

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99845; File No. SR-FICC-2024-802)

March 22, 2024

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice to Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) to Address the Conditions of Note H to Rule 15c3-3a

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> notice is hereby given that on March 14, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.<sup>3</sup> The Commission is publishing this notice to solicit comments on the advance notice from interested persons and to extend the review period of the Advance Notice.

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

This advance notice consists of modifications to FICC’s Government Securities Division (“GSD”) Rulebook (“Rules”)<sup>4</sup> to (1) provide for FICC to calculate, collect, and

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<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> On March 14, 2024, FICC filed this advance notice as a proposed rule change (SR-FICC-2024-007) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. A copy of the proposed rule change is available at [dtcc.com/legal/sec-rule-filings](https://dtcc.com/legal/sec-rule-filings).

<sup>4</sup> Terms not defined herein are defined in the Rules, available at [www.dtcc.com/~media/Files/Downloads/legal/rules/ficc\\_gov\\_rules.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf).

hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants; (2) simplify and revise the account types through which Members may record transactions at FICC and adopt a new Rule 2B to provide clearer public disclosures through the Rules regarding the GSD account structure; (3) allow Netting Members to elect for margin for indirect participant transactions to be calculated on a gross basis (*i.e.*, an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants); (4) align FICC's margin calculation methodology with the expanded account types and enhance public disclosure through the Rules of that calculation methodology; and (5) simplify the requirements for brokered transactions so that they only apply to transactions executed by an Inter-Dealer Broker Netting Member on the trading platform offered by that Inter-Dealer Broker Netting Member.

These proposed rule changes are primarily designed to ensure that FICC has appropriate rules regarding the separate and independent calculation, collection, and holding of margin for proprietary transactions and that for indirect participant transactions in accordance with the requirements of Rule 17Ad-22(e)(6)(i) under the Act, and that FICC has appropriate rules to satisfy the conditions of Note H to Rule 15c3-3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.<sup>5</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7-23-22) ("Adopting Release", and the rules adopted therein referred to herein as "Treasury Clearing Rules"). See also 17 CFR 240.15c3-3a.

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

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. 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](http://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](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

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

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

**Executive Summary of Proposed Changes**

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities (each a “Treasury CCA”), including FICC.<sup>6</sup> These amendments require, among other things, that FICC “calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in U.S. Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency’s payment, clearing, or settlement facilities.”<sup>7</sup> As described below, the proposed rules are designed to comply with these requirements.

Additionally, in the Treasury Clearing Rules, the Commission amended its broker-dealer customer protection rule (“Rule 15c3-3”)<sup>8</sup> and the reserve formulas thereunder (“Rule 15c3-3a”)<sup>9</sup> to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.<sup>10</sup> The proposed rules are also designed to satisfy these conditions and,

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<sup>6</sup> See supra note 5.

<sup>7</sup> 17 CFR 240.17Ad-22(e)(6)(i).

<sup>8</sup> 17 CFR 240.15c3-3.

<sup>9</sup> 17 CFR 240.15c3-3a.

<sup>10</sup> See supra note 5.

therefore, would permit broker-dealer Netting Members of FICC to include margin collected from their customers and on deposit at a Treasury CCA as a debit item in the reserve formulas.

First, the proposed changes would provide for the separate and independent calculation, collection, and holding of (i) margin deposited by a Netting Member to support its proprietary transactions and (ii) margin deposited by a Netting Member to support the transactions of an indirect participant. Specifically, FICC would provide in a new Rule 2B that FICC can establish proprietary Accounts to record the transactions that the Netting Member enters into for its own benefit and separately establish indirect participant Accounts to record transactions that the Netting Member submits to FICC for clearance and settlement on behalf of an indirect participant. Under this proposed Rule 2B, only proprietary transactions may be recorded in a proprietary Account, and only indirect participant transactions may be recorded in an indirect participant Account. FICC is also proposing revisions in Rule 4 to identify what types of transactions may be included together in a Margin Portfolio that FICC utilizes to determine a Netting Member's margin requirement. Specifically, FICC would revise the Margin Portfolio definition to make clear that a Margin Portfolio cannot include both proprietary and indirect participant Accounts. Because proposed Rule 2B would not permit transactions of indirect participants to be recorded in the same Account as a Netting Member's proprietary transactions, a Margin Portfolio would only be able to consist of the same type of proprietary or indirect participant transactions, not both. As a result, the transactions a Netting Member submits to FICC on behalf of an indirect participant would no longer be netted against a Netting Member's proprietary transactions for

purposes of calculating a Netting Member's margin requirements. In addition, to ensure separate collection and holding of margin deposited for proprietary and indirect participant transactions, FICC is specifying its practice in Rule 4 that a Netting Member must identify the different Account types for which a deposit is made on its wire instructions.

In order to facilitate these proposed changes, the rule changes would clarify the types of accounts in which Netting Members may record transactions. FICC's "Accounts" are not custodial accounts in which FICC holds assets, but rather a mechanism for FICC to record and group transactions. These records are utilized by FICC in connection with its calculation of a Netting Member's margining, settlement, and other obligations. The proposed rule changes would provide greater clarity regarding the purpose and use of these accounts through the public disclosures in the Rules. The proposed rules would do this by revising the definition of "Account" in Rule 1 and changing the names of certain Accounts to better reflect their function. The proposed rule changes would also create in a new Rule 2B a roadmap of the types of Accounts FICC maintains and what is recorded in those Accounts.

Second, the proposed rule changes would allow for the segregation of certain customer margin in a manner that satisfies the conditions for a broker-dealer to record a debit in the customer or PAB reserve formula under recently added Note H to Rule 15c3-3a.<sup>11</sup> As noted above, the Commission amended Rule 15c3-3a to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve

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<sup>11</sup> 17 CFR 240.15c3-3a.

formulas under certain conditions, including that the margin be collected in accordance with the rules of the Treasury CCA that impose the certain requirements.<sup>12</sup>

Such requirements are set forth in the Treasury Clearing Rules and Section (b)(2) of Note H to Rule 15c3-3a, and include, among other things, (1) the margin must be calculated separately for each customer and the broker-dealer must deliver that amount of margin for each customer on a gross basis; (2) the margin must be held in an account of the broker-dealer at the Treasury CCA that is segregated from any other account of the broker-dealer at the Treasury CCA and that is, among other things, used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker-dealer; and (3) the Treasury CCA has systems, controls, policies, and procedures to return the assets to the broker-dealer that are no longer needed to meet current margin requirements resulting from positions in U.S. Treasury securities of the customers of the broker-dealer.<sup>13</sup> The proposed changes are designed to comply with these requirements.

Specifically, FICC is proposing to permit a Netting Member, including a non-broker-dealer Netting Member, to designate any of its indirect participants Accounts for segregation. For any Account so designated, FICC would calculate the margin requirements applicable to the Account on a gross basis, meaning that FICC would not net the transactions of one indirect participant against the transactions of another indirect participant. In addition, FICC would segregate the margin deposited to support the transactions in the Account from any margin securing a Netting Member's proprietary

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<sup>12</sup> See supra note 5.

<sup>13</sup> See 17 CFR 240.15c3-3a. Supra note 5.

positions, both on FICC's own books and records and at FICC's custodians. FICC would only be able to use such segregated margin to satisfy the obligations of the customer for whom such margin is held. FICC would not be able to apply such margin to the proprietary obligations of the Netting Member that deposited it with FICC or to the obligations of any other Netting Member or participant. FICC would also set forth specific procedures to allow Netting Members to obtain the return of excess segregated margin. The aim of these changes is both to allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, to be able to segregate margin they deposit.

Third, the proposed rules would align the description of FICC's margin methodology with the revised Account types, consolidate the terms relating to margin calculation in a single, easily identifiable schedule, and make certain changes to the methodology to increase precision and predictability. To achieve these goals, the proposed rules would move the margin calculation methodology, including the relevant defined terms currently located in various Rules, into a new Margin Component Schedule. The proposed rules would also revise Rule 4 to make clear that a Netting Member's margin requirement is the sum of the margin amounts calculated for each type of Account in which transactions are recorded for the Netting Member. Further, the proposed rules would set forth a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements. In addition, the proposed rules would revise and clarify the calculation of the excess capital premium component of the Clearing Fund, to cap such amount at two times the amount



by which a Netting Member's VaR Charge exceeds its Netting Member Capital, clarify the capital amounts that are used in the calculation of such amount, limit FICC's discretion to waive the amount, and provide that FICC may calculate the premium based on updated available information. The proposed changes would also take steps to ensure that the excess capital premium does not result in differential treatment of indirect participants simply because of the particular capital level of the Netting Member providing access to FICC's clearance and settlement systems.

Lastly, the proposed rule changes would modify the terms relating to brokered transactions to require that only transactions that an Inter-Dealer Broker Netting Member executes on the Inter-Dealer Broker Netting Member's own trading platform benefit from favorable loss allocation treatment.<sup>14</sup> FICC believes that making these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.

## **Background**

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. Margin is a key tool that FICC uses to manage its credit exposures to its members. The aggregated amount of all GSD members' margin constitutes the GSD Clearing Fund (referred to herein as the "Clearing Fund"). The objective of the Clearing Fund is to mitigate potential losses to

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<sup>14</sup> See Rule 4, Section 7 ("Notwithstanding the foregoing, however, an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall not be subject to an aggregate loss allocation in an amount greater than \$5 million pursuant to this Section 7 for losses and liabilities resulting from an Event Period."), supra note 4.

FICC associated with liquidating a member's portfolio in the event FICC ceases to act for that member (hereinafter referred to as a "default").<sup>15</sup>

Under Rule 4 (Clearing Fund and Loss Allocation), Netting Members are required to make deposits to the Clearing Fund in an amount ("Required Fund Deposit") determined by reference to certain components. In determining a Netting Member's Required Fund Deposit, FICC may consider not only the Netting Member's proprietary transactions, but also the transactions that the Netting Member submits on behalf of indirect participants. However, the treatment of the indirect participant transactions for purposes of calculating the Required Fund Deposit can vary depending on whether those transactions are cleared under the Sponsored Service or prime brokerage / correspondent clearing services. Netting Members are required to instruct FICC to record those transactions in one of the position-keeping accounts (each, an "Account") that FICC establishes and maintains for the Netting Member. The Account in which a transaction is recorded is relevant for determining the margin requirement associated with that transaction under the Rules. Currently, a Netting Member may instruct FICC to record in the same Account, currently known as a "Netting Member Account," both the proprietary transactions of the Netting Member and transactions that the Netting Member carries for indirect participants through the prime brokerage / correspondent clearing services. Sponsored Member Trades, discussed in greater detail below, must be recorded in a separate Account.

