

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101694; File No. SR-FICC-2024-005)

November 21, 2024

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

On March 11, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FICC-2024-005 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to modify FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) with respect to facilitating access to GSD’s clearance and settlement services for all eligible secondary market transactions in U.S. Treasury securities.<sup>3</sup> On March 19, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections<sup>4</sup> to the proposed rule change. The proposed rule change, as modified by Partial Amendment No. 1, is referred to herein as the “Proposed Rule Change.” The Proposed Rule Change was published for public comment in the *Federal*

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Notice of Filing, *infra* note 5, at 89 FR 21363.

<sup>4</sup> Partial Amendment No. 1 makes clarifications and corrections to the description of the proposed rule change and Exhibit 5. Specifically, as originally filed, the description of the proposed rule change made a reference to an incorrect section of the GSD Rulebook. Partial Amendment No. 1 corrects that reference. Additionally, as originally filed, the description of the proposed rule change and Exhibit 5 contained inconsistent references regarding whether FICC or its Board would be responsible for approving membership applications and related membership matters. Partial Amendment No. 1 clarifies and corrects those references.

*Register* on March 27, 2024.<sup>5</sup>

On May 1, 2024, pursuant to Section 19(b)(2) of the Exchange Act,<sup>6</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>7</sup>

On June 27, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>8</sup> On September 24, 2024, pursuant to Section 19(b)(2) of the Exchange Act,<sup>9</sup> the Commission extended the period for the conclusion of proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>10</sup>

The Commission received several comment letters on the Proposed Rule Change.<sup>11</sup> In addition, the Commission received a letter from FICC responding to the public comments.<sup>12</sup> For the reasons discussed below, the Commission is approving the Proposed Rule Change.

---

<sup>5</sup> Securities Exchange Act Release No. 99817 (March 21, 2024), 89 FR 21362 (March 27, 2024) (File No. SR-FICC-2024-005) (“Notice of Filing”).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> Securities Exchange Act Release No. 100031 (Apr. 25, 2024), 89 FR 35269 (May 1, 2024) (File No. SR-FICC-2023-005).

<sup>8</sup> Securities Exchange Act Release No. 100399 (June 21, 2024), 89 FR 53681 (June 27, 2024) (SR-FICC-2024-005).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(II).

<sup>10</sup> Securities Exchange Act Release No. 101081 (Sept. 18, 2024), 89 FR 77949 (Sept. 24, 2024) (SR-FICC-2024-005).

<sup>11</sup> Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005.htm>.

<sup>12</sup> See Letter from Laura Klimpel, Head of Fixed Income Financing Solutions, Depository Trust & Clearing Corporation, (Aug. 1, 2024) (“FICC Letter”).

## **I. DESCRIPTION OF THE PROPOSED RULE CHANGE**

### **A. Background and Current Access Models**

FICC, through GSD, serves as a central counterparty (“CCP”) and provides real-time trade matching, clearing, risk management and netting for cash purchases and sales of U.S. Treasury securities as well as repurchase and reverse repurchase transactions (“repos”) involving U.S. Treasury securities. Currently, FICC is the sole provider of clearance and settlement services for U.S. Treasury securities.

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies, such as FICC,<sup>13</sup> requiring each such clearing agency for U.S. Treasury securities to have written policies and procedures reasonably designed to, among other things, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of the clearing agency’s indirect participants.<sup>14</sup>

---

<sup>13</sup> A “covered clearing agency” is, among other things, a registered clearing agency that provides the services of a CCP, and a CCP is a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer. 17 CFR 240.17ad-22(a); *see also* 15 U.S.C. 78c(a)(23) (defining a clearing agency). FICC is a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1), and it acts as a CCP.

<sup>14</sup> 17 CFR 240.17ad-22(e)(18)(iv)(C). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (“Adopting Release,” and the rules adopted therein referred to herein as “Treasury Clearing Rules”).

## **1. Direct Participation at FICC**

GSD's CCP services are currently available directly to entities that are approved under the GSD Rules<sup>15</sup> to be Netting Members.<sup>16</sup> Currently, there are different categories of Netting Member based upon the type of legal entity (*i.e.*, Bank Netting Member, Dealer Netting Member, Inter-Dealer Broker Netting Member, *etc.*) and whether an entity is incorporated in the United States or not (*i.e.*, a Foreign Netting Member). Netting Member applicants must meet both financial and operational minimum eligibility requirements<sup>17</sup> and, once admitted, Netting Members must adhere to ongoing minimum membership standards.<sup>18</sup> Furthermore, both the minimum eligibility requirements and ongoing standards vary depending on the relevant Netting Membership category. However, in general, all Netting Member categories may access the services available through GSD's Comparison System<sup>19</sup> and Netting System.<sup>20</sup>

## **2. Indirect Participation at FICC**

---

<sup>15</sup> The GSD Rules are *available at* [https://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). Terms not otherwise defined herein are defined in the GSD Rules.

<sup>16</sup> See GSD Rule 2, *supra* note 15.

<sup>17</sup> See GSD Rule 2A, *supra* note 15.

<sup>18</sup> See GSD Rule 3, *supra* note 15.

<sup>19</sup> See GSD Rule 5, *supra* note 15. The Comparison System includes the system of GSD services and operations in connection with the reporting, validating, and in some cases, matching of the long and short sides of a securities trade. GSD also has a limited membership that permits Comparison-Only Members to participate only in its Comparison System. FICC does not act as a CCP for activity processed through its Comparison System and the services offered through its Comparison System are not guaranteed by FICC.

<sup>20</sup> See GSD Rule 11, *supra* note 15. The Netting System includes the system of GSD services and operations in connection with aggregating and matching offsetting obligations resulting from securities trades submitted by or on behalf of Netting Members.

Market participants may also access GSD’s clearing services indirectly through a Netting Member. There are currently two indirect participation models to facilitate indirect participant access to GSD – the Sponsored Service<sup>21</sup> and the correspondent clearing / prime broker services.<sup>22</sup> Each of these indirect participation models gives market participants different options to consider in accessing GSD’s clearance and settlement services. The primary difference between the two models is that an indirect participant who becomes a Sponsored Member must establish an indirect, limited purpose GSD membership, whereas the correspondent clearing / prime broker services do not require an indirect member to establish any relationship with GSD.

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

---

<sup>21</sup> See GSD Rule 3A, *supra* note 15.

<sup>22</sup> See GSD Rule 8, *supra* note 15.

<sup>23</sup> See GSD Rule 3A, *supra* note 15. An entity that chooses to become a Sponsoring Member retains its status as a Netting Member and can continue to submit any non-Sponsored Member activity to FICC as such.

A Sponsored Member is a GSD Member and the legal counterparty to FICC for any submitted transactions.<sup>24</sup> However, the Sponsoring Member unconditionally guarantees to FICC the Sponsored Member’s performance under a Sponsoring Member Guaranty, which guarantees to FICC the payment and performance of a Sponsored Member’s obligations to FICC.<sup>25</sup> Therefore, FICC relies on the financial resources of the Sponsoring Member in relying upon the Sponsoring Member Guaranty. If a Sponsoring Member fails to perform under the Sponsoring Member Guaranty, FICC may cease to act for the Sponsoring Member both as a Sponsoring Member as well as a Netting Member.<sup>26</sup>

Netting Members may also submit to FICC eligible activity on behalf of their customers through the correspondent clearing / prime broker services.<sup>27</sup> Under the current GSD Rules, the Netting Member is referred to as the “Submitting Member” and the customer is referred to as the “Executing Firm.”<sup>28</sup> Unlike the Sponsored Service, FICC has no relationship with the Executing Firm,<sup>29</sup> and all obligations (*i.e.*, margin and

---

<sup>24</sup> See GSD Rule 3A, section 7 (describing novation of Sponsored Member Trades) and 2 (identifying membership types), *supra* note 15.

<sup>25</sup> See GSD Rule 3A (describing the operation of the Sponsoring Member Guaranty) and 1 (defining the Sponsoring Member Guaranty), *supra* note 15.

<sup>26</sup> See Notice of Filing, *supra* note 5, at 89 FR 21365; *see also* GSD Rule 3A, Section 14; and GSD Rule 21, Sections 1(a), 1(b), 4(a) *supra* note 15.

<sup>27</sup> See GSD Rule 8, *supra* note 15.

<sup>28</sup> See *id.* There are no operational differences between the current correspondent clearing service and the prime broker service. The primary difference between the two services is that FICC provides a report to prime brokers that identifies margin calculation for their customers’ transactions and does not provide such report to Members using the correspondent clearing service.

<sup>29</sup> See GSD Rule 1 (defining the term Executing Firm), *supra* note 15.

settlement) under the GSD Rules remain with the Submitting Member.<sup>30</sup> Additionally, Submitting Members have the option of either netting Executing Firm activity with other activity they submit to FICC (*i.e.*, Submitting Member proprietary activity) or segregating Executing Firm activity in separate accounts.<sup>31</sup> In all cases, however, the Submitting Member must identify the relevant Executing Firm(s) on the FICC transaction submission file.<sup>32</sup> The current GSD Rule does not address the qualifications of a Submitting Member (or how a Netting Member becomes a Submitting Member); does not specify the information that each Submitting Member must provide to FICC regarding the Executing Firms on whose behalf it submits transactions; does not require acknowledgments from Executing Firms; and does not set forth any rules regarding the processing of transactions through the correspondent clearing / prime broker service or how such transactions are treated in the event of a default.

## **B. Proposed Changes<sup>33</sup>**

### **1. Re-Naming the Correspondent Clearing / Prime Broker Services as the Agent Clearing Service and Providing Additional Specificity on the Agent Clearing Service**

FICC proposes to re-name, consolidate, and adopt additional provisions governing GSD’s existing correspondent clearing / prime broker services. Moving forward, the correspondent clearing / prime broker services would be referred to as the “Agent Clearing Service,” Submitting Members would be referred to as “Agent Clearing

---

<sup>30</sup> See GSD Rule 8, Section 4, and GSD Rule 15, Section 1, *supra* note 15.

<sup>31</sup> See *id.*

<sup>32</sup> See GSD Rule 8, Section 2, *supra* note 15.

<sup>33</sup> For a detailed description of each proposed change, please refer generally to the Notice of Filing, *supra* note 5.

Members,” and Executing Firms would be referred to as “Executing Firm Customers.”

The Agent Clearing Service would continue to allow Netting Members to submit, on behalf of their customers, transactions to FICC for novation. These proposed changes would primarily amend GSD Rule 8,<sup>34</sup> which currently describes the correspondent clearing / prime broker services, to describe the Agent Clearing Service with greater specificity.

FICC designed the proposed changes to the Agent Clearing Service to highlight the similarities between the Agent Clearing Service and other agent clearing models, such as those through which market participants in the cleared derivatives markets can execute commodity derivatives with third parties and then give them up to a futures commission merchant (“FCM”) for clearing.<sup>35</sup> FICC states that these proposed changes would enhance the ability of indirect participants to identify the Agent Clearing Service as a workable “done-away” model that allows indirect participants to access clearing through multiple direct participants.<sup>36</sup>

While the proposed changes would re-name certain terms in the GSD Rules and otherwise expand upon the description of how the correspondent clearing / prime broker access models operate, most of the proposed changes would not alter how Netting Members and their customers use this model to access GSD’s services.<sup>37</sup> Like the

---

<sup>34</sup> See GSD Rule 8, *supra* note 15.

<sup>35</sup> See Notice of Filing, *supra* note 5, at 89 FR 21365-66.

<sup>36</sup> See *id.* FICC also states that these proposed changes would improve the transparency of the GSD Rules regarding the availability and operations of this service to both Netting Members and, indirectly, their customers. *See id.*

<sup>37</sup> See Notice of Filing, *supra* note 5, at 89 FR 21366.

correspondent clearing / prime broker models, the Agent Clearing Service would continue to facilitate agent-style trading by allowing an Agent Clearing Member to act as processing agent and credit intermediary for its Executing Firm Customers.

Specifically, the Proposed Rule Change would address various specific topics. First, the Proposed Rule Change would address Agent Clearing Member qualifications and the application process to become an Agent Clearing Member. A Netting Member, other than an Inter-Dealer Broker Netting Member, shall be eligible to become an Agent Clearing Member. An applicant to be an Agent Clearing Member would have to submit an application and provide additional information that FICC may request, and this application would include information about the applicant's customers, past and/or projected volumes of applicant customer activity, and the applicant's controls for monitoring and mitigating risks, including any risks posed by its customers.

Second, the Proposed Rule Change would require certain information regarding an Agent Clearing Member's Executing Firm Customer Relationships to be provided to FICC. The required information would include a Legal Entity Identifier ("LEI") for each Executing Firm Customer,<sup>38</sup> and each Agent Clearing Member would be required to indemnify FICC for any losses, liabilities, expenses and legal actions that could arise related to the LEI requirement. Thus, an Agent Clearing Member would establish a relationship with one or more Executing Firm Customers and provide FICC with notice

---

<sup>38</sup> In addition to the LEI, this information would include: the name and executing firm symbol of the Executing Firm Customer; written authorization from the Executing Firm Customer to act on its behalf; confirmation that the Executing Firm Customer and the Agent Clearing Member have entered into an agreement that binds the Executing Firm Customer to the applicable provisions of the GSD Rules, as would be required by Section 3, described below; and confirmation that the Executing Firm Customer understands, acknowledges and agrees to each of the Executing Firm Customer Acknowledgments set forth in, and as would be required by the GSD Rules.

confirming the Executing Firm relationship with each such customer. FICC states that this information sharing would better enable FICC to identify and manage the risks posed by such indirect participants and would support FICC's compliance with the requirements of Rule 17ad-22(e)(18)(iii) under the Exchange Act to monitor compliance with its participation requirements on an ongoing basis.<sup>39</sup>

In addition, the Proposed Rule Change would require that an agreement between the Agent Clearing Member and the Executing Firm Customer bind the customer to the applicable provisions of the GSD Rules. However, beyond this specific requirement the Proposed Rule Change would also acknowledge such an agreement may otherwise be on any terms and conditions mutually agreed to by the parties and confirm that the GSD Rules do not prohibit any reimbursement or other payments sharing arrangements that may be established between those parties, away from FICC.

Third, the Proposed Rule Change would define what transactions are eligible to be submitted through the Agent Clearing Service, which would remain the same as the transactions eligible for the correspondent / prime broker services and would continue to exclude Netting Eligible Auction Purchases, Brokered Transactions, GCF Repo Transactions, and CCIT Transactions.<sup>40</sup>

Fourth, the Proposed Rule Change would identify the rights and obligations of Agent Clearing Members. For example, it would define the role of the Agent Clearing

---

<sup>39</sup> See Notice of Filing, *supra* note 5, at 89 FR 21365; 17 CFR 240.17ad-22(e)(18)(iii).

<sup>40</sup> FICC states that GCF Repo Transactions and CCIT Transactions are currently excluded due to system limitations, and Brokered Transactions are necessarily excluded because Inter-Dealer Broker Netting Members are not permitted to act as Agent Clearing Members, as discussed above. The exclusion of Netting Eligible Auction Purchases is driven by the specific processing rules applicable to auctions that are external to FICC and established by the U.S. Department of the Treasury. See Notice of Filing, *supra* note 5, at 89 FR 21368.

