Members on regular and ongoing basis into one section within Rule 3, these proposed changes make the Rules easier to read and understand. In this way, the proposed changes that are designed to clarify and conform provisions of the Rules are consistent with the requirements of Rule 17ad-22(e)(23)(ii).⁵¹

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

The proposed rule changes to adopt a trade submission requirement and define the scope of that requirement by adopting definitions from the Treasury Clearing Rules could

⁴⁹ Id.

⁵⁰ 17 CFR 240.17ad-22(e)(23)(ii).

⁵¹ Id.

impose a burden on competition. Specifically, Netting Members that are subject to the trade submission requirement may incur additional costs related to submitting those transactions to FICC for central clearing, such as applicable clearing fees and risk management charges. These costs could burden Netting Members that have lower operating margins or higher costs of capital than other Netting Members or market participants. However, FICC believes that any burden on competition would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵²

First, as described above, the proposed rule changes to adopt a trade submission requirement would be necessary in furtherance of the Act. By subjecting Eligible Secondary Market Transactions to the risk mitigation benefits of central clearing at FICC, including reducing overall counterparty credit risk, enhancing the efficiency of, and market confidence in, centralized default management at FICC if a Netting Member defaults, and increasing multilateral netting of these transactions, the proposed trade submission requirement would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁵³

As described above, the proposed trade submission requirement that would be adopted in Rule 5 and the proposed scope of transactions that are subject to that requirement that would be adopted through the definition of “Eligible Secondary Securities Transactions” as such term is defined in the Exchange Act are necessary in

⁵² 15 U.S.C. 78q-1(b)(3)(I).

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

furtherance of Rule 17ad-22(e)(18)(iv)(A) under the Act.⁵⁴ The proposed measures that address how FICC would identify and monitor Netting Members' compliance with the trade submission requirement and how FICC would address a failure to submit transactions in compliance with the trade submission requirement are also necessary in furtherance of Rule 17ad-22(e)(18)(iv)(B) under the Act.⁵⁵

Second, FICC believes the proposed changes are appropriate in furtherance of the Act. Specifically, the proposed trade submission requirement would apply equally to all Netting Members, without any distinction between Members that are different legal entities or have different locations of incorporation, organizational structure or sizes. Under the proposed rules, which are being adopted to comply with the requirements of Rule 17ad-22(e)(18)(iv)(A), all Netting Members would be subject to the same obligation to submit Eligible Secondary Market Transactions to which they are a counterparty to FICC for clearing and settlement.⁵⁶

Similarly, the ongoing reporting requirement, Annual Trade Submission Attestation, Triennial Independent Trade Submission Review and Triennial Independent Trade Submission Report, proposed to comply with the requirements of Rule 17ad-22(e)(18)(iv)(B), would apply to all Netting Members equally, without distinction.⁵⁷ FICC is proposing to provide Netting Members with some flexibility in how they conduct the Triennial Independent Trade Submission Review by permitting them to either engage

⁵⁴ 17 CFR 240.17ad-22(e)(18)(iv)(A).

⁵⁵ 17 CFR 240.17ad-22(e)(18)(iv)(B).

⁵⁶ 17 CFR 240.17ad-22(e)(18)(iv)(A).

⁵⁷ 17 CFR 240.17ad-22(e)(18)(iv)(B).

an internal independent group or an external independent third party to conduct the review. By providing this flexibility, the proposed rules acknowledge that Netting Members may have different organizational structures and internal capabilities, but would continue to apply the same ongoing monitoring and attestation obligations on all Members. Similarly, the fines and regulatory reporting measures that FICC is proposing to adopt to address non-compliance with the trade submission requirement, would apply equally to all Netting Members. Finally, FICC is also proposing to adopt a cure period to incentivize Netting Members to self-report any non-compliance with the requirement. In these ways, FICC believes the proposed rule changes are appropriate and designed in a way to minimize the impact the proposal could have on competition.

Therefore, while the proposed rule changes may cause some burden on competition, FICC believes that the proposed rule changes are necessary and appropriate in furtherance of the purposes of the Act.

FICC believes that some of the proposed enhancements to GSD's initial and ongoing membership standards under Rules 2A and 3 could impact competition and that impact could be a burden: (i) authorizing FICC, at its discretion, the option to engage external legal counsel to review the validity and enforceability of a Guarantor's guaranty, with the costs and expenses of such review being borne by the GSD applicant or Member; (ii) requiring an assessment of an applicant's business plan, by an independent third-party consultant, at the expense of the applicant, to assess the reasonableness and viability of the applicant's business plan, including its assumptions and projections; (iii) extending the required operating history of a GSD applicant from six months to one year; (iv) subjecting Members to increased fines, adequate assurances, or a risk

management charge for failing to provide FICC requested information; and
(v) authorizing FICC the option to apply an adequate assurances condition on Funds-Only Settling Bank Members that could limit the number of Netting Members for which the bank provides settlement services.

FICC believes that requiring GSD applicants and Members to bear the cost of external legal counsel that FICC would have the option to engage to review the validity and enforceability of a Guarantor's guaranty could impose a burden on competition on such applicants and Members because they could now be required to expend financial resources on something that they currently may not be required to do. Similarly, requiring an applicant to bear the cost of an independent third-party consultant to assess the reasonableness and viability of the applicant's business plan could impose a burden on competition for the same reason. However, in both circumstances, FICC does not believe the burden would be significant because FICC does not anticipate that these new authorities would be exercised often, nor does FICC believe the costs would be ongoing or extensive in consideration of the amount of funds it takes to engage in the securities industry as a FICC participant. Moreover, FICC believes that these costs are likely avoidable where the guaranty or business plan is sound, clear, complete, and leaves little open to question.