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<sup>15</sup> The Rules identify when FICC may cease to act for a member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a member's access to FICC's services in the event that member defaults on a financial or other obligation to FICC. See Rule 21 (Restrictions on Access to Services), supra note 4.

Under Rule 4, a Netting Member’s Clearing Fund requirement, other than that arising from Sponsored Member Trades, is calculated on a net basis across all transactions recorded in the same Account of the Netting Member (or, if the Netting Member has elected to have multiple Accounts form part of the same “Margin Portfolio,” all transactions recorded in all such Accounts).<sup>16</sup>

The Sponsored Service permits Netting Members that are approved to be “Sponsoring Members,” to sponsor certain institutional firms, referred to as “Sponsored Members,” into GSD membership.<sup>17</sup> FICC establishes and maintains a “Sponsoring Member Omnibus Account” on its books in which it records the transactions of the Sponsoring Member’s Sponsored Members (“Sponsored Member Trades”).<sup>18</sup> To determine a Sponsoring Member’s Clearing Fund requirement in relation to Sponsored Member Trades recorded in the Sponsoring Member’s Sponsoring Member Omnibus Account, FICC calculates the “VaR Charge”<sup>19</sup> and the “MLA Charge”<sup>20</sup> component for each Sponsored Member such that it does not net the Sponsored Member Trades of one Sponsored Member against the Sponsored Member Trades of another Sponsored Member, even though those Sponsored Member Trades are recorded in the same

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<sup>16</sup> See Rule 4, supra note 4.

<sup>17</sup> See Rule 3A, supra note 4.

<sup>18</sup> See Rule 1 (definition of “Sponsored Member Trades”), supra note 4.

<sup>19</sup> See Rule 1 (definition of “VaR Charge”), supra note 4.

<sup>20</sup> See Rule 1 (definition of “MLA Charge”), supra note 4.

Sponsoring Member Omnibus Account.<sup>21</sup> For all of the other components, FICC calculates the components by reference to the Sponsoring Member Omnibus Account as a whole (*i.e.*, without regard to which Sponsored Member entered into which Sponsored Member Trade). In no instance does FICC net transactions recorded in a Sponsoring Member's Sponsoring Member Omnibus Account against other transactions of the Sponsoring Member for purposes of calculating the Sponsoring Member's Required Fund Deposit.

As an alternative to the Sponsored Service, a Netting Member (in such capacity, a "Submitting Member") may submit to FICC eligible transactions on behalf of the Submitting Member's customers (each, in such capacity, an "Executing Firm") through FICC's existing prime broker / correspondent clearing services.<sup>22</sup> As noted above, under the current Rules, a Submitting Member may instruct FICC to record such a transaction in the same Account at FICC as the Submitting Member's proprietary transactions. Accordingly, if transactions a Submitting Member submits on behalf of Executing Firms through the prime broker / correspondent clearing services are recorded in the same Account as the Netting Member's proprietary transactions (or in an Account that forms part of the same Margin Portfolio as an Account in which a Netting Member's proprietary transactions are recorded), FICC nets such transactions against one another in calculating the Netting Member's Required Fund Deposit.<sup>23</sup>

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<sup>21</sup> See Rule 3A, Section 10 (describing how the Required Fund Deposit for Sponsored Member Trades is calculated), supra note 4.

<sup>22</sup> See Rule 8, supra note 4.

<sup>23</sup> Contemporaneously with this proposed rule change, FICC has submitted a separate proposed rule change (File No. SR-FICC-2024-005) under which FICC is proposing to rename its primer broker / correspondent clearing services the

As noted above, the proposed rules would implement the amendments to Rule 17Ad-22(e)(6)(i) that require FICC to calculate, collect, and hold margin from a direct participant for its proprietary transactions in U.S. Treasury securities separately and independently from the margin calculated and collected for the U.S. Treasury transactions of an indirect participant that relies on the services provided by the direct participant to access FICC’s payment, clearing, or settlement facilities.<sup>24</sup> The proposed rules would also clarify and simplify FICC’s account structure and improve the transparency of FICC’s public disclosures of its margining methodology.

The proposed rules are also designed to allow broker-dealer Netting Members of FICC to collect margin from their customers and deposit that margin with FICC. As stated above, a Netting Member is responsible for the Clearing Fund obligations arising from the activity of indirect participant customers (*i.e.*, Sponsored Members and Executing Firms). FICC understands from engagement with broker-dealer Netting Members and their indirect participant customers that, due to the requirements of Rule

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“Agent Clearing Service,” “Submitting Members” as “Agent Clearing Members”, and “Executing Firms” as “Executing Firm Customers.” This separate proposed rule change would require that a Netting Member using the Agent Clearing Service submit transactions for Executing Firm Customers through an Agent Clearing Member Omnibus Account, to be recorded separately from its other clearing activity, including its proprietary activity. It would also add a definition for transactions eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm Customers (“Agent Clearing Transactions”). These proposed terms are used throughout this filing. These proposed changes are pending regulatory approval. A copy of this proposed rule change is available at [www.dtcc.com/legal/sec-rule-filings](http://www.dtcc.com/legal/sec-rule-filings).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(6)(i). See supra note 5.

15c3-3<sup>25</sup> and Rule 15c3-3a,<sup>26</sup> broker-dealer Netting Members are effectively unable to deposit with FICC any margin collected from indirect participants to support those indirect participants' transactions and must instead use proprietary resources.

The Treasury Clearing Rules' recent amendments to Rule 15c3-3a permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions.<sup>27</sup> As described in more detail below, the proposed changes would address those conditions. Therefore, the proposal would allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to permit all customers, including those that access FICC through non-broker-dealers, to segregate margin they deposit.

Finally, the proposed rule changes would address the treatment of transactions submitted to FICC by Inter-Dealer Broker Netting Members and certain Netting Members that operate similarly to Inter-Dealer Broker Netting Members ("Non-IDB Repo Brokers"). The Rules currently cap the amount of loss allocation that may be applied to an Inter-Dealer Broker Netting Member or Non-IDB Repo Broker in respect of transactions submitted by such Netting Members to FICC for clearance and settlement ("Brokered Transactions"). This treatment is based on the more limited risk that Brokered Transactions present relative to other transactions.

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<sup>25</sup> 17 CFR 240.15c3-3.

<sup>26</sup> 17 CFR 240.15c3-3a.

<sup>27</sup> See supra note 5.

## Description of Proposed Rule Changes

### 1. Segregate Indirect Participant Margin Requirements and Amend the GSD Account Structure

The proposed rule changes would provide for the separate calculation, collection, and holding of margin supporting a Netting Member's Proprietary Transactions and the margin supporting the transactions a Netting Member submits on behalf of indirect participants, in accordance with the requirements of Rule 17Ad-22(e)(6)(i), adopted under the Treasury Clearing Rules.<sup>28</sup> In connection with these changes, the proposal would also clarify the types of accounts in which Netting Members may record transactions and adopt a roadmap to its account structure in a new Rule 2B.

#### A. Separately Calculate, Collect and Hold Indirect Participant and Proprietary Margin Requirements

##### i. Limit Margin Portfolios to Accounts of the Same Type

The separate calculation of proprietary and customer margin would be accomplished by clarifying that each Margin Portfolio may only include Accounts of the same Type (*i.e.*, Dealer Accounts, Broker Accounts, Agent Clearing Member Omnibus Account, and Sponsoring Member Omnibus Accounts).

FICC would make this clarification by amending the definition of "Margin Portfolio" in Rule 1 and revising Rule 4, Section 1a, which would be renumbered Section 1b in light of changes described below, to provide that each Margin Portfolio may not contain more than one Type of Account (even if such Accounts are both Segregated Indirect Participants Accounts).

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<sup>28</sup> 17 CFR 240.17Ad-22(e)(6)(i).

By virtue of these changes, transactions recorded in different Types of Accounts could not be netted against each other when calculating Required Fund Deposit or Segregated Customer Margin Requirements. Since Proprietary Transactions and transactions submitted for indirect participants could not (by virtue of the changes described below) be recorded in the same Type of Account, the changes relating to Margin Portfolios would result in margin for a Netting Member's Proprietary Transactions being calculated separately and independently from margin calculated for the transactions that the Netting Member submits on behalf of indirect participants. As conforming changes, paragraphs (b) and (c) of Section 1b, which currently provide for such separate margin calculations in certain contexts, would no longer be needed since the Margin Portfolio definition and other changes described above would achieve such separate calculations.

ii. Required Fund Deposit Portions and Segregated Customer Margin Requirements

To further clarify how FICC would calculate and collect a Netting Member's margin requirements, the proposed rule changes would make other revisions to Rule 4. Specifically, Rule 4, Section 2, which currently describes a Netting Member's Required Fund Deposit requirement, would be revised to provide that a Netting Member's Required Fund Deposit consists of the sum of amounts (each, a "Required Fund Deposit Portion") calculated for each Type of Account, other than Segregated Indirect Participants Accounts. For Segregated Indirect Participants Accounts, there would, as mentioned below, be a Segregated Customer Margin Requirement, which would be the sum of the amounts calculated for the Netting Member's (i) Sponsoring Member Omnibus Accounts designated as Segregated Indirect Participants Accounts and (ii)



Agent Clearing Member Omnibus Accounts designated as Segregated Indirect Participants Accounts.

In connection with these changes, FICC would add a corresponding definition of “Required Fund Deposit Portion” to Rule 1. FICC would also adopt a defined term referring to the Required Fund Deposit Portion for a Netting Member’s Agent Clearing Member Omnibus Account (“Agent Clearing Member Omnibus Account Required Fund Deposit”) and amend the defined term for the Required Fund Deposit Portion for a Netting Member’s Sponsoring Member Omnibus Account (the Sponsoring Member Omnibus Account Required Fund Deposit). In addition, conforming changes would be made to the separately proposed Rule 8, Section 7(g) that would describe the requirement of an Agent Clearing Member to make and maintain an Agent Clearing Member Omnibus Account Required Deposit and that the calculation of such requirement would be performed separately from the calculation for Margin Portfolios consisting of the Agent Clearing Member’s Proprietary Transactions. Similar conforming changes would be made to Rule 3A, Section 10 relating to a Sponsoring Member’s Sponsoring Member Omnibus Account Required Fund Deposit.

iii. Separate Deposit IDs to Facilitate Separate Collection and Holding of Margin

To ensure that margin for Proprietary Transactions is not only calculated separately and independently but also collected and held separately and independently of margin for indirect participant transactions, a new Rule 4, Section 2a would be added to the Rules. This section would require each Required Fund Deposit Portion to be made to FICC using a separate Deposit ID, which is an existing operational mechanism used by

Netting Members to identify the type of Account for which a Required Fund Deposit is being made.