Members as processing agents of Executing Firm Customers and establish that Agent Clearing Members are liable to FICC for all obligations arising in connection with their Agent Clearing Transactions in the same manner as if the Agent Clearing Member had executed those trades. It would also state that FICC has no liability or obligation to any Executing Firm Customer. It would also provide that FICC may request information or reports regarding Agent Clearing Transactions, which would allow FICC to continue to identify, monitor and manage the risks its Agent Clearing Members may present to it and the broader GSD membership.<sup>41</sup>

Fifth, the Proposed Rule Change would include specific Executing Firm Customer acknowledgements with respect to their participation in the Agent Clearing Service.<sup>42</sup> Because Executing Firm Customers would continue to have no relationship to FICC, the Proposed Rule Change would provide that Agent Clearing Members are responsible for affirming that their Executing Firm Customers understand, acknowledge and agree to the provisions in the relevant section of the GSD Rules.

Finally, the Proposed Rule Change would set forth rules regarding the processing of Agent Clearing Transactions. FICC would require Agent Clearing Members to

---

<sup>41</sup> See Notice of Filing, *supra* note 5, at 89 FR 21368.

<sup>42</sup> These acknowledgments would include that the Agent Clearing Service is governed by the GSD Rules, including Novation of Agent Clearing Transactions; that FICC is not obligated to deal directly with the Executing Firm Customer and may deal exclusively with the Agent Clearing Member; that FICC shall have no obligations to the Executing Firm Customer with respect to any Agent Clearing Transactions submitted by an Agent Clearing Member on behalf of the Executing Firm Customer, including with respect to any payment or delivery obligations; and that the Executing Firm Customer shall have no right to receive from FICC, or any right to assert a claim against FICC with respect to, nor shall FICC be liable to the Executing Firm Customer for, any payment or delivery obligation in connection with any Agent Clearing Transactions submitted by an Agent Clearing Member on behalf of the Executing Firm Customer, and FICC shall make any such payments or redeliveries solely to the Agent Clearing Member.

process and record their customers’ activity in separate “Agent Clearing Member Omnibus Accounts,” as opposed to the optional segregated submission approach provided for in the current GSD Rules, to facilitate FICC’s ability to monitor and, ultimately, risk manage that activity appropriately.<sup>43</sup> It would also require that all Agent Clearing Transactions include an executing firm symbol that identifies the Executing Firm Customer. It would describe that Agent Clearing Transactions would continue to be processed in the same way that FICC processes other transactions through the GSD netting, clearing and settlement systems and would describe how Agent Clearing Transactions are processed when the optional field identifying the contra-party is either omitted or does not match on the transaction file. It would also address how a loss would be allocated within the Agent Clearing Service, that is, that the Agent Clearing Member, as principal, would be responsible for satisfying the loss allocation obligations that are calculated for its Executing Firm Customers.<sup>44</sup>

## **2. Changes to the Sponsored Service**

### *Eliminate Separate Categories of Sponsoring Members*

Under the current GSD Rules, there are two categories of Sponsoring Members – Category 1 Sponsoring Members are Bank Netting Members that meet the eligibility criteria described in Section 2(a) of Rule 3A, and Category 2 Sponsoring Members are all

---

<sup>43</sup> See Notice of Filing, *supra* note 5, 89 FR at 21368.

<sup>44</sup> The Proposed Rule Change would also provide that the Clearing Fund obligations applicable to an Agent Clearing Members’ Agent Clearing Transactions would be calculated separately from the obligations calculated with respect to other activity of the Agent Clearing Member. However, FICC would have the right to apply any Clearing Fund deposits of an Agent Clearing Member to any obligations of that Member (including in their capacity as a Netting Member). As a substantive matter, the above two changes do not vary from how FICC calculates and applies loss allocation or Clearing Fund requirements under the correspondent clearing and prime broker services today. See Notice of Filing, *supra* note 5, 89 FR at 21369.

other eligible Netting Members.<sup>45</sup> While Bank Netting Members are currently subject to certain capitalization requirements as Sponsoring Member applicants,<sup>46</sup> Category 2 Sponsoring Member applicants are subject to financial requirements that are greater than the financial requirements applicable in their capacity as Netting Members.<sup>47</sup> Thus, the current tiered category structure creates differing applicant criteria based on the type of entity seeking Sponsoring Member status.

Additionally, the ongoing Sponsoring Member requirements in the GSD Rules also apply a differentiated approach for Category 1 and Category 2 Sponsoring Members. For example, a Category 1 Sponsoring Member may be subject to an increase in its Required Fund Deposit if it fails to meet the applicable capitalization requirements.<sup>48</sup> Alternatively, a Category 2 Sponsoring Member may be subject to a limit on the activity it can submit through the Sponsoring Service if the Sponsoring Member’s VaR Charges exceed its Netting Member Capital.<sup>49</sup>

---

<sup>45</sup> See Securities Exchange Act Release No. 85470 (Mar. 29, 2019) 84 FR 13328 (Apr. 4, 2019) (SR-FICC-2018-013) (creating two categories of Netting Members to be eligible to be Sponsoring Members, expanding the eligibility of the service to other types of Netting Members in addition to Bank Netting Members). *See also* GSD Rule 3A, Section 2, *supra* note 15.

<sup>46</sup> Under Section 2(a) of GSD Rule 3A, Bank Netting Members applying to be a Sponsoring Member must (i) have equity capital of at least \$5 billion, (ii) be “Well-Capitalized,” as such term is defined in the GSD Rules, and (iii) have a bank holding company that is registered under the Bank Holding Company Act of 1954, as amended and that such bank holding company also be “Well Capitalized.” “Well Capitalized” is defined in GSD Rule 1 to have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. *Supra* note 15.

<sup>47</sup> These increased financial requirements do not solely relate to an applicant’s capitalization, but instead are based on the applicant’s anticipated use of the Sponsoring Service in relation to their financial condition. *See* Section 2(b)(ii) of GSD Rule 3A, *supra* note 15.

<sup>48</sup> *See* Section 2(h) of GSD Rule 3A, *supra* note 15.

<sup>49</sup> The “VaR Charge” is a component of the Required Fund Deposit and defined in GSD Rule 1; “Netting Member Capital” is defined in GSD Rule 1 to mean “Net Capital, net assets or equity capital as applicable, to a Netting Member based on its type of regulation.” *Supra* note 15.

FICC proposes to eliminate the two categories of Sponsoring Members and make all Sponsoring Members subject to the same eligibility and ongoing requirements that are currently applicable to Category 2 Sponsoring Members. FICC states that these proposed changes would encourage additional Netting Members to become Sponsoring Members thus facilitating broader access to clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants who may seek to use the Sponsored Service as Sponsored Members.<sup>50</sup> The proposed changes would affect Bank Netting Members that are – or will apply to be – Sponsoring Members by removing the above-mentioned capitalization requirements and instead applying the activity limits and financial condition factors used under the current GSD Rules for Category 2 Sponsoring Members. The proposed changes would create parity among all Sponsoring Members (and applicants), which FICC states would encourage additional market participants to become Sponsoring Members, which in turn should give indirect participants a wider range of Sponsoring Members to consider should they choose to access GSD’s central clearing services via the Sponsored Service.<sup>51</sup> FICC states that the activity limits and financial condition monitoring will allow FICC to continue to manage the risks that could be presented by any activity cleared through the Sponsored Service.<sup>52</sup> FICC does not believe the proposed changes would increase the risks presented to it by Bank Netting Members’ participation in the Sponsored Service as Sponsoring Members because other existing risk management tools (*e.g.*, FICC’s ability

---

<sup>50</sup> See Notice of Filing, *supra* note 5, at 89 FR 21370.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

to impose greater and additional financial requirements,<sup>53</sup> the Excess Capital Premium,<sup>54</sup> and activity limits<sup>55</sup>) would be available for FICC to continue to manage those risks.<sup>56</sup>

*Remove the “Qualified Institutional Buyer” Requirements for Sponsored Members*

FICC proposes to remove the requirement that Sponsored Members either be “qualified institutional buyers,” as such term is defined by Rule 144A under the Securities Act of 1933,<sup>57</sup> or satisfy the financial requirements of such definition (“QIB Requirement”). This proposed change would make the Sponsored Service available to additional market participants, thereby providing such firms with access to GSD’s clearing services. FICC states that expanding eligibility to become a Sponsored Member supports the goals of the Treasury Clearing Rules to facilitate increased central clearing of transactions involving U.S. Treasury securities.<sup>58</sup>

---

<sup>53</sup> See GSD Rule 3A, Section 2(b)(ii) (describing the factors that FICC may consider when determining whether to impose additional financial requirements on a Sponsoring Member), *supra* note 5. For the purposes of illustration only, such financial requirements could include, without limitation, additional reporting requirements, including reporting of parent company financials, or a higher minimum deposit to the Clearing Fund.

<sup>54</sup> See GSD Rule 3, Section 14 (the Excess Capital Premium is an additional Clearing Fund deposit that may be required if a Netting Member’s capital levels drop below a threshold relative to its other margin requirements), *supra* note 5.

<sup>55</sup> The activity limit, which currently only applies to Category 2 Sponsoring Members, restricts a Sponsoring Member from submitting additional activity into its Sponsoring Member Omnibus Account(s) if its capital levels exceed the sum of its VaR Charge component of the Clearing Fund. See GSD Rule 3A, Section 2(h), *supra* note 5.

<sup>56</sup> See Notice of Filing, *supra* note 5, at 89 FR 21370.

<sup>57</sup> 17 CFR 230.144A.

<sup>58</sup> See Notice of Filing, *supra* note 5, at 89 FR 21371; Adopting Release *supra* note 14, at 2716-17 (referring to the revisions to Rule 17ad-22(e)(18) as being designed to “bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby reducing the overall systemic risk in the market”).

FICC states that this change would not increase the relevant risks because FICC risk manages the Sponsored Service primarily at the Sponsoring Member level, not the Sponsored Member level.<sup>59</sup> For example, a Sponsoring Member is responsible for posting to FICC the Required Fund Deposit for its sponsored activity and, while Sponsored Members are principally liable to FICC for their settlement obligations, the Sponsoring Member is also required to provide a guaranty to FICC for such obligations.<sup>60</sup> In the event a Sponsored Member does not satisfy its settlement obligations, FICC is able to invoke the Sponsoring Member Guaranty.<sup>61</sup> Additionally, Sponsoring Members may be required to provide FICC with reports or other information that FICC may require, including, for example, responses to annual or ad hoc due diligence requests.<sup>62</sup> FICC utilizes such due diligence requests to identify, monitor and manage the risks Sponsoring Members and their Sponsored Members may present to it. As discussed above, where FICC identifies risks (whether via the due diligence process or otherwise), FICC can impose supplemental financial requirements on a Sponsoring Member, an Excess Capital Premium charge (where applicable), and activity limits.<sup>63</sup> Therefore, FICC states that its existing risk management practices with respect to the Sponsored Service, which do not rely on the QIB Requirement, are sufficiently effective.<sup>64</sup>

---

<sup>59</sup> See Notice of Filing, *supra* note 5, at 89 FR 21371.

<sup>60</sup> See GSD Rule 3A, *supra* note 15.

<sup>61</sup> See *id.*

<sup>62</sup> See *id.*

<sup>63</sup> See *supra* notes 53, 54, and 55.

<sup>64</sup> See Notice of Filing, *supra* note 5, 89 FR 21371.

### **3. Clarify Eligibility Criteria for Non-U.S. and Other Applicants**

#### *Changes Regarding Non-U.S. Applicants*

Currently, a Foreign Person applying to be a Netting Member must meet the eligibility criteria for the distinct Netting Member category of “Foreign Netting Members.”<sup>65</sup> In contrast with the eligibility criteria for other Netting Member categories, the eligibility criteria for Foreign Netting Members in Section 3(a)(v) of GSD Rule 2A do not specify or reference eligible types of legal entities.<sup>66</sup> Instead, Section 4(b)(ii)(E) of GSD Rule 2A provides FICC the authority to set minimum financial requirements for Foreign Netting Member applicants.<sup>67</sup> Additionally, Section 3(b) of GSD Rule 2A currently states that an entity can only be one category of Netting Member at a time.<sup>68</sup> Thus, a Foreign Person that is the foreign equivalent of, for example a Registered Investment Company, which is a legal entity recognized in the GSD Rules for U.S. entities, would apply to be a Foreign Netting Member, and would be subject to the eligibility criteria, other membership qualifications, and ongoing minimum membership standards applicable to Foreign Netting Members.<sup>69</sup> However, the GSD Rules also contain specific eligibility criteria, other membership qualifications, and ongoing minimum membership standards applicable to, in this example, Registered Investment

---

<sup>65</sup> See GSD Rule 2A, *supra* note 15.

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See Notice of Filing, *supra* note 5, 89 FR at 21372.

Company Netting Members.<sup>70</sup> Therefore, in this example, the current GSD Rules are unclear as to whether the applicant entity would only be subject to the Foreign Netting Member standards or would also be subject to the Registered Investment Company Netting Member standards.<sup>71</sup>

To avoid this ambiguity, FICC proposes to eliminate the category of “Foreign Netting Member” and expand the qualifications for each category of Netting Member to include the foreign equivalent of the same legal entity types.<sup>72</sup> Foreign Persons that are eligible to apply to be a Netting Member would be subject to both the minimum membership standards of the applicable Netting Member category as well as the eligibility criteria currently applicable to Foreign Netting Members, currently set forth in Section 3(a)(v) of GSD Rule 2A.<sup>73</sup> In making the determination of whether a Foreign Person is an equivalent legal entity to the domestic legal entities that qualify for a category of Netting Member, FICC would consider, for example, the applicant’s business

---

<sup>70</sup> See Notice of Filing, *supra* note 5, 89 FR at 21372.

<sup>71</sup> See *id.* FICC states that such ambiguity can have meaningful implications; for example, a Registered Investment Company Netting Member is excluded from certain requirements under the GSD Rules, and, therefore, if a Registered Investment Company that is a Foreign Person applied, and was approved, to be a Foreign Netting Member, it would not be clear if the applicable exclusions should apply to this Foreign Netting Member Applicant. See *id.*

<sup>72</sup> In making the determination of whether a Foreign Person is an equivalent legal entity to one of the domestic legal entities that qualify for a category of Netting Member, FICC would consider, for example, the applicant’s business model and its regulatory framework and designated examining authority. See Notice of Filing, *supra* note 5, at 89 FR 21372.

<sup>73</sup> See GSD Rule 2A, Section 3(a)(v) (providing that a person may be eligible to apply to be a Foreign Netting Member if it “(i) has a home country regulator that has entered into a memorandum of understanding with the SEC regarding the sharing or exchange of information, and (ii) maintains a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable in the Foreign Person’s business and can assist the Corporation’s representatives as necessary, and ensures that the Foreign Person will be able to meet its data submission, settlement, and other obligations to the Corporation as a Member in a timely manner.”) and Section 4(b)(ii)(E) (specifying the minimum financial requirements for an applicant to be a Foreign Netting Member), *supra* note 15.

model and its regulatory framework and designated examining authority. Therefore, the Proposed Rule Change would provide that a Foreign Person shall be eligible to become a Netting Member if either (1) it qualifies for one of the existing categories of Netting Member, or (2) FICC determines that the applicant may apply in the same way as an applicant that does not qualify under an existing category of Netting Member, as discussed with respect to “Changes Regarding Other Applicants” below.