FICC believes that extending the required operating history of a GSD applicant from six months to one year could cause a burden on competition because the applicant's competitive position may rest on its FICC membership. The significance of this potential burden would likely depend on the facts and circumstances of each individual applicant. However, FICC notes that it offers access to GSD services through its Sponsored

Members service,⁵⁸ that one year of operating history is still not a long period, and that FICC maintains the option to alternatively consider, at FICC's discretion, whether the applicant has personnel with sufficient operational and financial background and experience if the one-year operating history is not yet met.

FICC believes that subjecting Members to increased fines, adequate assurances, or a risk management charge for failing to provide FICC requested information may cause a burden on competition because funds paid to or held by FICC means fewer financial resources available to the Member for, possibly, competitive engagement. However, FICC does not believe the burden would be significant because whether a Member is subject to such charges would be within the control of the Member and avoidable if the Member simply provides the information requested by FICC in a timely and complete manner.

Finally, FICC believes that providing it the option to subject a Funds-Only Settling Bank Member to an adequate assurances condition that limits the number of Netting Members for which the bank provides settlement services could cause a burden on competition for that Member because it could limit the bank's business. However, FICC does not believe such burden would be significant because FICC does not anticipate exercising this authority often, and the circumstance in which such a bank would be subject to such a condition is likely within the control of the bank (i.e., FICC would not be exercising this authority but for addressing a risk presented by the bank that the bank could likely control).

⁵⁸ See Rule 3A, supra note 3.

Regardless of their significance, FICC believes that the potential competitive burdens of these proposed changes are necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) thereof.⁵⁹ More specifically, FICC believes these proposed changes are necessary and appropriate in furtherance of Section 17A(b)(3)(F) of the Act⁶⁰ and Rule 17ad-22(e)(18)(ii) and (iii) promulgated thereunder.⁶¹

First, FICC believes the proposed changes that could cause a burden on competition discussed above (i.e., independent review of a guaranty at the applicant or Member's cost; independent assessment of an applicant's business plan at the applicant's cost; extending the operating history requirement to one year; increasing and adding charges for failure to provide complete and timely information; and providing the option for an adequate assurance condition that could limit the number of Netting Member clients at a Funds-Only Settling Bank) are necessary in furtherance of Section 17A(b)(3)(F) of the Act⁶² because they would improve FICC's ability to assess and manage applicants and Members, as applicable, to help ensure they can or will be able to meet their obligations to FICC and, to the extent Members are not providing FICC with needed information or certain settling bank Members are presenting a unique risk, the proposed changes would provide enhanced charges and assurances to help incentivize Members and protect FICC. By furthering FICC's ability to assess, manage, incentivize,

⁵⁹ 15 U.S.C. 78q-1(b)(3)(I).

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁶¹ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁶² 15 U.S.C. 78q-1(b)(3)(F).

and seek assurances of its applicants and Members, as applicable, the proposed changes are necessary to improve FICC's ability to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, as required under Section 17A(b)(3)(F) of the Act, as cited above.

FICC also believes those proposed changes are necessary in furtherance of Rule 17ad-22(e)(18)(ii) and (iii) under the Act.⁶³ As required by Rule 17ad-22(e)(18)(ii) and (iii), those proposed changes are reasonably designed to help ensure that (A) applicants and Members, as applicable, have sufficient financial resources and robust operational capacity to meet the obligations arising from participation in FICC, and (B) FICC has more meaningful tools to help ensure compliance with its Rules, all of which is in furtherance of and consistent with Rule 17ad-22(e)(18)(ii) and (iii) under the Act, as cited above.

Second, FICC believes those proposed changes are appropriate in furtherance of both Section 17A(b)(3)(F) of the Act⁶⁴ and Rule 17ad-22(e)(18)(ii) and (iii)⁶⁵ promulgated thereunder because the changes are reasonably tailored, objective, risk-based, and agnostic in their application to applicants and Members, as applicable. In fact, FICC believes the potential burdens discussed above are, essentially, within the control of the applicant or Member, as applicable. For example, if the subject guaranty or business plan is sound, clear, complete, and leaves little open to question, then it is highly unlikely that the applicant or Member would incur the additional cost of an independent

⁶³ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁶⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁶⁵ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

assessment. Similarly, if the applicant has personnel with sufficient operational and financial background and experience, then it may not need a year's worth of operating history. Finally, if the subject Member simply provides the information requested by FICC in a timely and complete manner, or the Funds-Only Settling Bank Member mitigates the risk at issue from its side, then the corresponding charges and assurances proposed would not likely be imposed. For these reasons, FICC believes those proposed changes are appropriate in furtherance of and consistent with Section 17A(b)(3)(F) of the Act and Rule 17ad-22(e)(18)(ii) and (iii) under the Act, as each are cited above.

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 those 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FICC-2024-009 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-2024-009. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 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-2024-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁶

Vanessa A. Countryman,
Secretary.

⁶⁶ 17 CFR 200.30-3(a)(12).