A new Rule 4, Section 2b would impose a similar requirement in respect of Segregated Customer Margin Requirements. The use of these separate Deposit IDs would result in margin for each Type of Account being separately transferred to FICC and FICC recording on its books the separate margin amounts for each Type of Account. FICC would also adopt a definition of “Deposit ID” in Rule 1.

Rule 4, Sections 2a and 2b would also require FICC to report a Netting Member’s Required Fund Deposit and Segregated Customer Margin Requirement twice daily, which is the same timing interval on which FICC currently reports a Netting Member’s margin requirement. The report would also specify the amount of margin attributable to each Required Fund Deposit Portion or Segregated Indirect Participants Account, as applicable, so that the Netting Member can transfer the different margin amounts separately.

iv. Eliminate Permitted Margin Affiliates

In connection with these proposed rule changes, the proposal would eliminate the concept of Permitted Margin Affiliates, which allows a Member to elect to include its Accounts in the same Margin Portfolio with the Accounts of an affiliate that is also a Member, in accordance with the Rules.<sup>29</sup> In this way, a Member and its affiliate can net their transactions for purposes of calculating their margin requirements.

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<sup>29</sup> See Rule 1 (defining “Permitted Margin Affiliates”) and Rule 4, Section 1a(a) and (b) (permitting Members to include Accounts of their Permitted Margin Affiliates in their Margin Portfolio). Supra note 4.

In order to support the proposed change described above, which are designed to provide for the separate calculation, collection, and holding of margin, FICC believes that retaining the option for Members to designate Permitted Margin Affiliates would create unnecessary complexity. No Netting Member currently has a Permitted Margin Affiliate, and FICC would need to examine how such a cross-affiliate margining arrangement would function within the context of the proposed revisions to the account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Permitted Margin Affiliate concept at this time.

In order to implement this change, the proposal would remove the definition of “Permitted Margin Affiliate” from Rule 1, and remove references to Permitted Margin Affiliates from Rule 4, Section 1a (to be renamed Section 1b, as noted above); Rule 4, Section 1b (which would be removed and replaced by disclosures in the proposed Margin Component Schedule, as discussed below); Rule 4, Sections 4 and 6; Rule 21, Section 1; Rule 22, Section 2; and Rule 29, Section (a).

B. *Proposed Roadmap to Account Structure through New Rule 2B and Revision to Account Structure*

FICC is proposing to adopt a new Rule 2B that would describe the types of Accounts FICC is able to maintain for Netting Members, identify the activity that would be recorded in each type of Account, and generally provide a roadmap to market participants of FICC’s account structure.

i. Section 1 – Establishment of Proprietary Accounts

Rule 2B, Section 1 would provide that FICC can establish and maintain certain “Proprietary Accounts” to record transactions that a Netting Member enters into for its own benefit (“Proprietary Transactions”), rather than for the benefit of indirect participants. Proprietary transactions would not include transactions that a Netting Member enters into on behalf of an affiliate.

The Proprietary Accounts available for recording Proprietary Transactions would include “Dealer Accounts,” which would be available for all Netting Members, and “Cash Broker Accounts” and “Repo Broker Accounts,” which would only be available for Inter-Dealer Broker Netting Members. Dealer Accounts would be for purposes of recording a Netting Member’s Proprietary Transactions (other than, in the case of an Inter-Dealer Broker Netting Member, its Brokered Transactions), while Cash Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member’s Brokered Transactions (other than Brokered Repo Transactions), and Repo Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member’s Brokered Repo Transactions. Rule 2B, Section 1 would make clear that, as under FICC’s existing Rules, FICC can establish multiple Proprietary Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to adopt new, corresponding definitions of Proprietary Transactions, Proprietary Accounts, and Cash Broker Accounts in Rule 1, and to make corresponding amendments to the definitions of Dealer Account and Repo Broker Account. FICC is also proposing to remove from Rule 1 the defined

term “Netting Member Account” and replace references to such Account with references to Dealer Account.

ii. Section 2 – Establishment of Non-Proprietary Accounts

Rule 2B, Section 2 would provide that FICC can establish and maintain certain “Indirect Participants Accounts” to record transactions that a Netting Member submits to FICC on behalf of Sponsored Members and Executing Firm Customers. These Indirect Participants Accounts would include, in the case of a Sponsoring Member, Sponsoring Member Omnibus Accounts for purposes of recording Sponsored Member Trades, and, in the case of an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers. Rule 2B, Section 2 would also make clear that FICC can establish multiple Indirect Participants Accounts of the same Type for the Netting Member.

In connection with these changes, FICC is proposing to add to Rule 1 a new definition of Indirect Participants Account, which would include Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, and to correspondingly amend the definition of Sponsoring Member Omnibus Accounts.

iii. Section 3 – Segregation Designations for Indirect Participants Accounts

Rule 2B, Section 3 would permit a Sponsoring Member or Agent Clearing Member to designate any of its Indirect Participants Accounts as a segregated customer account (a “Segregated Indirect Participants Account”). The purpose of such a designation, as further described below, would be to give Netting Members a mechanism to direct FICC to calculate and segregate margin deposited in connection with the

Account in accordance with the conditions described in Note H to Rule 15c3-3a (“Note H”), as further described below.<sup>30</sup>

In connection with this revision, a new definition for “Segregated Indirect Participant” would be added to Rule 1 to mean a Sponsored Member or an Executing Firm Customer whose transactions are recorded in a Segregated Indirect Participants Account.

Rule 2B, Section 3 would provide that the designation of an Account as a Segregated Indirect Participants Account constitutes a representation to FICC by the Netting Member that the Netting Member intends to meet all margin requirements with respect to such Account using assets deposited by the Segregated Indirect Participants with the Netting Member, with the exception of temporary “prefunding” by the Netting Member while a margin call to the Segregated Indirect Participant is outstanding. The purpose of this representation is to ensure that only margin deposited by customers, not the Netting Member’s proprietary assets, is eligible for segregation.

Rule 2B, Section 3 would further provide that the margin requirement (“Segregated Customer Margin Requirement”) calculated for a Segregated Indirect Participants Account would equal the sum of the margin requirements that apply to each Segregated Indirect Participant whose transactions are recorded in the Account, as though each such Segregated Indirect Participant were a Netting Member. By virtue of this change and as further described below, in calculating the Segregated Customer Margin Requirement for a Segregated Indirect Participants Account, FICC would not net the transactions of multiple Segregated Indirect Participants against one another. A

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<sup>30</sup> 17 CFR 240.15c3-3a.

corresponding definition of “Segregated Customer Margin Requirement” would be added to Rule 1 to mean the amount of cash and securities that a Netting Member is required to deposit with FICC to support the obligations arising under transactions recorded in its Segregated Indirect Participants Accounts. As described in greater detail below, such amounts would be further described and addressed in Rule 4, Section 2(a)(v) and (vi).

iv. Section 4 – Designation of Account When Submitting Transactions

Lastly, Rule 2B, Section 4 would require a Netting Member, at the time it submits a Transaction to FICC for clearance and settlement, to designate the Account in which the particular transaction should be recorded. Any such designation would constitute a representation to FICC that the transaction is of a type that may be recorded in that Account in accordance with the Rules. The purpose of such representation would be to ensure that Netting Members record only their Proprietary Transactions in Proprietary Accounts, which separate recordation is necessary for the separate and independent calculation, collection, and holding of margin for direct participant and indirect participant transactions.

In addition, Rule 2B, Section 4 would provide that, when submitting a transaction on behalf of a Sponsored Member or Executing Firm Customer, a Netting Member must include an identifier for the applicable Sponsored Member or Executing Firm Customer. This requirement is consistent with an existing requirement in the Schedule of Required Data Submission Items in the Rules and ensures that FICC continues to have the ability to accurately calculate the Required Fund Deposit and Segregated Customer Margin Requirements appropriately. This requirement also facilitates FICC’s ability to engage in

risk management and market surveillance in accordance with the covered clearing agency standards.

In connection with these changes, FICC also proposes to remove from Rule 1 the term “Netting Member Account,” as such defined term would no longer be used. References to Netting Member Accounts throughout the Rules would be revised to “Dealer Accounts”, which would more clearly distinguish these Accounts from Broker Accounts, the other type of Proprietary Accounts. FICC would also remove Section 11 of Rule 3, which currently concern the types of Accounts that Netting Members may open. Rule 2B would now describe the Types of Accounts Netting Members may request as well as the transactions that may be recorded in such Accounts.

The foregoing changes are designed to ensure that proprietary and indirect participant transactions are recorded in separate Accounts. This would assist FICC in tracking and managing the risks associated with a Netting Member’s proprietary and indirect participant transactions. It would also facilitate compliance with the revised covered clearing agency standards regarding the separate calculation, collection, and holding of indirect participant and proprietary margin, which is described in further detail below.

v. Simplification and Revision of Account Structure

To support the foregoing changes, FICC is proposing to provide further clarity on what an Account is for purposes of the Rules. Under the Rules, “Accounts” at FICC are not cash, securities, or other kinds of custodial accounts through which FICC holds assets for a Netting Member. Instead, FICC Accounts are a recordkeeping mechanism by which FICC records certain transactions submitted by Netting Members to FICC for clearance



and settlement. This recordkeeping mechanism allows FICC to determine which transactions should be netted against one another in determining various obligations of the Netting Member, including its funds-only settlement amount and securities settlement obligations and its Required Fund Deposit. As discussed above, generally speaking, all transactions recorded in the same Account are netted for purposes of determining these obligations (though certain components of the Required Fund Deposit arising from Sponsored Member Trades are calculated on a gross basis, as described above). FICC is proposing to amend the definition of “Account” in Rule 1 to make clear that an “Account” means an account maintained by FICC to record transactions. In addition, FICC is proposing to adopt a new defined term, “Type of Account” or “Type,” to refer to the different kinds of Accounts described above.

FICC is also proposing to eliminate the concept of a Market Professional Cross-Margining Account, which refers to an Account carried by FICC for a Netting Member that is limited to Eligible Positions of Market Professionals or an Account that is carried by a Netting Member for Market Professionals that are party to a Market-Professional Agreement for Cross-Margining. FICC does not currently have in place a cross-margining arrangement for market professional indirect participants and would need to examine how such an arrangement would function within the context of the proposed revisions to the Account structure and margin methodology in order to determine what steps would be needed to implement such an arrangement consistently with the standards applicable to covered clearing agencies. Therefore, FICC is proposing to eliminate the Market Professional Cross-Margining Account concept at this time.