Foreign Persons that are eligible to apply to be a Netting Member would be subject to both the minimum membership standards of the applicable Netting Member category and the eligibility criteria currently applicable to Foreign Netting Members, currently set forth in Section 3(a)(v) of Rule 2A. Where an applicable Netting Member category is subject to membership qualifications that are inconsistent with the qualifications applicable to a Foreign Person, then the standards applicable to a Foreign Person would apply. Although this could lead to an approach where a Foreign Person applicant remains subject to home jurisdiction requirements that are different than the requirements applicable to other Netting Members, FICC states that that this is acceptable because, as discussed further below, the GSD Rules would still provide that FICC will continue to apply the membership standards that were designed specifically to address the risks that may not be present when an applicant is not domiciled in the U.S. and whose primary regulator is not U.S.-based.<sup>74</sup>

#### *Changes Regarding Other Applicants*

Additionally, FICC proposes to clarify the eligibility criteria for applicants that do not fit into one of the existing Netting Member categories. In light of the adoption of the

---

<sup>74</sup> See Notice of Filing, *supra* note 5, 89 FR at 21372.

Treasury Clearing Rules, additional market participants will need to access FICC's clearance and settlement services, either as direct Netting Members or as indirect participants. However, under the current GSD Rules, FICC does not have the authority to consider a Netting Member applicant that does not meet the eligibility criteria of one of the Netting Member categories enumerated in the GSD Rules. Therefore, FICC proposes amendments to the GSD Rules that would provide a framework for FICC to consider an applicant, including a Foreign Person, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories.

Specifically, the Proposed Rule Change would first require that an applicant submit an application questionnaire and other initial application materials that demonstrate to FICC that the applicant's business and capabilities are such that it could reasonably expect material benefit from direct access to FICC's services. FICC proposes to establish minimum membership standards, including financial and other qualifications for membership, as it may determine are reasonable and appropriate based on information provided by or concerning such an applicant. FICC's determination of the minimum membership standards to apply to that applicant would be based on the risk profile of the applicant, as determined by FICC, and information related to (i) the applicant's business model, (ii) its regulatory framework and designated examining authority, (iii) its organizational structure and risk management framework, and (iv) its anticipated use of the Corporation's services.

FICC states that it cannot reliably predict which types of legal entities will apply for direct membership or predict the risk profiles of those entities.<sup>75</sup> The proposed

---

<sup>75</sup> See Notice of Filing, *supra* note 5, at 89 FR 21373.

changes would provide FICC with the necessary flexibility to consider any potential applicants, including legal entities that do not fit into its current Netting Member categories.<sup>76</sup> FICC states that these proposed changes would facilitate access to GSD's clearing services to a broader range of market participants.<sup>77</sup>

#### **4. Other Proposed Changes**

FICC proposes changes to the GSD Rules generally designed to describe the criteria and related requirements regarding direct and indirect access to GSD's clearance and settlement services. FICC states that these proposed changes should enhance the ability of market participants, and in particular indirect participants, to understand and evaluate the comparative tradeoffs of using GSD's central clearing services depending on the relevant access model.<sup>78</sup>

Specifically, FICC proposes to include a "road map" in the GSD Rules describing the various GSD access models that allow for both direct and indirect access to GSD's clearance and settlement services. In addition, to simplify the description of eligibility requirements in GSD Rule 2A, FICC proposes to move the definitions of the Netting Member Categories from GSD Rule 2A to the defined terms in GSD Rule 1. FICC further proposes to remove definitions which are only used once in the GSD Rules and replace those uses with the defined terms, meaning that it would remove stand-alone definitions that are used only once and instead fold the one-time definition into broader

---

<sup>76</sup> *See id.*

<sup>77</sup> *See id.*

<sup>78</sup> *See id.*

context within the GSD Rules.<sup>79</sup> FICC proposes to clarify eligibility criteria for FCM

Netting Members to require membership in the National Futures Association.

Additionally, FICC proposes to make several grammatical and other non-substantive changes to the GSD Rules to streamline, clarify, and simplify the GSD access models, related definitions, and other relevant provisions.<sup>80</sup>

## **II. DISCUSSION AND COMMISSION FINDINGS**

Section 19(b)(2)(C) of the Exchange Act<sup>81</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change,<sup>82</sup> the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F)<sup>83</sup> and (b)(3)(I)<sup>84</sup> of the Exchange Act and Rules 17ad-22(e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii) thereunder.<sup>85</sup>

---

<sup>79</sup> For example, the GSD Rules currently contain a definition for Inter-Dealer Broker which is used only, in turn, to define an Inter-Dealer Broker Netting Member. The revisions would collapse the definition of an Inter-Dealer Broker into the description of an Inter-Dealer Broker Netting Member.

<sup>80</sup> See Notice of Filing, *supra* note 5, 89 FR at 21374-75.

<sup>81</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>82</sup> 17 CFR 240.17ad-22(e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

<sup>83</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>84</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>85</sup> As part of the Commission's process of analyzing the Proposed Rule Change for consistency with the Exchange Act and rules and regulations thereunder, the Commission carefully considered the

## A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act<sup>86</sup> requires that the rules of a clearing agency, such as FICC, be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, and protect investors and the public interest.

As described above in Section I.B., FICC proposes changes to the GSD Rules that are designed to encourage and facilitate a greater number of market participants to utilize GSD's clearance and settlement services for transactions in U.S. Treasury securities, including for done-with and done-away transactions. Specifically, as described in Section I.B.1, FICC's consolidation of the correspondent clearing / prime broker services into the Agent Clearing Service and the substantially increased level of detail about how this service operates should allow for a better understanding of the availability of this model at FICC.<sup>87</sup> By updating and expanding the Agent Clearing Service to more closely resemble the nomenclature and functioning of an FCM-style model, the Proposed Rule

---

public comment letters. Many of the comment letters were submitted in response to both the Proposed Rule Change and a related set of proposed rule changes (see Securities Exchange Act Release No. 99845 (Mar. 22, 2024), 89 FR 21603 (Mar. 28, 2024) (File No. SR-FICC-2024-802) and Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21586 (Mar. 28, 2024) (File No. SR-FICC-2024-007)). On October 25, 2024, FICC filed Partial Amendment No. 1 to the related set of proposed rule changes (see Securities Exchange Act Release No. 101455 (Oct. 28, 2024), 89 FR 87449 (Nov. 1, 2024) (File No. SR-FICC-2024-802) and Securities Exchange Act Release No. 101454 (Oct. 28, 2024), 89 FR 87441 (Nov. 1, 2024) (File No. SR-FICC-2024-007) (together, the "Account Segregation Proposals")). The comment letters generally did not specify which individual comments relate to the Proposed Rule Change as opposed to the Account Segregation Proposals. In the instant Order, the Commission addresses the comments related to the Proposed Rule Change. In a separate Order, the Commission addresses the comments related to the Account Segregation Proposals.

<sup>86</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>87</sup> See DTCC White Paper, Looking to the Horizon: Assessing a Potential Expansion of U.S. Treasury Central Clearing (Sept. 2023) ("2023 DTCC White Paper") at 9, available at <https://www.dtcc.com/-/media/Files/Downloads/WhitePapers/Accessing-Potential-Expansion-US-Treasury-Clearing-White-Paper.pdf>.

Change should better present the Agent Clearing Service as a viable method for market participants to consider for clearing transactions in U.S. Treasury securities. The new terminology should help to show that the Agent Clearing Service operates similarly to agent clearing models in cleared derivatives markets, where market participants execute transactions with third parties and then give them up to their futures commission merchant for clearing.

Further, the increased specificity regarding the functioning of the Agent Clearing Service should help market participants better evaluate its fitness for their individual needs. The current GSD Rules do not describe a Submitting Member as an agent for an Executing Firm or as submitting given up transactions to FICC for clearing, and the current GSD Rules present only limited information about how the service functions. By contrast, the expanded rules regarding the Agent Clearing Service makes clear how the Agent Clearing Service would function. It addresses various topics, including the qualifications of Agent Clearing Members and the application process, what an Executing Firm Customer is and what information an Agent Clearing Member must provide to FICC regarding its Executing Firm Customers (including confirmation that there is an agreement binding the Executing Firm Customer to the applicable GSD Rules and that the Executing Firm Customer agrees to the specified Executing Firm Customer Acknowledgments, what transactions may be submitted through the service, the rights and obligations of the Agent Clearing Member, and how transactions are addressed in the event of a default or non-default loss event. These changes substantially expand the description of how this service functions beyond the limited and high-level information currently in the GSD Rules. The Commission understands that, based on a survey

conducted by FICC, a significant number (28 percent) of Netting Member survey respondents have already indicated that they expect to facilitate clearing transactions in U.S. Treasury securities using their existing prime brokerage, agency clearing, or FCM business units currently used for clearing listed and over-the-counter derivatives.<sup>88</sup>

The changes regarding the Agent Clearing Service should help facilitate market participants' ability to access central clearing by providing more detail about how the service functions and, potentially, allowing market participants to leverage existing policies and practices used for other agent clearing models to clear other types of products. In addition, the changes would provide FICC with increased ability to risk manage and monitor the Agent Clearing Transactions because it would require additional information on Executing Firm Customers and the use of an Agent Clearing Omnibus Account. These changes should therefore help promote prompt and accurate clearance and settlement and protect investors and the public interest.

Additionally, FICC's proposals to streamline and clarify certain aspects of its membership standards would remove entry barriers and make it easier for market participants to utilize the Sponsored Service. First, as described above in Section I.B.2., the Proposed Rule Change would enable additional market participants to become Sponsoring Members by removing capital requirements and eliminating other distinctions between the two existing categories of Sponsoring Members. Second, the Proposed Rule Change would enable additional market participants to become Sponsored Members by removing the QIB Requirement. These changes should allow FICC to streamline the

---

<sup>88</sup> See FICC Letter at 5-6, 11 (citing DTCC White Paper, The U.S. Treasury Clearing Mandate: An Industry Pulse Check (July 2024) (“2024 DTCC White Paper”) at 6, available at <https://www.dtcc.com/-/media/WhitePapers/Treasury-Clearing-Mandate.pdf>).

Sponsored Service and improve its accessibility to potential Sponsoring and Sponsored Members, while still allowing FICC to appropriately risk manage transactions cleared through the Sponsored Service. Therefore, this aspect of the Proposed Rule Change should facilitate greater participation in the Sponsored Service and, therefore, in central clearing more generally, subject to appropriate risk management at FICC, which is consistent with both promoting prompt and accurate clearance and settlement and the protection of investors and the public interest.

The Proposed Rule Change, as described in Section I.B.3, would also facilitate broader market participation in GSD by streamlining and clarifying the Netting Member eligibility criteria applicable to Foreign Persons and applicants that do not otherwise fit into one of the existing categories of Netting Member and would establish an application process for such entities that allows FICC to consider any applicant and the potential risk that it could bring to FICC. FICC's membership requirements are part of its overall risk management because membership requirements help to guard against defaults of any FICC member, as well as to protect FICC and the financial system as a whole from the risk that one member's default could cause others to default, potentially including FICC itself.

Additionally, FICC's proposals to add new provisions to the GSD Rules that more clearly describe the various direct and indirect GSD access models, and otherwise clarify the GSD Rule provisions regarding the GSD access models, would provide greater transparency on those subjects to market participants, and thereby enable market participants to more accurately and efficiently evaluate which model best fits their business needs.

Finally, as described above in Section I.B.4., FICC proposes to make several grammatical and other non-substantive changes to the GSD Rules to streamline, clarify, and simplify the GSD access models, related definitions, and other relevant provisions.

The Proposed Rule Change would encourage and facilitate greater participation in central clearing, while still providing sound risk management which would promote the prompt and accurate clearance and settlement of securities transactions, and would protect investors and the public interest. As the Commission explained when adopting the Treasury Clearing Rules, U.S. Treasury securities play a critical and unique role in the U.S. and global economy, serving as a significant investment instrument and hedging vehicle for investors, a risk-free benchmark for other financial instruments, and an important mechanism for the Federal Reserve's implementation of monetary policy.<sup>89</sup> Consequently, confidence in the U.S. Treasury market, and in its ability to function efficiently is critical to the stability of the global financial system. In central clearing, through novating transactions (*i.e.*, becoming the counterparty to both sides of a transaction), a CCP addresses concerns about counterparty risk by substituting its own creditworthiness and liquidity for the creditworthiness and liquidity of the counterparties.<sup>90</sup> A CCP thereby enables market participants to effectively reduce costs, increase operational efficiency, and manage risks.<sup>91</sup> Moreover, a CCP provides a centralized system of default management that can mitigate the potential for a single

---

<sup>89</sup> See Adopting Release, *supra* note 14, 89 FR at 2715-17.

<sup>90</sup> See Adopting Release, *supra* note 14, 89 FR at 2716.

<sup>91</sup> See *id.* (citing Covered Clearing Agency Standards Proposing Release, Exchange Act Release No. 71699 (Mar. 12, 2014), 79 FR 29507, 29587 (May 27, 2014) ("CCA Standards Proposing Release")).

market participant’s failure to destabilize other market participants or the financial system more broadly.<sup>92</sup> The Commission adopted the Treasury Clearing Rules, in part, to help reduce contagion risk to the CCP and bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby lowering overall systemic risk in the market.<sup>93</sup>

CCP rules that are clear and comprehensible, increase operational efficiency, and more effectively manage risks, like the Proposed Rule Change, should encourage a broader scope of market participants to utilize the CCP’s services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and protecting investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act. The Proposed Rule Change is consistent with those objectives because it encourages and supports greater participation in GSD’s central clearing services for different types of market participants and transactions. Accordingly, the Proposed Rule Change would promote the prompt and accurate clearance and settlement of securities transactions, and protect investors and the public interest, because by encouraging greater participation in central clearing, the proposals would extend the benefits of operational efficiency and risk management to a greater segment of the U.S. Treasury securities market.

For these reasons, the Proposed Rule Change is consistent with the requirements

---

<sup>92</sup> See Adopting Release, *supra* note 14, 89 FR at 2716 (citing Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of Liffe Administration and Management and Lch.Clearnet Ltd. Related to Central Clearing of Credit Default Swaps, and Request for Comments, Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139, 140 (Jan. 2, 2009) (“Liffe Order”)).

<sup>93</sup> See Adopting Release, *supra* note 14, 89 FR at 2716 (citing Proposing Release, Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610, 64614 (Oct. 25, 2022) (“Proposing Release”)).

of Section 17A(b)(3)(F) of the Exchange Act.<sup>94</sup>

## **B. Consistency with Section 17A(b)(3)(I) of the Exchange Act**

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency, such as FICC, do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.<sup>95</sup> Section 17A(b)(3)(I) does not require the Commission to make a finding that FICC chose the option that imposes the least possible burden on competition. Rather, the Exchange Act requires that the Commission find that the Proposed Rule Change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, which involves balancing the competitive effects of the Proposed Rule Change against all other relevant considerations under the Exchange Act.<sup>96</sup>

Several commenters suggest that the Proposed Rule Change’s failure to include a requirement that FICC’s direct participants offer done-away clearing services would not sufficiently provide for a workable done-away model.<sup>97</sup> For example, one commenter

---

<sup>94</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>95</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>96</sup> *See Bradford National Clearing Corp.*, 590 F.2d 1085, 1105 (D.C. Cir. 1978).