In order to implement this change, the proposal would remove the definition of “Market Professional Cross-Margining Account” from Rule 1 and remove provisions concerning Market Professional Cross-Margining Accounts from Rule 1, Rule 4 and Rule 29.

2. Proposed Rule Changes Relating to Note H of Rule 15c3-3a

As described above, FICC would permit Netting Members to designate certain Indirect Participants Accounts as Segregated Indirect Participants Accounts. Such a designation would have the effect of causing FICC to calculate, collect, and hold the required margin for transactions recorded in such Accounts in accordance with the conditions for recording a debit in the customer reserve formula set forth in Note H of Rule 15c3-3a.<sup>31</sup>

A. Gross Calculation of Segregated Customer Margin Requirements

In order to satisfy the requirement of Section (b)(2)(i) of Note H to Rule 15c3-3a that the margin requirement be calculated on a gross basis,<sup>32</sup> new Rule 2B would, as noted above, provide that when calculating the Segregated Customer Margin Requirement, FICC would not net the transactions of multiple Segregated Indirect Participants, but would net the transactions of a single Segregated Indirect Participant that are recorded in the same Account.

In addition, the revised Rule 4, Section 1b would require FICC to calculate a Netting Member’s Segregated Customer Margin Requirement with respect to a particular Segregated Indirect Participants Account as the sum of the margin requirements

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<sup>31</sup> 17 CFR 240.15c3-3a.

<sup>32</sup> Id.

applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis.

FICC would also include language in the new Margin Component Schedule to achieve gross margining of Segregated Indirect Participants Accounts. Specifically, in Section 1 of the new Margin Component Schedule discussed below, new language would require each Netting Member for which FICC maintains a Segregated Indirect Participants Account to deposit with FICC Segregated Customer Margin equal to the sum of the Segregated Customer Margin Requirements for all such Accounts. Such language would further provide that each Segregated Customer Margin Requirement will be calculated twice daily and equal the sum of the amounts calculated pursuant to Section 3 of the Margin Component Schedule for each Segregated Indirect Participant whose transactions are recorded in the relevant Segregated Indirect Participants Account.

Section 3 of the new Margin Component Schedule, in turn, would set out the methodology for calculating such margin amounts. That section would provide for FICC to perform substantially the same calculation it currently performs when determining a Netting Member's Required Fund Deposit, except (i) such calculation would be performed on a Segregated Indirect Participant-by-Segregated Indirect Participant basis as though each Segregated Indirect Participant represented a separate Margin Portfolio and (ii) FICC would not impose an Excess Capital Premium.

With regard to the latter, FICC does not believe it would be appropriate to require an indirect participant to deposit with FICC additional margin on account of the capital position of its Netting Member. The Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to its VaR Charge will not be able to perform its obligations. However, Segregated Customer Margin cannot be applied to a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Accordingly, requiring indirect participants to deposit an additional Excess Capital Premium would not serve a risk management purpose. Further, requiring indirect participants who access FICC's clearance and settlement systems through a Netting Member with low capital to deposit more margin than indirect participants who access FICC's clearance and settlement system through other Netting Members would treat similarly situated indirect participants differently without an appropriate basis to do so. Moreover, it could lead to concentration among Netting Members, as indirect participants would be disincentivized to access clearing through smaller Netting Members, since smaller Netting Members typically have lower net capital.

For similar reasons, FICC would not add Segregated Customer Margin to Section 4 of the Margin Component Schedule, which describes FICC's ability to impose increased Required Fund Deposits under certain circumstances. However, when determining whether to increase the Required Fund Deposit of a Netting Member under the circumstances described in Section 4, FICC may consider the risk presented by a Netting Member in view of all activity it submits to FICC, including activity of indirect participants.

As a conforming change, FICC would revise the definitions of most of the components utilized for calculating a Netting Member’s Segregated Customer Margin Requirement as well as associated definitions to provide that these apply to Segregated Indirect Participants on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. These definitions include the Backtesting Charge, the Holiday Charge, the Intraday Supplemental Fund Deposit, the Margin Liquidity Adjustment or MLA Charge, the Margin Proxy, the Minimum Margin Amount,<sup>33</sup> the Portfolio Differential Charge, the Unadjusted GSD Margin Portfolio Amount, and the VaR Charge.

B. *Segregation of Customer Margin Deposits*

In order to satisfy the segregation requirements of Section (b)(2)(iii) of Note H to Rule 15c3-3a,<sup>34</sup> FICC is proposing a number of changes to the Rules. First, FICC is proposing to adopt a new definition of “Segregated Customer Margin” in Rule 1, which definition would refer to “all securities and funds deposited by a Sponsoring Member or an Agent Clearing Member with the Corporation to satisfy its Segregated Customer Margin Requirement.” FICC would also adopt a new Rule 4, Section 1a. That provision would require a Netting Member to deposit Segregated Customer Margin with FICC equal to the Netting Member’s Segregated Customer Margin Requirement in accordance with the timing provisions generally applicable to Required Fund Deposits.

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<sup>33</sup> FICC has filed a proposed rule change and related advance notice to adopt a Minimum Margin Amount at GSD (File Nos. SR-FICC-2024-003 and SR-FICC-2024-801). This proposal is pending regulatory approval, and the filings are available at [www.dtcc.com/legal/sec-rule-filings](http://www.dtcc.com/legal/sec-rule-filings).

<sup>34</sup> 17 CFR 240.15c3-3a.

i. Establishment of Segregated Accounts

In order to satisfy the requirements of Section (b)(2)(iii) of Note H that margin “be held in an account of the broker or dealer at the qualified clearing agency that is segregated from any other account of the broker or dealer at the qualified clearing agency,”<sup>35</sup> Rule 4, Section 1a would provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a “Segregated Customer Margin Custody Account” corresponding to each Segregated Indirect Participants Account of such Netting Member. Segregated Customer Margin Custody Account would be defined in Rule 1 as “a securities account within the meaning of the NYUCC maintained by the Corporation, in its capacity as securities intermediary as such term is used in the NYUCC, for an Agent Clearing Member or Sponsoring Member for the benefit of such Member’s Segregated Indirect Participants.” In other words, in contrast to the other FICC Accounts, which, as discussed above, are position record-keeping accounts rather than custodial accounts, each Segregated Customer Margin Custody Account would be a “securities account” within the meaning of the NYUCC.

As noted above, FICC is also proposing to amend the definition of “Account” in Rule 1 to make clear that such term refers only to an account maintained by FICC for a Netting Member to record transactions submitted by that Netting Member. FICC believes this change would help to distinguish “Accounts,” which are simply a transaction recordation mechanism, from the “Segregated Customer Margin Custody Account,” which is a traditional custodial account to which FICC would credit cash and securities.

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<sup>35</sup>

Id.

Rule 4, Section 1a would further provide that any assets credited to the Segregated Customer Margin Custody Account would be treated as financial assets within the meaning of the NYUCC. These changes would have the effect of making FICC the “securities intermediary” in respect of each Segregated Customer Margin Custody Account and the Netting Member, on behalf of its Segregated Indirect Participants, the “entitlement holder” under the NYUCC.<sup>36</sup> By virtue of these designations, the Segregated Customer Margin held by FICC would be reserved for the Netting Member (on behalf of its Segregated Indirect Participants), including in an FICC insolvency.<sup>37</sup>

Rule 4, Section 1a would further provide that all Segregated Customer Margin deposited with FICC to support the obligations arising under the transactions recorded in a given Segregated Indirect Participants Account be credited to the corresponding Segregated Customer Margin Custody Account. In other words, rather than treat Segregated Customer Margin as general Clearing Fund, FICC would record such margin in a specific Segregated Customer Margin Custody Account maintained by FICC on its books and records for the Netting Member that deposited such Segregated Customer Margin, which Account would be separate from any other Accounts maintained by FICC for the Netting Member, including fellow Segregated Customer Margin Custody Accounts. In furtherance of the goal of segregation, FICC would also amend Rule 4,

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<sup>36</sup> UCC § 8-102(7) (“‘Entitlement holder’ means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary....”).

<sup>37</sup> See UCC § 8-503.

Section 3a to provide that any interest on Segregated Customer Margin consisting of cash be paid to Netting Members.<sup>38</sup>

ii. Exclusive Use, Account Designation, and Exclusive Benefit

To satisfy the requirements of Section (b)(2)(iii)(A) of Note H that customer margin be “used exclusively to clear, settle, novate, and margin U.S. Treasury securities transactions of the customers of the broker or dealer;”<sup>39</sup> FICC would provide in Rule 4, Section 1a that the Segregated Customer Margin credited to a Segregated Customer Margin Custody Account would be used exclusively to settle and margin transactions in U.S. Treasury securities recorded in the corresponding Segregated Indirect Participants Account.

Rule 4, Section 1a would also provide that the Segregated Customer Margin Custody Account would be designated on FICC’s books and records as a “Special Clearing Account for the Exclusive Benefits of the Customers of [the relevant Sponsoring Member or Agent Clearing Member].” This is in accordance with the designation requirements of Section (b)(2)(iii)(B) of Note H.<sup>40</sup>

Section (b)(2)(iii)(C) of Note H requires that the account at the clearing agency to which customer margin is credited be subject to a written notice from the clearing agency

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<sup>38</sup> Rule 4, Section 1a would also specify New York as the “securities intermediary’s jurisdiction” for purposes of the NYUCC and specify that New York law would govern all issues specified in Article 2(1) of the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649 (entered into force Apr. 1, 2017) (the “Hague Securities Convention”). These changes are designed to ensure that New York law governs each Segregated Customer Margin Custody Account.

<sup>39</sup> 17 CFR 240.15c3-3a.

<sup>40</sup> Id.



to the broker-dealer stating that the margin credited to the account is being held “for the exclusive benefit of the customers of the broker or dealer in accordance with the regulations of the Commission and [is] being kept separate from any other accounts maintained by the broker or dealer or any other clearing member at the qualified clearing agency.”<sup>41</sup> Rule 4, Section 1a would provide for FICC to provide this notice to any Netting Member that is a Registered Broker or Registered Dealer and has designated an account as a Segregated Indirect Participants Account.

iii. Limitation on Permitted Liens and Use of Margin Deposits

FICC is also proposing changes to the Rules to satisfy the condition of Section (b)(2)(iii)(D) of Note H that the account established pursuant to Section (b)(2)(iii), *i.e.*, each Segregated Customer Margin Custody Account, be subject to a written contract providing that the customer margin in the account, *i.e.*, the Segregated Customer Margin, not be available to cover claims arising from the broker-dealer or any other clearing member defaulting on an obligation to the Treasury CCA, or be subject to any other right, charge, security interest, lien, or claim of any kind in favor of the qualified clearing agency or any person claiming through the qualified clearing agency, except a right, charge, security interest, lien, or claim resulting from a cleared U.S. Treasury securities transaction of a customer of the broker-dealer effected in the account.<sup>42</sup>

Specifically, FICC is proposing to amend the security interest each Netting Member provides to FICC under Rule 4, Section 4. That security interest, which is binding on the Netting Member and FICC through the incorporation of the Rules into the

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<sup>41</sup> Id.

<sup>42</sup> Id.

membership agreement between FICC and such Netting Member, currently applies to all cash and securities deposited by a Netting Member with FICC pursuant to Rule 4 and Rule 13 (defined in the Rules as the “Actual Deposit”) and secures all obligations of the Netting Member to FICC. FICC is proposing to amend Rule 4, Section 4 to exclude Segregated Customer Margin from the scope of the Actual Deposit. Such Segregated Customer Margin would instead be subject to a separate security interest pursuant to which the Segregated Customer Margin would secure only obligations arising out of Segregated Indirect Participants Accounts. FICC would also make a conforming change to Rule 3A, Section 10(f) to make clear that the security interest described therein only applies to the security interest granted in the Actual Deposit.

In addition, the bulk of the provisions of the Rules concerning Clearing Fund, including those relating to FICC’s ability to use Clearing Fund, would not apply to Segregated Customer Margin since such margin would not form part of the Clearing Fund. The only exceptions are the language in Rule 3A, Section 10(f) stating that margin obligations are secured by the Actual Deposit; the language in Rule 3A, Section 10(g) concerning fines applicable to a failure to meet margin requirements; the language in Rule 4, Section 3a concerning the requirement that cash margin deposits be made in immediately available funds; the language in Rule 4, Section 3b regarding the haircutting, delivery, qualification, and substitution requirements for securities margin; and the language in Rule 4, Section 9 relating to the requirement of Netting Members to deliver margin. These changes would ensure that FICC’s broad use rights in respect of Clearing Fund, *e.g.*, for loss mutualization, do not apply to Segregated Customer Margin.

In addition, FICC is proposing to amend Rule 4, Section 5 to provide that, on each Business Day, FICC would calculate the portion of Segregated Customer Margin that supports each Segregated Indirect Participant's transactions. FICC may only use such portion to secure or settle the performance of the obligations of that Segregated Indirect Participant (or its Sponsoring Member or Agent Clearing Member with respect to the Segregated Indirect Participant) or for permitted investment purposes described below. It would further provide that FICC would not be permitted to use Segregated Customer Margin supporting one Segregated Indirect Participant's transaction to secure or settle any other person's transactions, including those of a fellow Segregated Indirect Participant.

These changes would thus not only prohibit FICC from using Segregated Customer Margin to cover the obligations of the broker-dealer Netting Member in respect of its Proprietary Transactions or those of any other Netting Member in accordance with the requirements of Section (b)(2)(iii)(D) of Note H, but they would also limit "fellow customer risk" for Segregated Indirect Participants (*i.e.*, the risk that one customer incurs a loss on account of a default of another customer because the clearing organization applies margin deposited by the first customer to the second customer's obligations).<sup>43</sup>

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<sup>43</sup> In the event of the insolvency, resolution, or liquidation of a Netting Member, a Segregated Indirect Participant's ability to recover any funds or securities it has posted to its Netting Member in connection with an FICC-cleared transaction or that the Netting Member receives from FICC in connection with such a transaction will depend on the relevant insolvency, resolution, or liquidation regime. FICC would not, except as directed by the relevant insolvency, resolution, or liquidation officials in accordance with applicable law, make any payments or transfer any assets directly to an indirect participant.

FICC believes these changes would facilitate greater access to its clearance and settlement services.

FICC is proposing to require that the Segregated Margin Requirement be no lower than \$1 million per Segregated Indirect Participant, and that the same form of deposit requirements set forth in Rule 4, Section 3 apply to Segregated Customer Margin such that no less than \$1 million per Segregated Indirect Participant consist of cash. These changes would be accomplished through a new subsection (c) of Rule 4, Section 3 and reflected in the Margin Component Schedule.

First, this minimum requirement is consistent with the \$1 million minimum cash requirement applicable to each Margin Portfolio of a Netting Member. FICC believes it is appropriate to apply the same minimum cash requirement to each Segregated Indirect Participant that it currently applies to each Margin Portfolio because, as described above, FICC would be required to calculate the margin requirements for these participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, and would be restricted from using these funds to address any losses other than losses resulting from the participant for whom the funds are held.

Second, because FICC would be restricted from using these funds to address any losses other than losses resulting from the indirect participant for whom these funds are deposited, FICC believes this minimum requirement is appropriate to mitigate the risk exposures presented by this limitation. FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt

intraday change in their exposures.<sup>44</sup> Based on the analysis and impact studies FICC conducted in connection with a recent increase to minimum Required Fund Deposit for Netting Members,<sup>45</sup> FICC has determined that a \$1 million minimum requirement is the appropriate minimum amount to optimize the balance between financial impact of the requirement to Members and FICC's ability to continue to meet its regulatory obligation to maintain a backtesting performance coverage ratio above its 99 percent coverage target.

FICC is not able to predict how many indirect participants may elect to submit activity to FICC through a Segregated Indirect Participants Account, or the size and volume of that activity. However, because the margin requirements for each Segregated Indirect Participant would be calculated in the same manner as the requirements for each Margin Portfolio, it believes that these studies provide it with an appropriate approximation of the risks it may face if margin deposits for these Accounts are not subject to a minimum requirement.

C. Holding Segregated Customer Margin Deposits in Bank and FRBNY Accounts

To satisfy the eligible custodian conditions set forth in Section (b)(2)(iv) of Note H,<sup>46</sup> FICC is proposing to amend Rule 4, Section 1a to provide that all Segregated Customer Margin be held in an account of FICC at a bank within the meaning of the Act

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<sup>44</sup> As a covered clearing agency, FICC is required under Rule 17Ad-22(e)(6)(vi) to conduct backtests of its margin model at least once a day. 17 CFR 240.17Ad-22(e)(6)(vi). FICC's backtesting performance target is 99 percent.

<sup>45</sup> See Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR-FICC-2022-006).

<sup>46</sup> 17 CFR 240.15c3-3a.

that is insured by the Federal Deposit Insurance Corporation, or at the Federal Reserve Bank of New York. Rule 4, Section 1a would also provide that such account would be segregated from any other account of FICC and would be used exclusively to hold Segregated Customer Margin, in accordance with Section (b)(2)(iv)(A) of Note H to Rule 15c3-3a.<sup>47</sup> To satisfy the requirements of Sections (b)(2)(iv)(B) and (C) of Note H,<sup>48</sup> Rule 4, Section 1a would further provide that each such account would be subject to (i) a written notice of the bank or Federal Reserve Bank provided to and retained by FICC that the account is being held by the bank or Federal Reserve Bank pursuant to Rule 15c3-3 and is being kept separate from any other accounts maintained by FICC or any other person at the bank or Federal Reserve Bank and (ii) a written contract between FICC and the bank or Federal Reserve Bank which provides that the Segregated Customer Margin in the account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or Federal Reserve Bank or any person claiming through the bank or Federal Reserve Bank.

D. Investment Restrictions on Segregated Customer Margin Cash

In accordance with Section (b)(2)(ii) of Note H,<sup>49</sup> Rule 4, Section 1a would be amended to require FICC to only invest Segregated Customer Margin consisting of cash in U.S. Treasury securities with a maturity of one year or less. FICC will propose changes to the Clearing Agency Investment Policy by a separate proposed rule change filing to address the separate holding and investment of Segregated Customer Margin cash,

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<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

consistent with the disclosures proposed to be added to Rule 4. Pursuant to those changes, FICC would only hold Segregated Customer Margin consisting of cash in a cash deposit account at the Federal Reserve Bank of New York or, pending the opening of such account, another FDIC-insured bank and does not intend to make any other investment of these funds.

E. Return of Segregated Customer Margin

Lastly, in order to satisfy the condition in section (b)(2)(v) of Note H that a Treasury CCA adopt rules requiring systems, controls, policies, and procedures to return excess customer margin to a broker-dealer,<sup>50</sup> FICC is proposing to adopt certain amendments to Rule 4, Section 10. Under the proposed rule changes, Rule 4, Section 10 would be revised to require FICC to calculate twice each Business Day the excess of a Netting Member's Segregated Customer Margin over the Segregated Customer Margin Requirement (such amount, the "Excess Segregated Customer Margin").<sup>51</sup> In addition, FICC would adopt a new Rule 4, Section 10(b) that would require FICC to return a Netting Member's Excess Segregated Customer Margin at the Netting Member's request. In order to manage the risk of a Segregated Indirect Participant's transactions in accordance with the requirements of Rule 17Ad-22(e)(6) under the Act,<sup>52</sup> FICC would retain the discretion to retain such Excess Segregated Customer Margin if the Netting

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<sup>50</sup> Id.

<sup>51</sup> The twice each Business Day interval would also apply to the calculation of a Netting Member's excess Required Fund Deposit, since that is the interval on which FICC currently performs such calculation.

<sup>52</sup> 17 CFR 240.17Ad-22(e)(6).

Member has any outstanding payment or margin obligation with respect to the transactions of any Segregated Indirect Participant.

However, proposed Section 10(b) of Rule 4 would provide that, unlike in the case with Clearing Fund, FICC would not be able to retain Excess Segregated Customer Margin due to any obligation of the Netting Member that is unrelated to the Segregated Indirect Participants Account, unless FICC is either required to do so by applicable law or is authorized to do so by the Commission.

3. *Align Margin Methodology with Proposed Account Structure and Enhance Public Disclosures of Margin Components and Clearing Fund Methodology*

FICC is proposing changes to the Rules to reorganize, clarify, and refine its margin calculation methodology. FICC is not changing the method by which it calculates the various margin components.

A. *Consolidate Margin Components and Clearing Fund Calculation Methodology in Proposed Margin Component Schedule*

In order to improve the clarity and transparency of its margin components and Clearing Fund calculation methodology, FICC is proposing to move the calculation methodology from Rule 4, Sections 1b, and 2a, Rule 3, Section 14, and Rule 3A, Section 10, as well as the associated definitions of the margin components and associated terms, including Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment Charge or MLA Charge, Margin Proxy, Minimum Margin Amount,<sup>53</sup> Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage

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<sup>53</sup> Supra note 33.



Amount to a new Margin Component Schedule. As noted above, this methodology would not change, and would continue to be substantively the same as that which currently exists under Rule 4 and Rule 3A, Section 10.