<sup>97</sup> *See* Letter from William C. Thum, Managing Director and Assistant General Counsel, Securities Industry and Financial Markets Association, Asset Management Group (May 24, 2024) (“SIFMA-AMG Letter”) at 5; Letter from Joanna Mallers, Secretary, Futures Industry of America, Principal Traders Group (April 17, 2024) (“FIA-PTG Letter I”) at 2-3, 6-7; Letter from Sarah A. Bessin, Deputy General Counsel and Nhan Nguyen, Associate General Counsel, Investment Company Institute (June 20, 2024) (“ICI Letter”) at 2, 4-5; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (April 17, 2024) (“MFA Letter I”) at 4-5, 7-8; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (Nov. 12, 2024) (“MFA Letter II”) at 3-4; *see also* Letter from Jiri Krol, Deputy Chief Executive Officer, Global Head of Government Affairs, Alternative Investment Management Association (April 23, 2024) (“AIMA Letter”) at 4-5 (stating that not addressing the done-away problem leaves a critical gap in access to clearing and settlement service and places significant competitive burdens on indirect participants).

states that it does not expect Netting Members to offer done-away trading via the Agent Clearing Model (which would effectively result in clearing members surrendering potentially lucrative commissions from trade execution to other brokers).<sup>98</sup> This commenter further states that the Proposed Rule Change does not address this or otherwise provide any other mechanism to properly align Netting Members' incentives with the goal of facilitating done-away trading.<sup>99</sup> Another commenter states that the Proposed Rule Change "ignores the current reality" in which the commenter is not aware of any clearing member currently offering done-away clearing to its customers for either cash or repo transactions and the Proposed Rule Change fails to explain why done-with and done-away transactions continue to be treated differently given that a clearing member should be agnostic about with whom a trade is executed, as the counterparty of a cleared trade is FICC (*i.e.*, not the executing counterparty).<sup>100</sup> This commenter states that FICC has not explained the justification for treating done-with and done-away transactions differently and why it has elected to continue to permit its clearing members to require *all* customers to bundle execution and clearing in these models.<sup>101</sup> Another commenter states that there remain serious questions whether Netting Members view offering done-away services as practicable from a regulatory net capital perspective and whether a sufficient number of Netting Members will provide clearing services on a

---

<sup>98</sup> See SIFMA-AMG Letter at 5.

<sup>99</sup> See *id.*

<sup>100</sup> See FIA-PTG Letter I at 3.

<sup>101</sup> See *id.*; see also MFA Letter II at 3-4.

standalone basis, as opposed to bundling execution and clearing.<sup>102</sup>

As a solution to the foregoing concerns, the commenters state that FICC should require Netting Member intermediaries (*i.e.*, Sponsoring Members and Agent Clearing Members) to offer done-away clearing to their customers.<sup>103</sup>

In contrast to these commenters, one commenter states that a mandate from FICC is not a necessary condition for a viable done-away access model.<sup>104</sup> Instead, the commenter states that a Netting Member’s decision to provide done-away services—or any services—to market participants is, and should remain, a commercial and risk decision of each member, and that such commercial arrangements should not be mandated by rule or otherwise.<sup>105</sup> The commenter further states that mandating the provision of done-away services could compromise the goals of the Treasury Clearing Rules by making the access models less attractive from a business perspective to Netting Members and cause Netting Members to limit the offerings they do make to customers if doing so would mandate other commercial arrangements or transactions that they may not wish to engage in.<sup>106</sup>

In response, FICC states that requiring Netting Member intermediaries to offer

---

<sup>102</sup> See ICI Letter at 4-5.

<sup>103</sup> See FIA-PTG Letter I at 3-4; MFA Letter I at 4-5, 7-8; AIMA Letter at 4-5; SIFMA-AMG Letter at 2; ICI Letter at 2, 4-5. Commenters also state that by not including a requirement on Netting Member intermediaries to offer done-away clearing to their customers, the Proposed Rule Change does not adequately facilitate access for such customers to FICC’s clearance and settlement services, consistent with Rule 17ad-22(e)(18)(iv)(C). See 17 CFR 240.17ad-22(e)(18)(iv)(C). The Commission addresses those comments below in Section II.D.

<sup>104</sup> See Letter from Robert Toomey, Head of Capital Markets, Managing Director/Associate General Counsel, SIFMA, at 3-4 (July 31, 2024) (“SIFMA Letter II”).

<sup>105</sup> See SIFMA Letter II at 2.

<sup>106</sup> See *id.*

done-away clearing services to customers could expose FICC and its participants to additional risks and other challenges that could limit the commercial and risk management choices an intermediary could consider in offering clearing services, which in turn could reduce the number of market participants willing to provide such services.<sup>107</sup> FICC further states that such a contraction in the availability of direct participants providing clearing services would result in concentration of risk, increased costs, and reduced liquidity in the Treasury market.<sup>108</sup> Additionally, FICC states that unlike done-with clearing, done-away clearing presents unique liquidity risks to both FICC and Netting Member intermediaries.<sup>109</sup> For FICC, if a customer’s Netting Member intermediary defaults, FICC would be obligated to perform the one-sided obligations of the done-away transactions of the customer and would need liquidity to do so.<sup>110</sup> For Netting Member intermediaries, done-away transactions would increase the maximum liquidity a Netting Member may be required to provide to FICC under the Capped Contingency Liquidity Facility (“CCLF”), increasing the cost of clearing done-away

---

<sup>107</sup> See FICC Letter at 11.

<sup>108</sup> See *id.*

<sup>109</sup> See FICC Letter at 11-14.

<sup>110</sup> See FICC Letter at 11-12. FICC also states that, by contrast, in a done-with transaction, the customer enters into the transaction with its clearing member, and that, if the clearing member then defaults, the clearing agency has the option to close out both the obligations to the clearing member and those to the customer (*i.e.*, “both sides of the trade”), with the sole resulting payment obligation being the mark-to-market value of the positions. *See id.* at 12. One commenter states that it is “inaccurate” that done-away transactions have greater liquidity risks, but the commenter does not disagree with FICC’s description of these liquidity concerns, and instead states that this distinction highlights a deficiency of FICC’s current default management framework. *See* Letter from Stephen Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel and Citadel Securities, (Oct. 21, 2024) (“Citadel Letter”) at 5; *see also* MFA Letter II at 3-4. The concerns regarding the default management framework are discussed in Section II.D.6 *infra*.

transactions.<sup>111</sup>

FICC also states that since done-away transactions are negotiated between a customer and its counterparty, the Netting Member intermediary must rely on external parties and/or processes to confirm that a transaction is consistent with the Netting Member's risk limits and regulatory requirements.<sup>112</sup> Therefore, FICC states that imposing a done-away mandate on Netting Members that lack the infrastructure to perform such confirmations could discourage market participants from providing clearing services to customers.<sup>113</sup> FICC also states that done-away clearing might subject Netting Member intermediaries to certain regulatory challenges (e.g., regarding trade reporting and confirmations) and/or increased capital requirements (since it may be difficult to conclude that they have a well-founded basis on which they can exercise close-out netting rights upon a customer default).<sup>114</sup> FICC states that in light of the foregoing risks and challenges, a done-away mandate could have the unintended consequence of discouraging Netting Member intermediaries from providing clearing services to customers, which would concentrate risk, increase costs, and reduce liquidity in the Treasury market.<sup>115</sup> Instead of a done-away mandate, FICC states that Netting Member

---

<sup>111</sup> See FICC Letter at 12, 14. The CCLF is a member-funded, rules-based, committed liquidity resource, designed to enable FICC to meet its cash settlement obligations in the event of a default of the member (including affiliates) to which FICC has the largest exposure in extreme but plausible market conditions. FICC allocates \$15 billion of the total size of the CCLF among all members. FICC allocates the remainder of the total size of the CCLF among members depending on the amount and frequency with which they generate liquidity needs above \$15 billion. See GSD Rule 22A, Section 2a, *supra* note 15.

<sup>112</sup> See FICC Letter at 12-13.

<sup>113</sup> See *id.*

<sup>114</sup> See FICC Letter at 14.

<sup>115</sup> See FICC Letter at 11.

intermediaries should be allowed to decide whether and how to provide clearing services to customers after evaluating the relevant risks.<sup>116</sup>

As proposed, the GSD access models, including the ability to bundle execution and clearing, do not constitute a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act, because the models continue to offer optionality for different types of market participants to access central clearing in different ways. After proposing the Treasury Clearing Rules,<sup>117</sup> the Commission received similar comments regarding the impact that the absence of a done-away mandate would have on competition for GSD's indirect participants.<sup>118</sup> At that time, the Commission disagreed with those comments and declined to impose a done-away mandate and did not agree that FICC's current access models constituted a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.<sup>119</sup> Notably, the client clearing models that FICC has proposed allow for Netting Members to offer done-away services.

Although the models have not been widely used for done-away services to date, market

---

<sup>116</sup> See FICC Letter at 5-6, 11. FICC states that for Netting Members (both current and prospective) with business units already engaged in FCM-style derivatives clearing, the ability to leverage their existing systems should enable them to offer done-away clearing for transactions in U.S. Treasury securities. See also FICC Letter at 7, 9 (citing 2024 DTCC White Paper *supra* note 88 at 6 (noting a significant number (28 percent) of Netting Members indicated that they expect to facilitate clearing transactions in U.S. Treasury securities through business units already engaged in done-away clearing of other product types and citing statements from Netting Members and other market participants indicating an intent to utilize their existing FCM-style systems to offer done-away clearing for U.S. Treasury securities and citing statements from Netting Members and other market participants indicating an intent to utilize their existing FCM-style systems to offer done-away clearing for U.S. Treasury securities)).

<sup>117</sup> See Covered Clearing Agency Standards Proposing Release, Securities Exchange Act Release No. 71699 (Mar. 12, 2014), 79 FR 29507 (May 27, 2014) ("Proposing Release"); Adopting Release at 2756-57, *supra* note 14 (regarding comments arguing that the Commission should require FICC obligate its members to accept done-away transactions to avoid an undue burden on competition).

<sup>118</sup> See Adopting Release at 2756-57, *supra* note 14.

<sup>119</sup> See *id.*

participants have indicated that they will provide such services going forward.<sup>120</sup> In addition, as the Commission stated in the Treasury Clearing Adopting Release, in order to encourage Netting Member intermediaries to provide services that enable customers to access central clearing, it is best not to remove the ability of such intermediaries to determine which risks to take with respect to guaranteeing transactions to a CCP.<sup>121</sup> As FICC and one commenter highlighted, providing done-away clearing services brings certain risks to the Netting Member, which the Netting Member must evaluate and manage. Finally, approving the Proposed Rule Change does not preclude further action by FICC to incentivize or facilitate done-away clearing services going forward.

In addition, commenters state that the Proposed Rule Change should prohibit bundling of clearing and execution services. One commenter states that this prohibition need not include a done-away mandate, as it would simply prohibit Netting Members from requiring forced bundling, and the commenter also disagrees with FICC's legal arguments regarding whether FICC may impose such a prohibition.<sup>122</sup> An additional commenter states that there are economic incentives for direct participants to bundle their execution and clearing services by favoring done-with transactions.<sup>123</sup> This commenter cites certain prohibitions adopted by the Commodity Futures Trading Commission

---

<sup>120</sup> See FICC Letter at 8 (reporting survey results that 43 percent of Netting Members would likely clear indirect participant transactions through the Agent Clearing Service). See also, e.g., Bernard Goyder, "BNY to Launch 'Done Away' UST and Repo Clearing Service," available at <https://www.risk.net/markets/7960175/bny-to-launch-done-away-ust-and-repo-clearing-service> (Oct. 21, 2024); Bernard Goyder, "RJ O'Brien Plots Expansion Into US Treasury Clearing," available at <https://www.risk.net/markets/7959638/rj-obrien-plots-expansion-into-us-treasury-clearing> (July 1, 2024).

<sup>121</sup> See Adopting Release at 2756-57, *supra* note 14.

<sup>122</sup> See Citadel Letter at 8.

<sup>123</sup> See MFA Letter I at 5.

(“CFTC”) and states that FICC should adopt the same protections for the U.S. Treasury market, as necessary to ensure a robust done-away clearing market.<sup>124</sup>

In response to such comments, FICC states that such a prohibition would effectively mean that a Netting Member could not charge lower fees for done-with clearing because that would amount to tying executing to clearing, and, as a result, could be viewed as the clearing agency dictating pricing terms.<sup>125</sup> FICC further states that such setting of prices is not clearly consistent with Section 17A(b)(3)(E) of the Exchange Act, which provides that the rules of a clearing agency may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.<sup>126</sup>

The Commission considered similar comments regarding a prohibition of bundling and clearing when it adopted the Treasury Clearing Rules.<sup>127</sup> Specifically, several commenters stated that the Commission should require U.S. Treasury securities central clearing agencies to obligate their members to accept done-away transactions and prohibit their members from requiring clients to bundle execution and clearing.<sup>128</sup> In response, the Commission stated that it disagrees that the failure to require the

---

<sup>124</sup> See *id.*

<sup>125</sup> See FICC Letter at 15.

<sup>126</sup> See FICC Letter at 15-16. One commenter states that FICC also relied upon Section 17A(b)(6) regarding a prohibition on bundling and execution. See Citadel Letter at 8. However, FICC’s reference to that statutory provision relates to a comment that would require done-away clearing services to any customer that posts margin and not to the bundling of execution and clearing services.

<sup>127</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2756-77 (including n. 415 identifying such comments). More generally, the statutory authority for the CFTC provisions cited by one commenter differs significantly from the statutory authority applicable to the Commission for the U.S. Treasury market.

<sup>128</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2756.

submission of done-away transactions necessarily constitutes “unfair discrimination,” as discussed in Section 17A(b)(3)(F).<sup>129</sup> In order to encourage market participants to provide services to enable indirect access to central clearing, the Commission stated that it believes it is best not to remove the ability of FICC’s direct participants to determine what risks to take with respect to guaranteeing customer transactions. In addition, the Commission also did not agree that, at that time, the current access models offered by FICC constitute a burden on competition that is not necessary or appropriate, as discussed in Section 17A(b)(3)(I).<sup>130</sup> The Commission’s analysis remains applicable to the commenters seeking such a prohibition from FICC.

For these reasons, after considering the public comments and FICC’s response, the access models in the Proposed Rule Change, which would not prevent a Netting Member from bundling execution and clearing and do not require a Netting Member to provide done-away clearing services would not impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.<sup>131</sup>

### **C. Consistency with Rule 17ad-22(e)(18)(iii)**

Rule 17ad-22(e)(18)(iii) under the Exchange Act requires that a covered clearing agency, such as FICC, establish objective, risk-based, and publicly disclosed criteria for participation, which monitor compliance with such participation requirements on an ongoing basis.<sup>132</sup>

---

<sup>129</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2757.

<sup>130</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2756-77.

<sup>131</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>132</sup> 17 CFR 240.17ad-22(e)(4)(18)(iii).

As described above in Section I.B.1., FICC proposes changes that would enable it to monitor activity submitted through the Agent Clearing Service. Specifically, FICC would require a Netting Member to submit an application to become an Agent Clearing Member and provide additional information regarding each Executing Firm Customer beyond that which is required for Executing Firms under the current GSD Rules, such as a Legal Entity Identifier (“LEI”). FICC would also require an Agent Clearing Member to submit activity on behalf of its Executing Firm Customer(s) through one or more separate Agent Clearing Member Omnibus Accounts, as opposed to the optional segregated submission approach provided for in the current GSD Rules. Finally, for both initial and ongoing membership purposes, FICC would require an Agent Clearing Member to provide FICC with information related to its use of the Agent Clearing Service. Adding these provisions to the GSD Rules should help FICC monitor the trading activity generated within the Agent Clearing Service because they should allow FICC to better understand which transactions are attributable to which Executing Firm Customers submitting through an Agent Clearing Member, which should, in turn, provide better overall understanding of market participants’ activity at FICC even across multiple Agent Clearing Members.