The Margin Component Schedule would include existing and refined descriptions of the manner and method by which FICC would calculate a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement. FICC believes that describing its margin calculation methodology in a single schedule would facilitate access to its clearing and settlement services by making it easier for market participants to identify and review that methodology. FICC would also make conforming changes to provisions of the Rules that reference the margin calculation methodology of Rule 4 so that such provisions reference the Schedule of Margin Components.

Section 1 of the Margin Component Schedule would provide that both a Netting Member's Required Fund Deposit and its Segregated Customer Margin Requirement would be calculated twice each Business Day and that the Netting Member would be required to meet such requirements. This is the same time interval in which FICC currently calculates and collects a Netting Member's margin requirements. Section 2 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Required Fund Deposit. As discussed above, Section 3 of the Margin Component Schedule would set forth the methodology for calculating a Netting Member's Segregated Customer Margin Requirement. Section 4 of the Margin Component Schedule would set forth the terms under which FICC may impose increased Required Fund Deposits. These terms would be substantively the same as those currently in Rule 4 and Rule 3A, Section 10.

Section 5 of the Margin Component Schedule would contain the relevant definitions for the margin methodology calculation. These would be substantively the same as the existing definitions in Rule 1, with certain changes. As noted above, the definitions of Backtesting Charge, Blackout Period Exposure Adjustment, Excess Capital Differential, Excess Capital Ratio, Excess Capital Premium, Holiday Charge, Intraday Supplemental Fund Deposit, Margin Liquidity Adjustment or MLA Charge, Margin Proxy, Minimum Margin Amount,<sup>54</sup> Portfolio Differential Charge, Unadjusted GSD Margin Portfolio Amount, VaR Charge, VaR Floor and VaR Floor Percentage Amount would be revised to provide for such charges to be calculated for purposes of Segregated Customer Margin Requirements on a Segregated Indirect Participant-by-Segregated Indirect Participant basis. In addition, the MLA Charge definition would be amended to provide that, if a Segregated Indirect Participant clears through multiple Accounts (including Accounts of different Netting Members), then the MLA Charge applicable to its transactions carried in a given Segregated Indirect Participants Account would equal the greater of (i) an amount calculated only with regard to the transactions maintained in that Account (*i.e.*, without regard to the other Accounts in which the Segregated Indirect Participant's transactions are recorded) and (ii) an amount calculated on a consolidated portfolio basis (*i.e.*, taking into account the transactions carried in each of the Accounts). This is currently the same methodology that is used for Sponsored Members that clear through multiple Accounts.

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<sup>54</sup> Supra note 33.

B. Revise Definition of “Current Net Settlement Positions”

In order to refine its margin calculation methodology, FICC is also proposing to amend the definition in Rule 1 of Current Net Settlement Positions to provide for Current Net Settlement Positions in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account that are not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant to be allocated, for purposes of calculating margin requirements, pro rata to the Sponsored Members or Segregated Indirect Participants that had, as of the end of the preceding Business Day, positions in the same direction and CUSIP as the un-allocable Current Net Unsettled Positions. This situation could arise if, for example, a transaction recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account fails to settle. FICC believes this methodology facilitates a reasonable and fair allocation for purposes of calculating gross margin requirements.

FICC would make a corresponding deletion to the language of Rule 3A, Section 7 that addresses the treatment of such positions in Sponsoring Member Omnibus Accounts. Currently Rule 3A, Section 7(a)(i) provides that Net Settlement Positions per CUSIP shall be calculated for each Sponsored Member in the same manner set forth in Rule 11 for Netting Members. The proposed changes to the definition of Current Net Settlement Positions would, however, result in a different calculation of the Net Settlement Positions per CUSIP for Sponsored Members whose positions are recorded in a Sponsoring Member Omnibus Account than for Netting Members. Therefore, the statement in Rule 3A, Section 7 would no longer be correct and would be removed from the Rules.

C. Enhance the Methodology for Calculating the Excess Capital Premium

FICC is also proposing to amend the terms related to the Excess Capital Premium, one of the components of the Required Fund Deposit calculation, in order to make such calculation more precise and predictable. Currently, the Excess Capital Premium applicable to a Netting Member equals the Netting Member's "Excess Capital Ratio" (*i.e.*, its VaR Charge divided by its Netting Member Capital) multiplied by its "Excess Capital Differential" (*i.e.*, the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital). However, FICC currently reserves the right to collect less than this amount or to return some or all of this amount.

FICC is proposing to make the Excess Capital Premium more precise and predictable by revising the definition to (i) cap such amount at two times a Netting Member's Excess Capital Differential, (ii) provide that FICC would use the Netting Member Capital amounts set forth in the Netting Member's most recent Form X-17-A-5 (Financial and Operational Combined Uniform Single ("FOCUS") Report or Consolidated Report of Condition and Income ("Call Report")), as applicable, (iii) permit FICC in its discretion to accept updated amounts provided by a Netting Member prior to the issuance of the Netting Member's next financial report, and (iv) set forth a specific procedure through which FICC may waive the Excess Capital Premium. With regard to (iv), the proposed rule changes would provide that only a Managing Director in FICC's Group Chief Risk Office could grant waiver of an Excess Capital Premium and only in exigent circumstances if FICC observed extreme market conditions or other unexpected changes in factors, based on all relevant facts and circumstances, including the degree to which a Netting Member's capital position and trading activity compare or correlate to

the prevailing exigent circumstances and whether FICC can effectively address the risk exposure presented by a Netting Member without the collection of the Excess Capital Premium from that Netting Member. Any such waiver would need to be documented in a written report made available to the relevant Netting Member. FICC believes that these changes, which are substantially similar to changes recently adopted by the National Securities Clearing Corporation, would enhance the ability of Netting Members to identify what their Excess Capital Premium will be and to ensure such amount is accurately calibrated.<sup>55</sup>

FICC would also amend the defined term “Netting Member Capital” in Rule 1 to refer to a Netting Member’s Net Capital, Net Assets, or Equity Capital, as applicable based on the Netting Member’s type of regulation. The definition of “Net Capital,” in turn, would be revised to refer specifically to the net capital of a Netting Member as reported on its most recent FOCUS Report or, if a Netting Member is not required to file a FOCUS Report, on its most recent financial statements or equivalent reporting. “Equity Capital” would be defined in Rule 1 to mean the equity capital of a Netting Member as reported on its most recent Call Report, or if a Netting Member is not required to file a Call Report, on its most recent financial statements or equivalent reporting. FICC believes these changes would increase predictability and understanding of how FICC calculates the Excess Capital Premium.

FICC would also remove obsolete references to margin requirements for pending transactions since FICC does not apply margin requirements to such transactions.

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<sup>55</sup> See Securities Exchange Act Release No. 96786 (Feb. 1, 2023), 88 FR 8013 (Feb. 7, 2023) (SR-NSCC-2022-005).

D. *Exclude Segregated Customer Margin from Calculation of Excess Capital Premium Charge*

FICC is also proposing to revise the definitions of Excess Capital Ratio and Excess Capital Differential in the Margin Component Schedule to exclude the VaR Charge calculated with respect to Segregated Indirect Participants.

The VaR Charge assessed for each Segregated Indirect Participant would be satisfied by the Segregated Indirect Participant, and not by the Netting Member. As noted above, the Excess Capital Premium is designed to address the risk that a Netting Member with low capital relative to value-at-risk is not able to perform its obligations. However, Segregated Customer Margin cannot be applied to satisfy a Netting Member's obligations (other than to perform on behalf of the individual indirect participant for whom the Segregated Customer Margin is held). Therefore, including the VaR Charge that is calculated for a Segregated Indirect Participant and is satisfied by the capital of that Segregated Indirect Participant in the calculation of the Netting Member's Excess Capital Premium could result in assessing an Excess Capital Premium for that Netting Member that is greater than the amount required to mitigate the risk that the Excess Capital Premium is designed to address.

The proposed change is also designed to ensure that the Excess Capital Premium does not result in differential treatment of Netting Members that act as intermediaries for Segregated Indirect Participants.

E. *Other Clarifications and Conforming Changes*

In connection with the changes described above, FICC would make other clarifications and conforming changes to the Rules. First, FICC would move the definition of "Legal Risk" from Rule 4 to the definitions in Rule 1. This term refers to the

risk that FICC may be unable to either access Required Fund Deposits or take action following the insolvency or bankruptcy of a Netting Member as the result of a law, rule or regulation applicable to the Netting Member.<sup>56</sup> Because this term is used in multiple places in the Rules, including in the new Margin Component Schedule, moving the definition to Rule 1 would make it easier for a reader to find that definition.

FICC would also delete the definition of the term “Minimum Charge” from Rule 1 and move the use of this term from Rule 4 to Sections 2(c) and 3(c) of the Margin Component Schedule. While FICC would continue to apply a requirement that Netting Members maintain a minimum amount for each Margin Portfolio or Segregated Margin Requirement, as discussed above, FICC believes using a defined term for this concept is not necessary and could cause confusion about the requirement. The proposed change to remove the defined term and instead just explain the requirement in these sections of the Margin Component Guide would simplify and, therefore, clarify, the Rules in this regard.

4. *Clarifications to Treatment of Brokered Transactions*

FICC is proposing to refine the definition of Brokered Transactions and remove conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to receive favorable loss allocation treatment.

Currently, Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet a set of conditions described in Section 8 of Rule 3 to be subject to a cap on the application of FICC’s loss allocation procedure of no greater than \$5 million.<sup>57</sup> FICC

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<sup>56</sup> See Rule 4, Section 2(d), supra note 4.

<sup>57</sup> See Rule 3, Section 8 (such conditions require that an Inter-Dealer Broker Netting Member “(A) limit its business to acting exclusively as a Broker; (B) conduct all of its business in Repo Transactions with Netting Members; and (C) conduct at least 90 percent of its business in transactions that are not Repo Transactions,

believes this favorable loss allocation treatment is appropriate because the Netting Member is not undertaking a directional position with respect to the transactions. Instead, each transaction has a counterparty other than the Netting Member that will ultimately deliver the securities or pay the cash.

FICC is proposing to revise the Rules related to Brokered Transactions so that the favorable loss allocation treatment applies only to the transactions that present this limited risk. In particular, FICC is proposing to revise the definition of Brokered Transactions to only encompass transactions entered into by an Inter-Dealer Broker Netting Member on the Inter-Dealer Broker Netting Member's own trading platform. This rule change would limit the definition of these transactions to transactions for which an Inter-Dealer Broker is standing in between two counterparties and is thus completely flat.

In connection with this change, FICC would eliminate the conditions that Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers must meet in order to be subject to such favorable treatment. As noted above, the proposed Rule 2B would clarify that only Inter-Dealer Broker Netting Members are able to maintain Cash Broker Accounts or Repo Broker Accounts, and that only Brokered Transactions may be submitted through such Accounts, as appropriate. Therefore, FICC believes the revised definition of Brokered Transactions and the revisions to the Account structure would collectively serve the risk-mitigation function that the conditions in Rule 3, Section 8

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measured based on its overall dollar volume of submitted sides over the prior month, with Netting Members”) and Rule 4, Section 7, supra note 4.



achieve, but in a much more effective manner and in a manner that is easier for FICC to monitor. As such, those conditions would be removed from the Rules.

Finally, FICC would remove the category of Non-IDB Repo Brokers from the Rules. Non-IDB Repo Brokers are currently defined as Netting Members other than Inter-Dealer Broker Netting Members that operate in the same manner as a Broker and have agreed to meet the same requirements imposed on Inter-Dealer Broker Netting Members.<sup>58</sup> As described above, FICC believes the favorable loss allocation treatment is appropriate only for Inter-Dealer Broker Netting Members that submit Brokered Transactions, as such term would be defined. Therefore, FICC would delete the references to such parties and associated terms. In connection with these changes, the proposal would delete the defined term for “Non-IDB Repo Broker” as that term would no longer be used in the Rules.

### **Implementation Timeframe**

Subject to the completion of all regulatory actions required with respect to this proposal,<sup>59</sup> FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed changes by an Important Notice posted to FICC’s website.

### **Expected Effect on Management of Risk**

FICC believes that the proposed rule changes to separately and independently calculate, collect, and hold the margin for a Netting Member’s proprietary transactions from the margin for the transactions of indirect participants, to limit Brokered

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<sup>58</sup> Currently, only one Netting Member is a Non-IDB Repo Broker.

<sup>59</sup> Supra note 3.

Transactions to those entered into by an Inter-Dealer Broker Netting Member on its own trading platform, to set forth a segregation arrangement for certain indirect participant margin, and to clarify FICC's account structure and consolidate its margin methodology in a single accessible Margin Component Schedule would enhance FICC's and its Netting Members' risk management.

The separate calculation of margin for a Netting Member's proprietary and indirect participant transactions would ensure that the quantum of margin that FICC collects from a Netting Member more precisely reflects the separate risk profiles of the Netting Member's proprietary portfolio of transactions and the portfolio of transactions that the Netting Member submits to FICC on behalf of indirect participants. This approach would also provide FICC with a more detailed understanding of potential risks arising from the various types of transactions that it clears.

The revisions to the Brokered Transactions definition would also help facilitate a more precise identification and calibration of potential risks attendant to different transaction types. In this context, the revisions would ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from a more favorable loss allocation treatment. And they would ensure that other types of transactions are maintained in Dealer Accounts, alongside other regular market activity.

FICC further believes that the proposed changes to clarify FICC's account structure and consolidate its margin methodology in a single accessible Margin Component Schedule would enhance risk management by furthering public awareness of how FICC assesses margin requirements. Such greater awareness would allow Netting

Members and indirect participants to make more informed choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios.

FICC additionally believes that the proposed margin segregation arrangement would reduce risk by enhancing the ability of Netting Members to collect margin from indirect participants and deposit that margin with FICC. Currently, broker-dealer Netting Members must finance the margin obligations of their indirect participants' transactions because they cannot record a debit in the Rule 15c3-3a formulas for margin deposited with FICC. In addition, non-broker-dealer Netting Members may often need to finance the margin obligations of their indirect participants' transactions because the absence of a segregation arrangement makes it impossible or undesirable for indirect participants to use their own assets to satisfy such margin obligations. Such financing can expose Netting Members to the risk of an indirect participant default. FICC's proposed segregation arrangement would serve to reduce the need for Netting Members to provide financing by allowing Netting Members to collect margin from indirect participants and deposit that margin with FICC. Such collection and depositing would reduce the risk to a Netting Member of an indirect participant default because the Netting Member can look to the margin for credit support. As a result, collecting and depositing the indirect participant's margin in a segregated account at FICC would limit the likelihood that a default of an indirect participant gives rise to distress at the Netting Member that could limit its ability to perform to FICC. By the same token, the segregated account structure FICC is proposing to hold indirect participant margin should help those indirect

participants manage their risks to their Netting Member, fellow Netting Member customers, and even FICC itself because the account structure would ensure that such margin is only available to cover losses arising from a default by the indirect participant's position.

### **Consistency with Section 805 of the Clearing Supervision Act**

FICC believes the proposed rule changes are consistent with the Clearing Supervision Act.<sup>60</sup> Specifically, FICC believes these changes are consistent with the risk management objectives and principles of Section 805.<sup>61</sup>

1. *Consistency with Section 805(b) of the Clearing Supervision Act*

Section 805(b) provides that “[t]he objectives and principles for the risk management standards prescribed under subsection (a) shall be to (1) promote robust risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system.”<sup>62</sup> As described in greater detail below, the proposed rule changes to clarify FICC’s account structure and margin calculation methodology would improve public understanding of FICC’s margining and recordkeeping processes and thereby facilitate greater access to the systemic risk-reducing benefits of FICC’s central clearing services. The proposed changes would do this by revising the definition of “Account” to make clear that FICC Accounts are for purposes of recording transactions, providing a roadmap in Rule 2B identifying the types of Accounts FICC maintains for Netting Members and which transactions may be

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<sup>60</sup> 12 U.S.C. 5461 et seq.

<sup>61</sup> 12 U.S.C. 5464.

<sup>62</sup> 12 U.S.C. 5464(b).

recorded in such Accounts, amending Rule 4 to clarify the types of transactions that may be included in a Margin Portfolio, and consolidating the components of FICC's margin calculation methodology currently in Rules 1 and 4 into an accessible Margin Component Schedule and refining the description of FICC's margin calculation methodology. The proposed change to eliminate the Permitted Margin Affiliates from the Rules would also lead to clearer Rules and, therefore, improved public understanding of FICC's margining practices by removing a concept that is not being used by Netting Members.

The collective impact of these changes would be to enhance the ability of Netting Members and indirect participants to make more informed choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios. Enhanced understanding and decision-making by market participants of FICC's risk-reducing central clearing services would promote easier and more diverse access to such services. This expanded access, in turn, would promote robust risk management across the U.S. Treasury market since expanded access also result in expanded application of FICC's risk management measures, including margin requirements. With this expanded application also comes clearer understanding by market participants of the potential financial resource and liquidity needs necessary to satisfy FICC's margin requirements, and therefore the ability of market participants to anticipate and manage those needs on a more organized and orderly basis. Thus, expanded and more transparent application of these risk management measures would promote safety and soundness across the

diversity of participants in the U.S. Treasury markets, thereby also reducing systemic risk and supporting stability of the broader financial system.

The proposed changes to create a segregation arrangement for certain indirect participant margin would also facilitate broader access to the risk-reducing benefits of FICC's central clearing services. As noted above, broker-dealer and other Netting Members must often finance the margin obligations of their indirect participants. In addition to increasing a Netting Member's risk exposure to indirect participants, such financing increases the costs to the Netting Member of providing access to central clearing. The proposed rules would facilitate greater access to FICC's clearance and settlement systems by creating a segregation arrangement that would allow broker-dealer and other Netting Members to collect margin from their indirect participants and deposit that margin with FICC. Such collection and depositing would reduce the costs and attendant liquidity needs to such Netting Members of providing access to FICC's clearance and settlement services via margin payments, thereby increasing the diversity and scope of market participants able to access central clearing while also ensuring that expanded access to central clearing does not increase funding and liquidity risk for the Netting Members. By improving the position of the Netting Members in this regard, the proposed changes can reduce systemic risk that can be triggered by a large Netting Member liquidity stress event or where an indirect participant default also causes a Netting Member to default. For the same reasons, the outcome of these proposed changes promotes safety and soundness and the stability of the broader financial system.

By the same token, the segregated account structure FICC is proposing to hold indirect participant margin should help indirect participants who access central clearing

to manage more effectively their risks to their Netting Member, fellow Netting Member customers, and even FICC itself because the account structure would ensure that such margin is only available to cover losses arising from a default by the indirect participant's position. Thus, the proposed changes would promote robust risk management at indirect participants and, by reducing the risk that indirect participants may not be able to access their margin upon the default of another party, also reduce the risk that the indirect participant will suffer a related default or market stress event. For this reason, the proposals further promote safety and soundness, reduce systemic risk, and support the stability of the broader financial system.

The proposed rule changes to separately and independently calculate the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements, and to limit the scope of Brokered Transactions to those executed by an Inter-Dealer Broker Netting Member on its own trading platform would also promote robust risk management, and safety and soundness at FICC by reducing the potential risk to FICC arising from indirect participant transactions and provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears.<sup>63</sup> They would also ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from the favorable loss allocation treatment, which further promotes robust risk management at FICC. The proposed changes would also incentivize Netting Members and indirect participants to make more informed

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<sup>63</sup> See Adopting Release, supra note, at 144.

choices about how the various types of portfolios they present for clearing would be risk managed by FICC, which in turn should allow such parties to better anticipate and provision for any financial resourcing and liquidity needs that might arise from margin calls for those portfolios. As already explained above, these outcomes applied across the various actors in the U.S. Treasury market would, in turn, reduce systemic risks and support the stability of the broader financial system.

As a result, FICC believes the proposed changes will collectively advance Section 805(b)'s objectives and principles of promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.<sup>64</sup>

2. Consistency with Section 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like FICC. Accordingly, the Commission has adopted risk management standards under this section and under Section 17A of the Act.<sup>65</sup> The Section 17A standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.<sup>66</sup> FICC believes that the proposed changes are consistent with Rules

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<sup>64</sup> Id.

<sup>65</sup> 17 CFR 240.17Ad-22(e).

<sup>66</sup> Id.



17Ad-22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii), each promulgated under the Act.<sup>67</sup>

Rule 17Ad-22(e)(4)(i) under the Act requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.<sup>68</sup> The proposed rule changes to separately and independently calculate, collect, and hold the margin for a Netting Member's proprietary transactions from the margin for the transactions of indirect participants, to limit Brokered Transactions to those entered into by an Inter-Dealer Broker Netting Member on its own trading platform, and to increase the precision of the Excess Capital Premium would enhance FICC's risk management. These changes would ensure that the quantum of margin that FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's portfolio of Proprietary Transactions and portfolio transactions that the Netting Member submits to FICC on behalf of indirect participants, ensure that only those transactions that present the limited risk for which FICC's Brokered Transactions provisions are designed benefit from favorable loss allocation treatment, and calibrate the Excess Capital Premium based on the most readily available information.