One commenter states that FICC should change its proposal regarding the requirement on Agent Clearing Members to indemnify FICC for any harm arising out of the Agent Clearing Member’s failure to have the current LEIs of its Executing Firm Customers on file with FICC.<sup>133</sup> Specifically, the commenter states that FICC’s proposal

---

<sup>133</sup> See Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association (April 17, 2024) (“ISDA Letter I”) at 5-6; Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association (July 18, 2024) (“ISDA Letter II”) at 5.

is overly broad insofar as it would ostensibly require an Agent Clearing Member to halt a customer's trading activity for minor lapses in LEI renewals and require the Agent Clearing Member to verify current LEIs on any number of LEI service provider websites.<sup>134</sup> The commenter states that FICC should not need to maintain such strict rules governing LEIs when other identifying information accompanies each trade.<sup>135</sup> Therefore, the commenter states that FICC should more narrowly tailor the indemnification provision to cover only relevant harms arising out of an Agent Clearing Member's gross negligence, willful misconduct, or fraudulent conduct.<sup>136</sup>

In response, FICC states that, although the Agent Clearing Member has a contractual relationship with its customers, FICC does not.<sup>137</sup> Therefore, the Agent Clearing Member is able to include contract provisions that obligate its customers to maintain current LEI information and notify the Agent Clearing Member of any LEI renewals or changes.<sup>138</sup> FICC further states that although it does not generally expect the LEI indemnification provision to give rise to significant liability, neither FICC nor its other members should bear the costs of any such liability.<sup>139</sup>

The Commission agrees with FICC on this point. The LEI portion of the Proposed Rule Change is consistent with FICC's existing rule regarding a Sponsoring Member's

---

<sup>134</sup> See ISDA Letter II at 5.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> See FICC Letter at 41.

<sup>138</sup> See *id.*

<sup>139</sup> See *id.*

obligation to provide an LEI for its Sponsored Members.<sup>140</sup> Therefore, Sponsoring Members are already subject to such a requirement. An Agent Clearing Member, like a Sponsoring Member, should be able to contract with its Executing Firm Customers to ensure that it receives updated LEI information to provide to FICC. Neither FICC nor its other members should bear any liability arising out of an Agent Clearing Member's failure to have the current LEIs of its Executing Firm Customers on file with FICC.

Accordingly, the Proposed Rule Change would assist FICC in monitoring its participants' ongoing compliance with the Agent Clearing Service participation requirements, consistent with Rule 17ad-22(e)(18)(iii).<sup>141</sup>

#### **D. Consistency with Rule 17ad-22(e)(18)(iv)(C)**

Rule 17ad-22(e)(18)(iv)(C) under the Exchange Act requires that a covered clearing agency, such as FICC, when providing CCP services for transactions in U.S Treasury securities, establish objective, risk-based, and publicly disclosed criteria for participation, which 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>142</sup>

FICC states that the Proposed Rule Change is primarily designed to ensure that the access models in the GSD Rules comply with Rule 17ad-22(e)(18)(iv)(C) by

---

<sup>140</sup> See GSD Rules, Rule 3A, Section 2(d) ("Each Sponsoring Member shall submit the Legal Entity Identifier for each of its Sponsored Member applicants as part of the application of such Sponsored Member applicant. Each Sponsoring Member shall provide the Corporation with a Legal Entity Identifier for each of its Sponsored Members such that the Corporation shall have a current Legal Entity Identifier for each Sponsored Member at all times.").

<sup>141</sup> 17 CFR 240.17ad-22(e)(18)(iii).

<sup>142</sup> 17 CFR 240.17ad-22(e)(18)(iv)(C).

constituting criteria for participation that facilitate access to GSD’s clearance and settlement services, including for indirect participants.<sup>143</sup> Specifically, FICC developed the Proposed Rule Change following FICC’s review of GSD’s existing direct and indirect access models.<sup>144</sup> That review examined whether those models provide market participants with access to GSD’s clearance and settlement services in as flexible a means as possible, consistent with FICC’s responsibility to provide sound risk management and comply with its regulatory risk management obligations under Rule 17ad-22(e) and other parts of the Exchange Act.<sup>145</sup>

### **1. Changes to the Agent Clearing Service**

As described above in Section I.B.1., FICC proposes to re-name GSD’s existing correspondent clearing / prime broker services as the Agent Clearing Service. FICC also proposes to consolidate and adopt additional provisions governing the re-named Agent Clearing Service. The proposed changes to re-name, consolidate, and provide additional specificity regarding the operation of the Agent Clearing Service should improve transparency of the GSD Rules regarding the Agent Clearing Service and allow market participants to better evaluate and consider how the Agent Clearing Service operates, including how it compares to existing cleared derivatives systems and infrastructure. The refinement of the proposed Agent Clearing Service should help ensure that market participants are able to evaluate and, if they choose, use this service to access FICC, including for done-away transactions, as discussed above in Section I.A. Therefore, these

---

<sup>143</sup> See Notice of Filing, *supra* note 5, at 89 FR 21363.

<sup>144</sup> See *id.*

<sup>145</sup> See 17 CFR 240.17ad-22(e); Notice of Filing, *supra* note 5, at 89 FR 21363.

proposed changes are consistent with Rule 17ad-22(e)(18)(iv)(C).

Several commenters request that FICC clarify that an Agent Clearing Member would be permitted to treat its customer transactions as off-balance sheet for accounting purposes, otherwise the Agent Clearing Service may be so capital intensive as to disincentivize use of the access model.<sup>146</sup> In response, FICC states that it is actively working with industry groups to determine the balance sheet impact of done-away transactions.<sup>147</sup>

It is ultimately the responsibility of each Netting Member to determine the accounting treatment of its own transactions. FICC need not opine on the balance sheet treatment for transactions within the Agent Clearing Service in order for the Commission to evaluate the Proposed Rule Change's consistency with Rule 17ad-22(e)(18)(iv)(C).<sup>148</sup>

Another commenter is concerned that the rights of Executing Firm Customers are too limited vis-à-vis FICC within the Agent Clearing Service.<sup>149</sup> For example, the commenter states that under the Proposed Rule Change, FICC would have no obligations to Executing Firm Customers; rather, FICC's obligations would be solely to the Agent Clearing Member.<sup>150</sup>

In the Notice of Filing, FICC states that within the current correspondent clearing

---

<sup>146</sup> See FIA Letter at 5, 10-11; Letter from Robert Toomey, Head of Capital Markets, Managing Director/Associate General Counsel, SIFMA, at 3-4 (May 22, 2024) (“SIFMA Letter I”) at 2, 5; SIFMA Letter II at 3. One commenter further states that if FICC can provide clarity on this matter, it would negate the need for a done-away clearing mandate in the GSD Rules. See SIFMA Letter I at 5.

<sup>147</sup> See FICC Letter at 14.

<sup>148</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>149</sup> See ICI Letter at 4.

<sup>150</sup> See *id.*

/ prime broker services, an indirect participant does not establish any relationship with FICC.<sup>151</sup> FICC's proposed changes regarding the Agent Clearing Service would not change that aspect of the access model. In contrast, within the Sponsored Service, a Sponsored Member must establish an indirect, limited purpose membership with FICC. FICC states that one of the factors that an indirect participant may wish to consider in choosing between GSD access models is whether the participant prefers to be in a direct contractual relationship with FICC.<sup>152</sup>

In the Treasury Clearing Rules Adopting Release, the Commission also recognized that certain access models offered by FICC may not result in a contractual relationship or direct obligation between FICC and an indirect participant.<sup>153</sup> This generally would be the case in any agent clearing relationship in which an indirect participant relies upon a direct participant to submit transactions for clearing on its behalf.<sup>154</sup> The commenter's concern that within the Agent Clearing Service, indirect participants would not have a contractual relationship with FICC, does not render the Proposed Rule Change inconsistent with Rule 17ad-22(e)(18)(iv)(C).

## **2. Comments Regarding Done-Away Clearing**

As discussed in more detail in Section II.B above, several commenters suggest that by not including a requirement on Netting Member intermediaries to provide done-away clearing services to customers, the Proposed Rule Change would fail to implement

---

<sup>151</sup> See Notice of Filing, *supra* note 5, 89 FR at 21364.

<sup>152</sup> See FICC Letter at 50-51.

<sup>153</sup> See Adopting Release, *supra* note 14, 89 FR at 2758.

<sup>154</sup> See *id.*

criteria for participation that facilitate access to GSD’s clearance and settlement services for indirect participants.<sup>155</sup> Specifically, commenters state that if a customer is limited to done-with transactions, it would need to establish separate clearing relationships with each done-with counterparty with whom it wishes to transact, which would increase cost, complexity, operational risk, and limit the number of counterparties with whom to transact.<sup>156</sup> In addition, several commenters state that alternatively, these market participants may limit their cash and/or repo U.S. Treasury transactions, thereby negatively impacting market liquidity.<sup>157</sup> Commenters also state that FICC should prohibit the bundling of clearing and execution services to comply with Rule 17ad-22(e)(18)(iv)(C). As discussed further in Section II.B *infra*, these commenters state that such a prohibition is necessary to ensure that market participants will provide done-away clearing services.<sup>158</sup>

Generally, these commenters state that FICC should impose a mandate on Netting Member intermediaries to provide done-away clearing services to customers and should

---

<sup>155</sup> See FIA-PTG Letter I at 3 (stating that the Proposed Rule Change “raises serious questions regarding whether [it] appropriately facilitate[s] access to clearing for indirect participants as required by” Rule 17ad-22(e)(18)(iv)(C)); MFA Letter I at 3 (stating that the Proposed Rule change “[does] not go far enough to satisfy” Rule 17ad-22(e)(18)(iv)(C)); AIMA Letter at 4-5 (stating that the changes in the Proposed Rule Change “are not sufficient to facilitate access to clearing for indirect participants”); SIFMA-AMG Letter at 4 (stating that FICC must ensure that the Proposed Rule Change facilitates done-away trading in a manner that fulfills the requirements of the Treasury Clearing Rules); ICI Letter at 4 (stating that “it is not clear that the [Proposed Rule Change] fully implements the requirements of” Rule 17ad-22(e)(18)(iv)(C)).

<sup>156</sup> See FIA-PTG Letter I at 3; MFA Letter I at 4-5; AIMA Letter at 4 (stating that without a done-away model, indirect participants will face new and unnecessary costs in having to bundle execution and clearing services or establish additional clearing relationships so that they can engage with multiple execution counterparties)

<sup>157</sup> See AIMA Letter at 4; *see also* SIFMA-AMG-Letter at 4-5 (arguing that without changes to the GSD access models, many market participants may be shut out of the U.S. Treasury market, with significant negative effects on liquidity).

<sup>158</sup> See Citadel Letter at 7-8; MFA Letter II at 4.

prohibit the bundling of clearing and execution services to address these concerns.<sup>159</sup>

As discussed in more detail in Section II.B above, in response, FICC states that the Proposed Rule Change would meaningfully facilitate done-away clearing, without imposing a done-away mandate or prohibiting the bundling of clearing and execution services.<sup>160</sup> FICC also states that a done-away mandate could expose both FICC and its participants to unique risks.<sup>161</sup> First, as discussed in Section II.B above, done-away transactions present liquidity risks that done-with transactions do not.<sup>162</sup> Because done-away transactions are entered into between a customer and a counterparty other than the customer's Netting Member intermediary, if the intermediary defaults, FICC would need to perform the one-sided obligations of the customer.<sup>163</sup> Second, because done-away transactions are negotiated between the customer and its counterparty, the Netting Member intermediary must depend on outside processes or parties to confirm that the transactions do not give rise to risk or regulatory issues (e.g., trade reporting and confirmation requirements, anti-money laundering and sanctions regulations, *etc.*).<sup>164</sup> FICC states that its direct participants should independently determine whether they can assume the risks associated with providing done-away clearing services.<sup>165</sup> Otherwise, according to FICC, the increased risks and costs associated with a done-away mandate

---

<sup>159</sup> See FIA-PTG Letter I at 2-3, 6-7; MFA Letter I at 4-5, 7-8; AIMA Letter at 4-5.

<sup>160</sup> See FICC Letter at 8.

<sup>161</sup> See FICC Letter at 11-13.

<sup>162</sup> See *id.*

<sup>163</sup> See *id.*

<sup>164</sup> See *id.*

<sup>165</sup> See *id.*

could stifle the ongoing and positive market developments toward done-away clearing by discouraging Netting Member intermediaries from providing clearing services altogether.<sup>166</sup>

FICC further states that a done-away mandate could be inconsistent with Section 17A(b)(3)(E) and/or Section 17A(b)(6) of the Exchange Act.<sup>167</sup> FICC states that for a done-away mandate to be effective, it would likely need to prohibit the bundling of execution and clearing (and thereby prevent a Netting Member intermediary from forcing its customers into done-with transactions through more favorable terms).<sup>168</sup> FICC states that, as a result, a done-away mandate could be viewed as FICC dictating pricing terms, which could violate Section 17A(b)(3)(E).<sup>169</sup> Additionally, Section 17A(b)(6) provides that a clearing agency may not “prohibit or limit access by any person to services offered by any participant therein.”<sup>170</sup> FICC states that a requirement on Netting Member intermediaries to provide done-away clearing to customers that post margin could violate Section 17A(b)(6) because the service offered to customers who do not post margin could potentially be limited to done-with clearing.<sup>171</sup>

In addition, as stated above in Section II.B., one commenter also states that FICC should not impose a done-away clearing mandate.<sup>172</sup> Rather, the commenter states that

---

<sup>166</sup> See FICC Letter at 13-15.

<sup>167</sup> See FICC Letter at 15-16; 15 U.S.C. 78q-1(b)(3)(E); 15 U.S.C. 78q-1(b)(6).

<sup>168</sup> See FICC Letter at 15-16.

<sup>169</sup> See 15 U.S.C. 78q-1(b)(3)(E).

<sup>170</sup> 15 U.S.C. 78q-1(b)(6).

<sup>171</sup> See FICC Letter at 16; 15 U.S.C. 78q-1(b)(6).

<sup>172</sup> See SIFMA Letter II at 3-4.

any decision to offer done-away services should be a commercial/business decision left to clearing members, driven by evaluations of risk.<sup>173</sup> The commenter states that FICC can implement an access model, without a done-away clearing mandate, that would be reasonably designed to ensure that FICC has appropriate means to facilitate access to its clearance and settlement services consistent with Rule 17ad-22(e)(18)(iv)(C).<sup>174</sup>

The Proposed Rule Change does not include a requirement that FICC's participants offer done-away clearing or prohibit the bundling of clearing and execution services. The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that it is consistent with the Exchange Act,<sup>175</sup> and the Proposed Rule Change is consistent with the Exchange Act and the rules thereunder, even in the absence of a done-away mandate or a prohibition on the bundling of clearing and execution services.

The Commission disagrees with the commenters arguing that FICC must impose a done-away clearing mandate on Netting Member intermediaries or prohibit the bundling of clearing and execution services to comply with Rule 17ad-22(e)(18)(iv)(C). As discussed in the Adopting Release, Rule 17ad-22(e)(18)(iv)(C) does not prescribe a particular access model, but it instead helps ensure that FICC, and any other covered clearing agency serving the U.S. Treasury market, review their indirect access models and ensure that they facilitate access to clearance and settlement services in a manner suited to the needs and regulatory requirements of market participants, including indirect

---

<sup>173</sup> See *id.*

<sup>174</sup> See SIFMA Letter II at 4.

<sup>175</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

participants.<sup>176</sup> Further, in the Adopting Release, the Commission stated that a requirement to accept done-away transactions would require a covered clearing agency to, in turn, require their direct participants to transact with their customers in specific ways and limit their ability to offer certain types of pricing services.<sup>177</sup>

More generally, and as stated above in Section II.A., both the Sponsored Service and the Agent Clearing Service (including the prime broker / correspondent clearing service in place currently) allow (and are currently used) for done-away clearing.<sup>178</sup> As stated in the Adopting Release, in order to encourage Netting Member intermediaries to provide services that enable customers to access central clearing, it is best not to remove the ability of such intermediaries to determine which risks to take with respect to guaranteeing transactions to a CCP such as FICC.<sup>179</sup> This is also true with respect to providing done-away clearing services. The Commission agrees with the rationale articulated by both FICC and one commenter arguing that a done-away clearing mandate could be counterproductive and ultimately discourage Netting Member intermediaries from providing clearing services to customers.<sup>180</sup> Additionally, it is appropriate to allow the U.S. Treasury market to adjust to the implementation of the Treasury Clearing Rules (e.g., the Account Segregation Proposals) before determining that additional access

---

<sup>176</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2755-56.

<sup>177</sup> See Treasury Clearing Adopting Release, *supra* note 14, 89 FR at 2757.

<sup>178</sup> See FICC Letter at 7, note 14 and accompanying text (highlighting that although the bulk of current done-away transactions are cash transactions cleared through the correspondent clearing / prime broker clearing models, nearly 10 percent of FICC's Sponsoring Members currently clear done-away repo transactions through the Sponsored Service).

<sup>179</sup> See Adopting Release at 2756-57, *supra* note 14.

<sup>180</sup> See FICC Letter at 11-15; SIFMA Letter II at 3-4.

models are needed.<sup>181</sup> For the foregoing reasons, FICC need not impose a done-away clearing mandate on Netting Member intermediaries in order to comply with Rule 17ad-22(e)(18)(iv)(C).<sup>182</sup>

Several commenters state that FICC should explain how its proposal to re-brand the Agent Clearing Service would actually facilitate done-away clearing.<sup>183</sup> Two commenters state the re-branding and making conforming, technical amendments to the Agent Clearing Service are non-substantive and “superficial” and would not increase the availability of done-away trading.<sup>184</sup> One commenter states that there is not a significant amount of repo activity conducted through the current correspondent clearing / prime broker clearing services.<sup>185</sup> The commenter further questions why that would change after the services are re-branded as the Agent Clearing Service.<sup>186</sup> In response, FICC states that its survey results demonstrate that prior to publication of the Notice of Filing, 77 percent of market participants were not very familiar with the correspondent clearing / prime brokerage services, and that lack of familiarity is likely the reason for the relatively low level of use of those GSD access models.<sup>187</sup> FICC states that after publication of the Notice of Filing, its survey results indicate that 43 percent of Netting Members would

---

<sup>181</sup> See Adopting Release at 2756-57, *supra* note 14.

<sup>182</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>183</sup> See SIFMA-AMG Letter at 2, 4-5; ICI Letter at 2, 4-5; MFA Letter I at 3-4.

<sup>184</sup> See SIFMA-AMG Letter at 2, 4-5; ICI Letter at 2, 4-5.

<sup>185</sup> See MFA Letter I at 3-4.

<sup>186</sup> See *id.*

<sup>187</sup> See FICC Letter at 8.

likely clear indirect participant transactions through the Agent Clearing Service.<sup>188</sup> FICC attributes the shift among participants towards considering using the Agent Clearing Service is a result of the Proposed Rule Change’s clarifications and consolidations regarding the Agent Clearing Service.<sup>189</sup>

The Proposed Rule Change sufficiently explains how the Agent Clearing Service would work and how it could facilitate done-away clearing. Further explanation is unnecessary for purposes of considering the Proposed Rule Change, and each market participant has to determine which access model to use for its own business purposes. However, the Commission observes that FICC has engaged in market outreach to assist market participants in evaluating and understanding the operations and business case for each access model.<sup>190</sup>

Several commenters raise the concern that even if a Netting Member intermediary offers done-away clearing services, customers would be required to disclose the identity of their execution counterparties to the intermediary.<sup>191</sup> One commenter states that requiring the disclosure of execution counterparties to the Netting Member intermediary divulges confidential information regarding the customer’s trading activities and could lead to limitations placed on those execution counterparties, directly undermining a key

---

<sup>188</sup> *See id.*

<sup>189</sup> *See id.*

<sup>190</sup> *See* FICC Letter at 4; *see generally* FICC’s U.S. Treasury Clearing information website, *available at* <https://www.dtcc.com/ustclearing> (e.g., the “Access Central Clearing” tab, which provides resources for direct and indirect participants to understand and evaluate each GSD access model, including explanations of recommended access models for specific types of market participants).

<sup>191</sup> *See* FIA-PTG Letter I at 7-8; MFA Letter I at 4-5; FIA-PTG II at 3; Citadel Letter at 4-5.

benefit of central clearing.<sup>192</sup> Another commenter states that in a cleared market, the identity of a customer’s original execution counterparty should be irrelevant to a clearing member because the clearing member is not exposed to the creditworthiness of the execution counterparty, meaning that a clearing member should not be in a position to limit a customer’s execution counterparties.<sup>193</sup> This commenter also states that this concern is why the Commodity Futures Trading Commission specifically prohibited “the type of trilateral execution agreement described by FICC.”<sup>194</sup> Therefore, commenters state, FICC should enable customers to avoid disclosing the identity of their execution counterparties to their Netting Member intermediaries and prohibit the restriction of execution counterparties.<sup>195</sup>

FICC states that it is currently not practically feasible to prohibit a direct participant from knowing the execution counterparty’s identity because there is no mechanism in the U.S. Treasury market available for someone other than a direct participant to submit transactions and counterparty information to FICC.<sup>196</sup> Regarding the concerns that disclosure of the identity of a customer’s execution counterparty could result in the Netting Member intermediary placing limitations on the execution

---

<sup>192</sup> See FIA-PTG Letter I at 7-8.

<sup>193</sup> See Citadel Letter at 4-5; *see also* Letter from Joanna Mallers, Secretary, Futures Industry of America, Principal Traders Group (Oct. 11, 2024) (“FIA-PTG Letter II”) at 3.

<sup>194</sup> See Citadel Letter at 5.

<sup>195</sup> See FIA-PTG Letter I at 7-8; MFA Letter I at 4-5.

<sup>196</sup> See FICC Letter at 16. FICC states that in other markets (*e.g.*, the U.S. markets for equity securities and cleared derivatives), there are execution facilities or affirmation platforms that provide post-trade settlement market infrastructure with counterparty information. However, in the U.S. Treasury market, such facilities or platforms are not predominant or do not currently offer similar services. *See id.*

counterparty, FICC states that Netting Member intermediaries may, in certain cases, have legitimate reasons to know or limit a customer's execution counterparties.<sup>197</sup> For example, FICC states that a Netting Member may need to confirm that a customer's proposed execution counterparty has an execution or similar agreement in place with the Netting Member and that the execution counterparty has performed any obligations set forth in that agreement.<sup>198</sup> FICC also states that Netting Members may also need to know the identity of a customer's execution counterparty to assess certain risks, such as potential CCLF requirements.<sup>199</sup> FICC states that whether and how a Netting Member intermediary may restrict execution counterparties are matters that should be commercially negotiated between the intermediary and its customers, rather than dictated by FICC in the GSD Rules.<sup>200</sup>

The Commission acknowledges that a customer may not wish to disclose the identity of its execution counterparty to its Netting Member intermediary. Although the commenters state that FICC should enable anonymous execution, such anonymous execution is not yet possible considering the current market infrastructure. Therefore, FICC need not require Netting Member intermediaries to provide for anonymous execution in order for the Proposed Rule Change to be consistent with Rule 17ad-22(e)(18)(iv)(C).<sup>201</sup>

---

<sup>197</sup> See FICC Letter at 17.

<sup>198</sup> See *id.*

<sup>199</sup> See *id.*

<sup>200</sup> See *id.*

<sup>201</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

In addition, regarding the concern that a Netting Member intermediary could restrict the execution counterparty, FICC’s response that a Netting Member intermediary might have legitimate reasons to know the identity and restrict execution counterparties supports the suggestion that such matters should be negotiated bilaterally between customers and their Netting Members intermediaries.<sup>202</sup> However, regarding potential liquidity risk arising from done-away transactions, the Commission understands that the existence of exposure arising from a done-away transaction, and not necessarily the execution counterparty to that exposure, could have an effect on the Netting Member’s liquidity obligations to FICC in the event of a member default. The Commission would not view the identity of the execution counterparty as relevant to the potential liquidity risk arising from that transaction. Moreover, the Commission disagrees that FICC’s statements regarding confirming that a proposed execution counterparty has an execution or similar agreement in place with the Netting Member equates to the types of trilateral agreements prohibited by the CFTC.<sup>203</sup>

One commenter asked why the Agent Clearing Service cannot be used for

---

<sup>202</sup> In addition, the Commission understands that, to the extent that a market participant is transacting on an inter-dealer broker or similar platform, the execution counterparty to the transaction would be the inter-dealer broker or platform, not the other market participant that was brought together on the platform and also had a transaction with the inter-dealer broker or platform.

<sup>203</sup> Such agreements incorporated optional annexes that make the clearing member to one or both of the executing parties a party to the agreement. These trilateral agreements contain provisions that would permit a customer’s FCM, in consultation with the swap dealer (“SD”) that is the customer’s counterparty, to establish specific credit limits for the customer’s swap transactions with the SD, and that the FCM will only accept for clearing those transactions that fall within these specific limits. The limits set for trades with the SD or MSP might be less than the overall limits set for the customer for all trades cleared through the FCM. CFTC, Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21279 (Apr. 9, 2012).

“brokered transactions” or GCF repo transactions.<sup>204</sup> The commenter also states that for Treasury cash transactions executed by inter-dealer brokers, there would appear to be no way to comply with the Treasury Clearing Rules via customer clearing, as the execution counterparty does not offer customer clearing services and therefore another clearing member must accept these trades via a done-away offering.<sup>205</sup> In response, FICC states that, with respect to general collateral repo transactions, FICC would not be able to clear such transactions through the proposed Agent Clearing Service, but it states that it is considering developing such capabilities based on feedback from market participants.<sup>206</sup> With respect to brokered transactions, FICC states that it would not be appropriate for transactions cleared through the proposed Agent Clearing Service to be treated as “Brokered Transactions” under the GSD Rules because Brokered Transactions are designed to capture certain transactions that present lower risk than other cleared transactions.<sup>207</sup> Moreover, the Account Segregation Proposals<sup>208</sup> would modify the GSD Rules regarding Brokered Transactions, further clarifying the unique treatment of Brokered Transactions due to the limited risk they present to FICC.<sup>209</sup> The current GSD Rules cap the amount of loss allocation that may be applied to Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers submitting Brokered Transactions.<sup>210</sup> The

---

<sup>204</sup> See FIA-PTG Letter I at 7.

<sup>205</sup> See FIA-PTG Letter I at 3; FIA-PTG Letter II at 3.

<sup>206</sup> See FICC Letter at 22.

<sup>207</sup> See FICC Letter at 22-23.

<sup>208</sup> See Account Segregation Proposals, *supra* note 85.

<sup>209</sup> See Account Segregation Proposals, *supra* note 85, 89 FR at 87451.

<sup>210</sup> See GSD Rule 4, Section 6, *supra* note 15.

Account Segregation Proposals would revise the definition of Brokered Transactions to only include the side of the transactions submitted to FICC for novation by an Inter-Dealer Broker Netting Member and entered into on the Inter-Dealer Broker Netting Member’s own trading platform.<sup>211</sup> As a result, the favorable loss allocation treatment for Brokered Transactions would only apply to the transactions that present limited risk since an Inter-Dealer Broker is standing in between two counterparties in those transactions and is therefore completely flat.<sup>212</sup> Since the favorable loss allocation treatment is only appropriate for Inter-Dealer Broker Netting Members submitting Brokered Transactions, the Account Segregation Proposals would delete the term “Non IDB Repo Broker” from the GSD Rules.<sup>213</sup> Additionally, the concurrently approved Account Segregation Proposals would provide that transactions entered into on an Inter-Dealer Broker Netting Member’s trading platform or similar platform may be cleared using the Sponsored Service or the Agent Clearing Service, which addresses the commenter’s concern.<sup>214</sup>

In response to the comments regarding transactions executed on an inter-dealer broker or similar platform, the Commission agrees that, as FICC represented,<sup>215</sup> such transactions could be submitted through the Agent Clearing Service.

### **3. Changes to the Sponsored Service**

As described above in Section I.B.2., FICC also proposes to update certain

---

<sup>211</sup> See Account Segregation Proposals, *supra* note 85, 89 FR at 87451.

<sup>212</sup> See Account Segregation Proposals, *supra* note 85, 89 FR at 21598.

<sup>213</sup> See *id.*

<sup>214</sup> See Account Segregation Proposals, *supra* note 85, 89 FR at 87451; see also FICC Letter at 22-23.

<sup>215</sup> See Account Segregation Proposals, *supra* note 85; FICC Letter at 23.

membership standards in the GSD Rules regarding the Sponsored Service. First, FICC proposes to eliminate the two categories of Sponsoring Members, and instead, make all Sponsoring Members subject to the same eligibility and ongoing requirements that are currently applicable to Category 2 Sponsoring Members. These proposed changes would remove the capitalization requirements on Bank Netting Members from the current GSD Rules, and instead apply the activity limits and financial condition factors used under the current GSD Rules for Category 2 Sponsoring Members. These proposed changes would create parity among all Sponsoring Members (and applicants), thereby encouraging additional market participants to become Sponsoring Members, which in turn should give indirect participants a wider range of Sponsoring Members to consider should they choose to access GSD’s central clearing services via the Sponsored Service.<sup>216</sup> Second, FICC proposes to remove the QIB Requirement for Sponsored Members, which would make the Sponsored Service available to additional market participants (*i.e.*, those unable to meet the QIB Requirement).<sup>217</sup>

Therefore, the proposed changes to the GSD Rules to (1) consolidate the Sponsoring Member categories, and (2) eliminate the QIB Requirement for Sponsored Members, constitute criteria for participation that facilitate access to GSD’s clearance and settlement services, including for indirect participants, are consistent with Rule 17ad-22(e)(18)(iv)(C), because the proposed changes would expand the availability of the

---

<sup>216</sup> See Notice of Filing, *supra* note 5, 89 FR at 21370.

<sup>217</sup> One commenter expressed support for FICC’s proposal to eliminate the QIB Requirement. See ICI Letter at 5. No other commenter addressed this particular change or any other changes to the Sponsored Service.

Sponsored Service to a broader range of market participants.<sup>218</sup>

#### **4. Changes to Eligibility Criteria for Non-U.S. and Other Applicants**

As described above in Section I.B.2., FICC proposes to clarify the eligibility criteria for non-U.S. Netting Member applicants. Whereas the current GSD Rules are unclear as to whether a non-U.S. applicant entity would only be subject to the Foreign Netting Member standards or would also be subject to the legal entity standards, FICC proposes to streamline the relevant membership categories by eliminating the category of “Foreign Netting Member” and expanding the qualifications for each category of Netting Member to include the foreign equivalent of the same legal entity types. Additionally, FICC proposes to clarify the eligibility criteria for applicants (including non-U.S. entities) that do not fit into one of the existing Netting Member categories.