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<sup>67</sup> 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(i), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

<sup>68</sup> 17 CFR 240.17Ad-22(e)(4)(i).

Collectively, these changes would enhance the ability of FICC to manage the risk of the transactions it clears and settles and cover its credit exposure to its participants with a high degree of confidence.

The proposed change to require a minimum cash requirement of \$1 million per Segregated Indirect Participant would mitigate the greater risk exposure presented to FICC by the limitations on its use of these deposits. As discussed above, FICC's daily backtesting of the sufficiency of Clearing Fund deposits has revealed a heightened likelihood of backtesting deficiencies for those Members with lower deposits that are not sufficient to mitigate any abrupt intraday change in their exposures, and a \$1 million minimum requirement was appropriate to mitigate the risks of backtesting deficiencies while balancing the financial impact of this requirement on Members.<sup>69</sup> Because FICC is required to calculate the margin requirements for Segregated Indirect Participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, it believes it is also appropriate to apply the same minimum requirement that it applies to each Margin Portfolio. By maintaining sufficient resources to cover its credit exposures fully with a high degree of confidence, the proposed change supports FICC's ability to identify, measure, monitor, and, through the collection of Segregated Customer Margin, manage its credit exposures to these indirect participants. Therefore, FICC believes adopting this minimum requirement is consistent with the requirements of Rule 17Ad-22(e)(4)(i) under the Act.<sup>70</sup>

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<sup>69</sup> Supra note 45.

<sup>70</sup> 17 CFR 240.17Ad-22(e)(4)(i).

Rule 17Ad-22(e)(6)(i) under the Act requires FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.<sup>71</sup> The proposed rule changes would require that each Margin Portfolio only consist of activity from the same Type of Account, ensuring that proprietary transactions and transactions submitted to FICC on behalf of indirect participants are margined separately, and to require Netting Members to use separate Deposit IDs for different transaction types. As noted above, the proposed changes to Rule 2B, Section 3 would require FICC to calculate the Segregated Customer Margin Requirement for a particular Segregated Indirect Participants Account as the sum of the requirements applicable to each Segregated Indirect Participant whose transactions are recorded in such Account, as though each Segregated Indirect Participant were a separate Netting Member with a single Margin Portfolio consisting of such transactions. These provisions would result in FICC calculating separate margin amounts for each Segregated Indirect Participant and for such amounts to be collected on a gross basis. Finally, the proposed changes to Rule 4, Section 1a would provide for FICC to establish on its books and records for each Netting Member that deposits Segregated Customer Margin a "Segregated Customer Margin Custody Account" corresponding to each Segregated Indirect Participants Account of such Netting Member. Collectively, these proposed

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<sup>71</sup> 17 CFR 240.17Ad-22(e)(6).

changes would ensure that a Netting Member's proprietary transactions are not netted with indirect participant transactions for purposes of margin calculation and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member's proprietary transactions.

Rule 17Ad-22(e)(18)(ii) under the Act requires FICC to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in FICC.<sup>72</sup> The proposed changes to consolidate FICC's margin methodology in a Margin Component Schedule, to identify the particular Required Fund Deposit Portions and Segregated Customer Margin Requirements, and to elaborate on the calculation of the Excess Capital Premium and the circumstances in which FICC would waive the application of such premium would improve public disclosure of FICC's margin methodology and the obligations that Netting Members and their indirect participants would have as a result of their participation in FICC's clearance and settlement system. In particular, the proposed changes would provide Netting Members and their indirect participants with a single, standalone schedule that they can review in order to understand how FICC would calculate margin obligations for their transactions. The proposed changes would also improve public disclosure by allowing Netting Members and their indirect participants to see how the various Accounts and Margin Portfolios give rise to separate inputs into the total margin calculation and how and when a Netting Member may face an increase in margin on account of the Excess Capital Premium.

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<sup>72</sup> 17 CFR 240.17Ad-22(e)(18)(ii).

Rule 17Ad-22(e)(18)(iii) under the Act requires that FICC establish written policies and procedures reasonably designed to monitor compliance with its participant requirements on an ongoing basis.<sup>73</sup> The proposed changes to require Netting Members to designate the Account in which a transaction is to be recorded and to identify the Sponsored Member or Executing Firm Customer for whom the transaction is submitted on that transaction record would help facilitate FICC's ability to monitor which transactions are being entered into by which entities. This enhanced monitoring of participant activity would thus allow FICC to better monitor participants' compliance with FICC's various requirements in accordance with Rule 17Ad-22(e)(18)(iii).<sup>74</sup>

Rule 17Ad-22(e)(18)(iv)(C) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.<sup>75</sup> FICC believes that the proposed changes giving Netting Members the ability to elect for margin deposited by

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<sup>73</sup> 17 CFR 240.17Ad-22(e)(18)(iii).

<sup>74</sup> Id.

<sup>75</sup> 17 CFR 240.17Ad-22(e)(18)(iv)(C). Contemporaneously with this proposed rule change, FICC and its affiliates, National Securities Clearing Corporation and The Depository Trust Company, have submitted separate proposed rule changes (File Nos. SR-FICC-2024-006, SR-NSCC-2024-003 and SR-DTC-2024-003) under which they are proposing to amend the Clearing Agency Risk Management Framework to address the requirement under Rule 17Ad-22(e)(18)(iv)(C) that FICC's Board review its policies and procedures related to compliance with that rule on an annual basis. These proposed changes are pending regulatory approval. Copies of the proposed rule changes are available at [www.dtcc.com/legal/sec-rule-filings](http://www.dtcc.com/legal/sec-rule-filings).

indirect participants and deposited with FICC to be segregated would facilitate access to FICC's clearance and settlement systems by giving indirect participants greater optionality. The proposed rule changes would allow a Netting Member and its indirect participant to choose whether (i) the indirect participant will post margin under a customer protection framework that is similar to that which exists in other cleared contexts,<sup>76</sup> (ii) the Netting Member will finance the margin for the indirect participant's transactions, or (iii) the indirect participant will deposit margin but without the protection (or higher margin requirements) associated with a segregation arrangement. FICC believes that such optionality would facilitate access in accordance with Rule 17Ad-22(e)(18)(iv)(C) by allowing Netting Members and their indirect participants to adopt a margining arrangement that is most consistent with their business objectives and applicable regulatory, operational, and practical constraints.

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

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<sup>76</sup> Both the Options Clearing Corporation and the U.S. derivatives clearing organizations allow for, or require, the segregation of customer margin and/or positions. See generally OCC By-Laws Sections 3, 27 (outlining the various accounts that OCC may maintain for a clearing member and the extent to which the positions and margin recorded to such accounts may applied to other obligations); 7 U.S.C. 6d (outlining the segregation rules applicable to commodity futures and cleared swap transactions); Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with the Portfolio Margining of Cleared Swaps and Security-Based Swaps that are Credit Default Swaps, Securities Exchange Release No. 93501 (Nov. 1, 2021), 86 FR 61357 (Nov. 5, 2021) (S7-13-12) (providing that certain cleared security-based swaps may be portfolio margined in a cleared swaps account subject to the rules generally applicable to cleared swaps).

participants to access FICC's clearance and settlement facilities.<sup>77</sup> The proposed changes to separately and independently calculate margin for proprietary and indirect participant transactions, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and require a Netting Member to represent that margin deposited in relation to a Segregated Indirect Participants Account is generally margin collected from an indirect participant would reduce the potential risk to FICC arising from indirect participant transactions.

These changes would ensure that the margin FICC collects from a Netting Member reflects the separate risk profiles of the Netting Member's proprietary portfolio and the portfolio of transactions it submits to FICC on behalf of indirect participants. They would also provide FICC with a better understanding of the source of potential risk arising from the transactions that it clears and incentivize Netting Members to maintain more balanced proprietary portfolios, since such portfolios would lead to lower margin requirements. In addition, the proposed representation by Netting Members that they generally intend to satisfy Segregated Customer Margin Requirements with assets collected from indirect participants rather than proprietary assets would reduce the risk of FICC's proposed margin segregation arrangement by limiting such arrangement to indirect participant assets and ensuring that proprietary assets a Netting Member deposits with FICC are available for loss mutualization purposes.

Rule 17Ad-22(e)(23)(ii) under the Act requires FICC to establish written policies and procedures providing sufficient information to enable participants to identify and

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<sup>77</sup> 17 CFR 240.17Ad-22(e)(19).

evaluate the risks, fees, and other material costs they incur by participating in FICC.<sup>78</sup>

The proposed rule changes to consolidate and clarify FICC's margin calculation methodology in the proposed Margin Component Schedule, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and to clarify the calculation of the Excess Capital Premium would make it easier for both Netting Members and indirect participants to identify and price the potential margining costs associated with how one chooses to submit transactions to FICC for clearance and settlement.

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

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

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

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<sup>78</sup> 17 CFR 240.17Ad-22(e)(23)(ii).



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

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-FICC-2024-802 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-2024-802. 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 advance notice that are filed with

the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 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 (<https://dtcc.com/legal/sec-rule-filings.aspx>). 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-2024-802 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Date and Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that FICC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives an advance notice or (ii) the date that any additional information requested by the Commission is received,<sup>79</sup> unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject

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<sup>79</sup> 12 U.S.C. 5465(e)(1)(G).

to the Commission providing the clearing agency with prompt written notice of the extension.<sup>80</sup>

Here, as the Commission has not requested any additional information, the date that is 60 days after FICC filed the advance notice with the Commission is May 13, 2024. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act<sup>81</sup> because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. The Advance Notice concerns a matter of first impression for the Commission, as it concerns recently adopted margin collection and account segregation requirements for Treasury CCAs.<sup>82</sup> The Commission has not yet considered such a proposal pursuant to Rule 17Ad-22(e)(6)(i) and the amendments to Rule 15c3-3 under the Act<sup>83</sup> and the material aspects of the proposal are detailed, substantial, and interrelated with other risk management practices at FICC.

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,<sup>84</sup> extends the review period for an additional 60 days so that the

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<sup>80</sup> 12 U.S.C. 5465(e)(1)(H).

<sup>81</sup> Id.

<sup>82</sup> See supra note 5.

<sup>83</sup> 17 CFR 240.17Ad-22(e)(6)(i) and 17 CFR 240.15c3-3.

<sup>84</sup> 12 U.S.C. 5465(e)(1)(H).

Commission shall have until July 12, 2024 to issue an objection or non-objection to advance notice SR-FICC-2024-802.

All submissions should refer to File Number SR-FICC-2024-802 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>85</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>85</sup> 17 CFR 200.30-3(a)(91) and 17 CFR 200.30-3(a)(94).