Following the adoption of the Treasury Clearing Rules, additional market participants will need to access FICC’s clearance and settlement services, either as direct Netting Members or as indirect participants. Whereas the current GSD Rules do not provide FICC with the authority to consider a Netting Member applicant that does not meet the eligibility criteria of one of the Netting Member categories enumerated in the GSD Rules, the proposed changes, as described in Section I.B.2, would provide a framework for FICC to consider such other applicants. FICC designed the proposed changes regarding non-U.S. and other applicants to facilitate access to GSD’s clearing services to a broader range of market participants.<sup>219</sup>

---

<sup>218</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>219</sup> See Notice of Filing, *supra* note 5, at 89 FR 21373.

The proposed changes to the GSD Rules to clarify the eligibility criteria for non-U.S. Netting Member applicants and applicants that do not fit into one of the existing Netting Member categories, are consistent with Rule 17ad-22(e)(18)(iv)(C), because the proposed changes would expand the availability of GSD’s clearing services to a broader range of market participants.<sup>220</sup>

## **5. Changes to Clarify the GSD Access Models**

As described above in Section I.B.3., FICC proposes to include a “road map” in the GSD Rules describing the various GSD access models that allow for both direct and indirect access to GSD’s clearance and settlement services. FICC also proposes to simplify the GSD Rule definitions regarding the different types of membership and other related definitions.<sup>221</sup> FICC states that these proposed changes would enhance the ability of market participants to better understand and evaluate the comparative tradeoffs between GSD’s different access models.<sup>222</sup>

Several commenters request that FICC provide further clarity regarding the GSD access models.<sup>223</sup> Specifically, commenters request that FICC explain the expected use cases for each of the GSD access models to enable market participants to better evaluate the relative benefits of each access model by understanding the substantive differences between them.<sup>224</sup> One commenter states that FICC should eliminate any access model

---

<sup>220</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>221</sup> See Notice of Filing, *supra* note 5, 89 FR at 21374.

<sup>222</sup> See Notice of Filing, *supra* note 5, 89 FR at 21373-74.

<sup>223</sup> See FIA-PTG Letter I at 6-8; ISDA Letter I at 8; MFA Letter I at 6; AIMA Letter at 5-6; SIFMA-AMG Letter at 3, 11-12; ISDA Letter II at 2-3.

<sup>224</sup> See *id.*

that it cannot justify with a use case.<sup>225</sup> One commenter states that although the availability of multiple access models may provide flexibility to market participants, it could also introduce unnecessary complexity and confusion.<sup>226</sup>

FICC states that it developed four indirect access models (*i.e.*, the Sponsored Service and Agent Clearing Service, each with either segregated or non-segregated margin) after engagement with market participants to ensure a diverse array of models through which market participants can access central clearing.<sup>227</sup> In response to the comments requesting further clarity and challenging the need for each of the proposed access models, FICC describes some of the possible use cases and advantages of each of the four access models.<sup>228</sup> Specifically, FICC states that market participants might prefer the Agent Clearing Service due to its conceptual and operational similarity to an FCM-style cleared derivatives model, enabling market participants to leverage their existing legal analyses, structures, policies, and procedures to clear transactions in U.S. Treasury securities.<sup>229</sup> Additionally, due to the greater intermediation of the Agent Clearing Service, a Netting Member intermediary would be able to utilize a “financial asset” election to perfect its security interest in cleared transactions without having to file a Uniform Commercial Code financing statement, potentially reducing cost, risk, and

---

<sup>225</sup> See MFA Letter I at 7.

<sup>226</sup> See MFA Letter I at 6; FIA-PTG Letter I at 4. For example, with a greater number of access models, a direct participant’s service offerings and pricing might not be readily apparent to indirect participants. *See id.*

<sup>227</sup> See FICC Letter at 18, 20.

<sup>228</sup> See FICC Letter at 50-51.

<sup>229</sup> See FICC Letter at 20, 50-51.

publicity.<sup>230</sup> Moreover, in comparison to the Sponsored Service, the Agent Clearing Service would involve a simpler onboarding process, would not require privity of contract between indirect participants and FICC, and would not impose the same jurisdictional requirements on indirect participants.<sup>231</sup> On the other hand, FICC highlights potential advantages to the Sponsored Service, including being in a direct contractual relationship with FICC.<sup>232</sup> FICC also states that Netting Members have existing clearing agreements with many customers for the Sponsored Service without segregation and could continue to utilize their existing agreements.<sup>233</sup> Additionally, since the Sponsored Service has existed for nearly two decades, FICC states that market participants have achieved a certain level of confidence regarding the Sponsored Service's treatment for legal, regulatory, accounting, and other purposes.<sup>234</sup>

Publication of “use cases” or justifications are not required for a proposed rule change to be consistent with Rule 17ad-22(e)(18)(iv)(C), which requires only that a covered clearing agency have written policies and procedures reasonably designed to ensure appropriate access to its clearing and settlement services, including for indirect participants. Further, the decision of which access model to use is for each individual market participant to determine, as each market participant has different regulatory obligations, business strategies, ownership models, etc. Nevertheless, FICC’s description

---

<sup>230</sup> See FICC Letter at 19, 50-51.

<sup>231</sup> See FICC Letter at 19-20, 50-51.

<sup>232</sup> See FICC Letter at 50-51.

<sup>233</sup> See *id.*

<sup>234</sup> See FICC Letter at 20, 50-51.

of the reasons for each of its four access models is sound and clearly identifies potential advantages and disadvantages of each model for market participants to consider.<sup>235</sup>

In addition, several commenters questioned the decision to offer both segregated and non-segregated accounts in both the Sponsored Service and Agent Clearing Service. Specifically, one commenter requests that FICC explain the benefits of the access models insofar as they allow for omnibus (*i.e.*, non-segregated) margin submission.<sup>236</sup> Another commenter questioned whether both the Sponsored Service and Agent Clearing Service should offer segregated models.<sup>237</sup>

In response, FICC explains potential advantages regarding margin segregation options (*i.e.*, to explain why the GSD access models allow for both segregated and non-segregated, or omnibus, margin submission).<sup>238</sup> Specifically, within the Agent Clearing Service, if margin is not segregated, Clearing Fund requirements for customer transactions would be calculated on a net basis across all Executing Firm Customers whose transactions are recorded within the same account, resulting in aggregate margin obligations that are substantially lower than under the Sponsored Service.<sup>239</sup> If margin is segregated, Agent Clearing Members would not bear the costs of financing margin

---

<sup>235</sup> The Commission also understands that FICC has engaged in outreach and education efforts to further explain the different features of each model. *See generally* FICC’s U.S. Treasury Clearing information website, *available at https://www.dtcc.com/ustclearing* (*e.g.*, the “Access Central Clearing” tab, which provides resources for direct and indirect participants to understand and evaluate each GSD access model, including explanations of recommended access models for specific types of market participants).

<sup>236</sup> *See* SIFMA-AMG Letter at 11-12.

<sup>237</sup> *See* FIA-PTG Letter at 4.

<sup>238</sup> *See* FICC Letter at 50-51.

<sup>239</sup> *See id.*

obligations for customer positions – a cost saving that could be passed on to customers without exposing customers to FICC, fellow customer, or Netting Member risk.<sup>240</sup>

Regarding the Sponsored Service, FICC states that many customers have clearing agreements in place that already provide for non-segregated margin.<sup>241</sup> By continuing to allow non-segregated margin within the Sponsored Service, FICC would enable such customers to maintain their existing clearing agreements and associated processes.<sup>242</sup>

FICC’s explanation of the potential reasons why a customer may want to be able to pursue the various options of segregation within both models is sound. Each market participant will have to evaluate the advantages and drawbacks of each option and determine what works best for its own business. The existence of both segregated and omnibus options for both the Agent Clearing and Sponsored Services is consistent with Rule 17ad-22(e)(18)(iv)(C), which requires only that a covered clearing agency have written policies and procedures reasonably designed to ensure appropriate access to its clearing and settlement services, including for indirect participants.

For these reasons, FICC’s proposals to include a “road map” describing the various GSD access models and to simplify the definitions regarding GSD membership would, among other things, provide clarity in the GSD Rules regarding the models that direct and indirect participants may use to access GSD’s clearance and settlement services. The proposed changes would enable market participants to better understand and evaluate the various GSD access models for clearing transactions in U.S. Treasury

---

<sup>240</sup> *See id.*

<sup>241</sup> *See id.*

<sup>242</sup> *See id.*

securities. Therefore, the proposed changes would constitute criteria for participation that facilitate access to GSD's clearance and settlement services, including for indirect participants, consistent with Rule 17ad-22(e)(18)(iv)(C).<sup>243</sup>

Additionally, one commenter states that FICC should require Netting Member intermediaries to allow their customers to choose whether to access clearing through the Sponsored Service or the Agent Clearing Service.<sup>244</sup> The same commenter further states that that margin segregation should be automatic for any Sponsored Member that posts its own margin.<sup>245</sup>

In response, FICC states that the best way to facilitate access to clearing is to enable direct and indirect participants to select the access method and associated terms that are most consistent with their commercial, regulatory, risk, operational, and legal considerations. Moreover, FICC states that mandating that Netting Members offer a particular service or clearing model could be inconsistent with Section 17A(b)(3)(E) of the Exchange Act, which prohibits a clearing agency from imposing any schedule of prices, or fix rates or other fees for its participants' services.<sup>246</sup> In response to the comment regarding automatic margin segregation within the Sponsored Service, FICC states that margin segregation should not be automatic for Sponsored Members that post their own margin, because there are scenarios in which market participants may prefer the

---

<sup>243</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>244</sup> See MFA Letter I at 7.

<sup>245</sup> See *id.*

<sup>246</sup> See FICC Letter at 32-33; 15 U.S.C. 78q-1(b)(3)(E).

flexibility of choosing non-segregated margin even when a Sponsored Member posts its own margin.<sup>247</sup>

The Proposed Rule Change does not include a requirement that FICC's Netting Members offer their customers a choice of what access model to use. The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that it is consistent with the Act,<sup>248</sup> and the lack of a requirement that each Netting Member give its customers the choice of which access model to use is not inconsistent with the Act.

One commenter raises concerns as to whether FICC has the operational capability to onboard and account for the large number of new accounts that would need to be established to support the increased volume of clearing activity that would arise from FICC's implementation of its requirements pursuant to the Treasury Clearing Rules.<sup>249</sup> Specifically, the commenter states that that FICC would need to establish and maintain a large number of new accounts because each Agent Clearing Member would need to set up an individual account at FICC for each indirect participant for which the Agent Clearing Member would segregate margin.<sup>250</sup>

In response, FICC states it proposed each access model after confirming that FICC has the ability, from a legal, operational, risk, regulatory, and commercial perspective, to provide such a model.<sup>251</sup> Regarding individual accounts, FICC states that

---

<sup>247</sup> See FICC Letter at 21-22.

<sup>248</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

<sup>249</sup> See SIFMA-AMG Letter at 12.

<sup>250</sup> See *id.*

<sup>251</sup> See FICC Letter at 22.

neither the Sponsored Service nor the Agent Clearing Service would necessitate individual accounts for each customer.<sup>252</sup>

The Commission agrees that neither the Proposed Rule Change nor FICC's implementation of its other requirements pursuant to the Treasury Clearing Rules would require FICC to establish and maintain accounts for each indirect participant.<sup>253</sup> Moreover, in its supervisory capacity regarding FICC, the Commission routinely and regularly receives data, reports, and other information regarding FICC's clearance and settlement activities, including FICC's operational capabilities. Based on the Commission's supervisory knowledge, FICC has the requisite operational capacity to offer the access models that it has proposed.<sup>254</sup>

One commenter raised concerns regarding the inability of FCMs to utilize the GSD access models.<sup>255</sup> Specifically, the commenter states that certain regulatory requirements to which FCMs are subject would conflict with FCMs participating in both

---

<sup>252</sup> See *id.*

<sup>253</sup> See <https://www.dtcc.com/-/media/Files/Downloads/Microsites/Treasury-Clearing/FICC-Treasury-Clearing-Client-Impact-Roadmap.pdf>.

<sup>254</sup> See 17 CFR 240.17ad-22(e)(18)(iv)(C).

<sup>255</sup> See Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry of America (April 18, 2024) ("FIA Letter") at 2-12. On July 1, 2024, FICC filed a separate proposed rule change that would, among other things, require each Netting Member to submit for central clearing all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. See Securities Exchange Act Release No. 100417 (June 25, 2024), 89 FR 54602 (July 1, 2024) (SR-FICC-2024-009) ("Trade Submission Proposal"). The Commission notes that the FIA Letter includes a request for relief from the clearing requirement in the Trade Submission Proposal. See FIA Letter at 2-3. The commenter appropriately submitted a separate comment letter in response to the Trade Submission Proposal requesting similar relief, and the Commission will address the comment when adjudicating the Trade Submission Proposal. However, the commenter's request is outside the scope of the instant Proposed Rule Change.

the Sponsored Service and Agent Clearing Service.<sup>256</sup> The commenter urges FICC to allow Netting Members to maintain sub-accounts for futures customer funds, cleared swaps customer funds, and foreign futures customer funds that comply with CFTC requirements.<sup>257</sup> Additionally, the commenter states that FCMs are currently seeking relief from the CFTC to recognize FICC as an acceptable counterparty and otherwise align the GSD access models with CFTC requirements.<sup>258</sup> In the interim, the commenter requests that FICC apply to FCMs certain GSD Rules that would exempt a Netting Member's Covered Affiliate from submitting trades to FICC if the obligation to submit the trade would cause a violation of any applicable law, rule, or regulation.<sup>259</sup> The commenter further requests that FICC work with FCMs and the CFTC to develop alternative CFTC-compliant access models.<sup>260</sup>

FICC states that it is open to considering additional access models if necessary to address market participants' regulatory or other needs.<sup>261</sup> In response to the commenter's request regarding sub-accounts, FICC states that the GSD Rules would allow Netting Members to instruct FICC to establish separate accounts for certain kinds of transactions

---

<sup>256</sup> See FIA Letter at 4, 7-8 (citing CFTC Regulations regarding acceptable FCM counterparties, delivery-versus-payment and payment-versus-delivery requirements, posting collateral as margin for repos entered into with customer funds, FCM bankruptcy management, FCM repos with affiliates, and FCMs holding customer assets in customer segregated accounts).

<sup>257</sup> See FIA Letter at 8.

<sup>258</sup> See FIA Letter at 2-3, 11.

<sup>259</sup> See FIA Letter at 4-5; GSD Rule 11, Section 3 and GSD Rule 18, Section 2, *supra* note 15.

<sup>260</sup> See FIA Letter at 5, 8-10.

<sup>261</sup> See FICC Letter at 23.

and to have such accounts constitute separate margin portfolios.<sup>262</sup> Thus, a Netting Member that enters into transactions using futures, cleared swaps, or foreign futures customer funds could have those transactions recorded in an account that does not net with the Netting Member’s other accounts for purposes of calculating margin or funds-only settlement amounts.<sup>263</sup>

The commenter specifically seeks relief from the CFTC from certain CFTC regulations, which are not within the Commission’s jurisdiction.<sup>264</sup> The commenter also requests that FICC continue to apply certain GSD Rule provisions that would exempt FCMs from the requirement to submit trades to FICC if such trade submission would cause the FCM to be in violation of any applicable rule, or regulation.<sup>265</sup> The Commission notes that the GSD Rule provisions cited by the commenter are currently the subject of the Trade Submission Proposal, a separate pending proposed rule change filed by FICC.<sup>266</sup> Because the commenter’s request to be excluded from the trade submission requirement deals with GSD Rule provisions that are subject to change as part of a separate proposed rule change, the Commission is not addressing the comment in the instant Order. For the same reason, the Commission is not addressing the commenter’s request to require FICC to apply those GSD Rule provisions that are subject to change as

---

<sup>262</sup> *See id.*

<sup>263</sup> *See id.*

<sup>264</sup> *See FIA Letter at 4-5.*

<sup>265</sup> *See id.*; GSD Rule 11, Section 3 and GSD Rule 18, Section 2, *supra* note 15.

<sup>266</sup> *See Trade Submission Proposal, supra* note 257.

part of a separate proposed rule change.<sup>267</sup>

Finally, the commenter requests that FICC work with FCMs and the CFTC to develop access models that are more suitable for FCMs than the Agent Clearing Service.<sup>268</sup> As mentioned above, FICC states that it is open to considering additional access models if necessary to address market participants' regulatory or other needs.<sup>269</sup> Additionally, FICC states that it continues to actively engage with the FCM community to resolve outstanding issues regarding the GSD access models.<sup>270</sup>

One commenter requests that FICC confirm that a bank's branches and Netting Member's affiliates can establish a separate margin portfolio within the Netting Member's account that would be separately netted and margined, such that they would not have to establish indirect access to FICC.<sup>271</sup> Because the commenter's request relates directly to GSD Rule provisions that are subject to change as part of the Trade Submission Proposal, a separate pending proposed rule change filed by FICC,<sup>272</sup> the Commission is not addressing the comment in the instant Order.

## **6. Comments Regarding Default within the Client Clearing Models**

Commenters raised several issues related to how FICC should address certain aspects of default within the Agent Clearing and Sponsored Services.

---

<sup>267</sup> See FIA Letter at 11.

<sup>268</sup> See FIA Letter at 4-5.

<sup>269</sup> See FICC Letter at 23.

<sup>270</sup> See FICC Letter at 23-24.

<sup>271</sup> See ISDA Letter I at 6-7; ISDA Letter II at 5.

<sup>272</sup> See Trade Submission Proposal, *supra* note 257, at 89 FR 54605.

One commenter states that FICC should allow indirect participants to close out their positions with a defaulting Sponsoring Member or Agent Clearing Member.<sup>273</sup> For example, the commenter states that under the current GSD Rules, the process for closing out indirect participants' trade positions under the Sponsored Service is driven entirely by FICC, with indirect participants having no "say" in whether their positions are closed out, meaning that the customer may need to continue to rely on an insolvent (or near insolvent) Netting Member to make or receive payments on its behalf.<sup>274</sup> This commenter also states that FICC should clearly address Executing Firm Customers close-out rights in the event of the default of their Agent Clearing Member.<sup>275</sup> Alternatively, the commenter states that in the event of such a default, customers should be able to elect to receive payment directly from FICC, with FICC using any customer funds held at FICC to satisfy such amounts owed.<sup>276</sup> Similarly, an additional commenter states that the GSD Rules should address the situation of a FICC default simultaneous with a Sponsoring Member default, suggesting that Sponsored Members should have the ability to promptly close out and manage its positions.<sup>277</sup>

In response, FICC states that it was not aware of any such U.S. CCP that provides either for customers to have the ability to direct the CCP to terminate trades or to make payments directly to the customer, but that, instead, CCPs interface directly with clearing

---

<sup>273</sup> See SIFMA-AMG Letter at 2, 6, 11.

<sup>274</sup> See SIFMA-AMG Letter at 7.

<sup>275</sup> See *id.*

<sup>276</sup> See SIFMA-AMG Letter at 2, 6, 11.

<sup>277</sup> See ICI Letter at 14.

members, as agents for their customers consistent with the framework of an intermediated clearing arrangement.<sup>278</sup> FICC further states that, from a risk perspective, it is important to FICC to interface with Netting Members as agents for their customers because Netting Members are subject to comprehensive operational requirements and testing that are designed to ensure that they have the capability to perform and to receive performance from FICC and that such performance will not expose FICC to operational risks (e.g., systems failures and viruses).<sup>279</sup> FICC states that because customers are not subject to such requirements, FICC cannot establish interoperability without exposing itself, its participants, and the broader market to significant operational risk.<sup>280</sup> FICC also states that imposition of operational standards to customers would be quite burdensome, if not infeasible, for many customers, and that such burdens would likely outweigh any benefits of establishing interoperability with customers, because in a Netting Member default scenario, FICC would generally close out trades or settle through the trustee or receiver of the defaulting member and applicable insolvency law would likely prohibit FICC from engaging directly with customers.<sup>281</sup>

The Proposed Rule Change does not include these types of close-out provisions for indirect participants that the commenter seeks. The Commission shall approve a

---

<sup>278</sup> FICC Letter at 27.

<sup>279</sup> *See id.*

<sup>280</sup> *See id.*

<sup>281</sup> *See id.*

proposed rule change of a self-regulatory organization if it finds that it is consistent with the Act,<sup>282</sup> and the lack of such close-out provisions is not inconsistent with the Act.

One commenter requests that FICC clarify the differences in the GSD Rules between the Sponsored Service and Agent Clearing Service governing a default of the Sponsoring Member or Agent Clearing Member.<sup>283</sup> The commenter states that the Proposed Rule Change suggests that customer positions will always be closed-out under the Agent Clearing Service, whereas FICC may elect to continue to settle customer positions under the Sponsored Service in the event of a Netting Member default.<sup>284</sup> FICC agrees with the commenter's suggestion that FICC should have the opportunity to settle the outstanding cleared transactions that a defaulting Agent Clearing Member has cleared through the Agent Clearing Service.<sup>285</sup> FICC states that, as a general matter, settlement may in many instances be the most effective and customer-protective way to address a member default scenario, so long as the receiver or trustee of the defaulting member consents.<sup>286</sup>

The Proposed Rule Change does not include the ability for FICC to settle the transactions of a defaulting Agent Clearing Member's customers that the commenter seeks. The Commission shall approve a proposed rule change of a self-regulatory

---

<sup>282</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

<sup>283</sup> See FIA-PTG Letter at 8.

<sup>284</sup> See FIA-PTG Letter at 8; FIA-PTG Letter II at 3.

<sup>285</sup> See FICC Letter at 25-26.

<sup>286</sup> See FICC Letter at 26. FICC further states that it is considering amendments to the Proposed Rule Change that would give FICC the option to effectuate such settlement, but that it would be more efficient to propose such changes after the Commission has considered the Proposed Rule Change, but at the very least before Dec. 31, 2025. *See id.*

organization if it finds that it is consistent with the Act,<sup>287</sup> and the lack of such close-out provisions is not inconsistent with the Act.

Some commenters question why the proposed Agent Clearing Service does not include a close-out mechanism regarding a defaulted customer’s open positions, which could pose unique risks to an Agent Clearing Member by forcing it to keep a defaulted customer’s positions open until the default is resolved.<sup>288</sup> One commenter further states that FICC may have declined to provide a mechanism for liquidating customer trades because, in contrast to the Sponsored Service, Executing Firm Customers are not members of FICC and therefore a “close out amount” cannot be calculated as between the customer and FICC.<sup>289</sup> However, this commenter also states that FICC could amend its rulebook to explicitly allow Netting Members to liquidate positions with defaulting customers, with such close-out procedure then addressed in account documentation between the Agent Clearing Member and its Executing Firm Customer.<sup>290</sup> Several commenters also state that FICC should allow an Agent Clearing Member to liquidate the transactions of a defaulted customer by transferring the positions to its proprietary account or by transferring offsetting positions to its omnibus account.<sup>291</sup> In addition, one

---

<sup>287</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

<sup>288</sup> See SIFMA Letter I at 2-3 (stating that FICC should revise the Agent Clearing Service to allow Netting Members to liquidate positions of defaulting indirect participants, consistent with what is available in the Sponsored Service); *see also* ISDA Letter I at 2-3 and ISDA Letter II at 4 (similarly discussing the need to close-out positions by transferring them to the proprietary/house account or by transferring offsetting positions to the omnibus account).

<sup>289</sup> See SIFMA Letter I at 3.

<sup>290</sup> See *id.*

<sup>291</sup> See ISDA Letter I at 2-3 (stating that FICC should provide in the GSD Rules that an Agent Clearing Member may liquidate an Executing Firm Customer’s positions by transferring the positions to its proprietary/house account or by transferring positions into the Agent Clearing

commenter states that FICC should include similar trade liquidation procedures for done-away transactions cleared through the Sponsored Service.<sup>292</sup>

In response, FICC states that the Agent Clearing Service was designed to closely resemble the clearing model used in the futures and cleared swap market, and that such clearing models do not, to FICC's knowledge, prescribe a close-out mechanism for a clearing member to use to close out its customers' trades.<sup>293</sup> FICC further states that, instead, the clearing models generally leave it to the bilateral agreement between clearing members and their customers to address how such close-out should be effected. FICC also states that it is open to considering steps FICC can take to facilitate the ability of Netting Members to address a customer default situation and to promote legal certainty for both done-away and done-with transactions under the Agent Clearing and Sponsored Services.

The Proposed Rule Change does not include these types of close-out provisions that the commenter seeks. However, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that it is consistent with the Act,<sup>294</sup> and

---

Member Omnibus Account to flatten open positions of the Executing Firm Customer); ISDA Letter II at 4 (same); FIA Letter at 5, 10 (stating that FICC should incorporate a rule that authorizes an Agent Clearing Member, in connection with liquidating an Executing Firm Customer's open positions upon its default, to cause the Executing Firm Customer's open positions to be transferred from the applicable Agent Clearing Member Omnibus Account and/or transfer to the Agent Clearing Member Omnibus Account transactions that offset or flatten the Executing Firm Customer's open positions); SIFMA Letter I at 2-3 (stating that FICC's proposed rules should permit Netting Members to transfer a defaulting customer's positions to the Netting Member's Proprietary Account or Agent Clearing Member Omnibus Account to flatten open positions of the defaulting Executing Firm Customer).

<sup>292</sup> See ISDA Letter II at 4.

<sup>293</sup> See FICC Letter at 26.

<sup>294</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

the lack of such close-out provisions is not inconsistent with the Act.

Several commenters state that the GSD Rules should provide for a porting mechanism to enable a customer to transfer positions to another Netting Member intermediary for risk management or business-related reasons.<sup>295</sup> Some commenters highlight that porting mechanisms exist in the cleared futures market as an important risk management tool.<sup>296</sup> In addition, one commenter states that in the event of a clearing member default, *all* non-defaulting customers will want the option to avoid immediately having their positions closed-out by FICC (regardless of whether their original execution counterparty was the clearing member or a third party), through either continuing to settle open positions or porting them to another clearing member.<sup>297</sup>

In response, FICC states that it intends to propose amendments to the GSD Rules that would add porting provisions similar to those adopted by other U.S. CCPs, to make clear that porting is possible for FICC-cleared trades.<sup>298</sup> FICC also states its belief that it will be more efficient to wait until the Commission decides whether to approve or disapprove the Proposed Rule Change before proposing a specific porting framework,

---

<sup>295</sup> See FIA-PTG Letter I at 8; ISDA Letter I at 5; MFA Letter I at 6, 8; FIA Letter at 11; SIFMA Letter I at 2, 4; SIFMA-AMG Letter at 2-3; ISDA Letter II at 3-4; FIA-PTG Letter II at 2; MFA Letter II at 7.

<sup>296</sup> See ISDA Letter I at 5 (stating that many cleared futures clients are accustomed to their porting rights and use them as an important risk management tool); ISDA Letter II at 3-4 (stating that the commenting association's members have already come to rely on this type of guardrail in the futures clearing model as an essential risk management tool); MFA Letter I at 6 (stating that porting is an important risk management tool that provides additional certainty to indirect participants, particularly during periods of market stress); SIFMA-AMG Letter at 8 (stating that the ability to port positions is an important feature of the cleared swaps and futures market.).

<sup>297</sup> See Citadel Letter at 5.

<sup>298</sup> See FICC Letter at 25.

and states that it will seek to facilitate porting before December 31, 2025.<sup>299</sup> FICC also states that any porting framework would need to take into consideration the fact that many FICC-cleared customer transactions are overnight, and that porting may not be practical for such transactions because they will generally settle before the porting can be completed.<sup>300</sup> FICC further states that the ability to settle (which is currently included in the GSD Rules governing the Sponsored Service) is therefore substantially more important than the ability to port.<sup>301</sup>

The Proposed Rule Change does not contain any provisions related to porting customer transactions at FICC. However, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that it is consistent with the Act,<sup>302</sup> and the lack of porting provisions is not inconsistent with the Act.

Accordingly, for the reasons above, the Proposed Rule Change is consistent with Rule 17ad-22(e)(18)(iv)(C).<sup>303</sup>

#### **E. Consistency with Rule 17ad-22(e)(23)(ii)**

Rule 17ad-22(e)(23)(ii) under the Exchange Act requires a covered clearing agency, such as FICC, to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in

---

<sup>299</sup> *See id.*

<sup>300</sup> *See id.*

<sup>301</sup> *See id.*

<sup>302</sup> *See* 15 U.S.C. 78s(b)(2)(C)(i).

<sup>303</sup> *See* 17 CFR 240.17ad-22(e)(18)(iv)(C).

the covered clearing agency.<sup>304</sup>

Several commenters state that FICC should regularly publish statistics regarding the GSD access models, such as the volumes and proportion of transactions cleared through each access model and transactions executed on done-with and done-away bases.<sup>305</sup> The commenters suggest that FICC's publication of such data would enable market participants to better evaluate which access model best fits their business needs.<sup>306</sup> FICC responds that it intends to collect and publish information regarding the GSD access models, including the (1) number of Netting Members enabled to use each model, (2) number of Sponsoring Members enabled to offer done-away clearing, and (3) volumes of trading through each access model, including the number of transactions and total notional.<sup>307</sup> The Commission agrees that FICC's regular publication of the foregoing data should provide information that would better enable market participants to evaluate the GSD access models.

One commenter states that in addition to regularly publishing the data referenced in the immediately preceding paragraph, FICC should also regularly publish the number of clearing members who are in fact clearing more than de minimis volumes pursuant to each such model, and clearly separate out done-with and done-away activity.<sup>308</sup> The Proposed Rule Change does not contain any provisions related to FICC's publication of

---

<sup>304</sup> 17 CFR 240.17ad-22(e)(23)(ii).

<sup>305</sup> See FIA-PTG Letter I at 4; MFA Letter I at 8; AIMA Letter at 6.

<sup>306</sup> See *id.*

<sup>307</sup> See FICC Letter at 20-21.

<sup>308</sup> See FIA-PTG Letter II at 4.

the specific data requested by the commenter. The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that it is consistent with the Act,<sup>309</sup> and the lack of provisions regarding FICC's regular publication of the data requested by the commenter is not inconsistent with the Act.

For the reasons discussed above, the Proposed Rule Change would enable FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable members to identify and evaluate the risks, fees, and other material costs they incur as FICC's members, consistent with Rule 17ad-22(e)(23)(ii).<sup>310</sup>

### **III. CONCLUSION**

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and in particular with the requirements of Section 17A of the Exchange Act<sup>311</sup> and the rules and regulations promulgated thereunder.

---

<sup>309</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

<sup>310</sup> 17 CFR 240.17ad-22(e)(23)(ii).

<sup>311</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act<sup>312</sup> that proposed rule change SR-FICC-2024-005, be, and hereby is, APPROVED.<sup>313</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>314</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>312</sup> 15 U.S.C. 78s(b)(2).

<sup>313</sup> In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>314</sup> 17 CFR 200.30-3(a)(12).