SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63361; File No. SR-FICC-2010-09)

November 23, 2010

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change to Introduce Cross-Margining of Certain Positions Cleared at the Fixed Income Clearing Corporation and Certain Positions Cleared at New York Portfolio Clearing, LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder[2] notice is hereby given that on November 12, 2010, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow FICC to offer cross-margining of certain positions cleared at its Government Securities Division ("GSD") and certain positions cleared at New York Portfolio Clearing, LLC ("NYPC"). The proposed rule change also would make certain other related changes to GSD's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to: (i) introduce cross-margining of certain positions cleared at the GSD and of certain positions cleared at NYPC and (ii) make certain other changes to the GSD Rules as set forth below.[4]

NYPC has applied for registration with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization ("DCO") pursuant to Section 5b of the Commodity Exchange Act and Part 39 of the Regulations of the CFTC.[5] FICC would not implement the proposed rule change until NYPC obtains such registration. Upon registration as a DCO, NYPC proposes initially to clear U.S. dollar-denominated interest rate futures contracts.

The proposed rule change would allow certain GSD Members to combine their positions at the GSD with their positions or those of certain permitted affiliates cleared at NYPC, within a single margin portfolio ("Margin Portfolio").

1. Cross-Margining with NYPC

Background

Currently, the GSD maintains a clearing fund ("Clearing Fund") comprised of deposits of cash and eligible securities from its members (each a "GSD Member") to provide liquidity and satisfy any losses that might otherwise be incurred as a result of a GSD Member's default and the subsequent close out of its positions. The amount of a GSD Member's required deposit to

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[3] The Commission has modified the text of the summaries prepared by FICC.

[4] The specific language of the proposed provision can be found at http://www.dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-09.pdf.

[5] NYPC's DCO application may be viewed on the CFTC's website: http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.

the Clearing Fund ("Required Fund Deposit") is calculated with reference to several factors relating to an analysis of the possible losses associated with the GSD Member's positions. Currently, this analysis is performed with respect to the GSD Member's positions in a particular account.

Proposed Cross-Margining with NYPC

The cross-margining arrangement with NYPC contemplated herein ("NYPC Arrangement") is to be distinguished from the cross-margining arrangement currently conducted between the Chicago Mercantile Exchange ("CME") and FICC ("CME Arrangement"). In the CME Arrangement, each of FICC and CME holds and manages its own positions and collateral, and independently determines the amount of margin that it will make available for cross-margining, referred to as the "residual margin amount," that remains after each of FICC and CME conducts its own internal offsets. FICC then computes the amount by which the cross-margining participant's margin requirement can be reduced at each clearing organization ("cross-margining reduction") by comparing the participant's positions and the related margin requirements at FICC as against those at CME. FICC offsets each cross-margining participant's residual margin amount based on related positions at FICC against the offsetting residual margin amounts of the participant or its affiliate at CME. FICC and CME may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant's positions at FICC and its or its affiliate's positions at CME.

Under the proposed NYPC Arrangement, a member of FICC that is also an NYPC clearing member ("Joint Clearing Member") could, at the discretion of NYPC and FICC, and in accordance with the provisions of the GSD and NYPC Rules, elect to have its margin requirement with respect to eligible positions in its proprietary account at NYPC and its margin

requirement with respect to eligible positions at FICC calculated by taking into consideration the net risk of such eligible positions at both clearing organizations. In addition, an affiliate of a member of FICC that is a clearing member of NYPC ("Permitted Margin Affiliate") could agree to have its positions and margin at NYPC margined together with eligible positions of the FICC member.

The NYPC Arrangement would allow (i) Joint Clearing Members and (ii) members of FICC and their Permitted Margin Affiliates to have their margin requirements for FICC and NYPC positions determined on a combined basis, with FICC and NYPC each having a security interest in such members' margin deposits and other collateral to secure such members' obligations to FICC and NYPC.

The following types of FICC members would not be eligible to participate in the NYPC Arrangement in order to allow FICC to maintain segregation of certain business or member types that are treated differently for purposes of loss allocation: (i) GSD Sponsored Members, (ii) Inter-Dealer Broker Netting Members and (iii) Dealer Netting Members with respect to their segregated brokered accounts. In addition, in order for a Banking Netting Member to combine its accounts into a Margin Portfolio with any other accounts, it would have to demonstrate to the satisfaction of FICC and NYPC that doing so would comply with the regulatory requirements applicable to the Bank Netting Member.

In order to distinguish between the CME Arrangement and the NYPC Arrangement, FICC is proposing to amend the definition of "Cross-Margining Agreement" in the GSD Rules, which would be defined as an agreement entered into between FICC and one or more FCOs (as defined in GSD Rule 1) pursuant to which a Cross-Margining Participant, at the discretion of FICC and in accordance with the provisions of the GSD Rules, could elect to have its Required

Fund Deposit with respect to Eligible Positions at FICC, and its or its Permitted Margin Affiliate's, if applicable, margin requirements with respect to Eligible Positions at such FCO(s), calculated either (i) by taking into consideration the net risk of such Eligible Positions at each of the clearing organizations or (ii) as if such positions were in a single portfolio. Therefore, the CME Arrangement would fall into clause (i) of the definition whereas the NYPC Arrangement would fall into clause (ii). Conforming changes would be made to GSD Rule 1, Definitions, relating to cross-margining. GSD Rule 43, Cross-Margining Arrangements, also would be amended to add provisions regarding single-portfolio margining (i.e., the proposed NYPC Arrangement). To implement this proposal, FICC and NYPC would enter into a cross-margining agreement ("NYPC Agreement"), which would be appended to the GSD Rules and made a part thereof.

Pursuant to the NYPC Agreement, and consistent with previous approvals of cross-margining arrangements involving DCOs, cross-margining with certain NYPC positions would be limited to positions carried in proprietary accounts of clearing members of NYPC. Customers of NYPC clearing members would not be permitted to participate in the cross-margining arrangement. Participation in the NYPC Arrangement would be voluntary. Participants and their Permitted Margin Affiliates would be required to execute the requisite cross-margining participant agreements (the Joint Member or Affiliated Member version, as applicable), which are exhibits to the NYPC Agreement.

FICC would be responsible for performing the margin calculations in its capacity as the Administrator under the terms of the NYPC Agreement. Specifically, FICC would determine the

combined FICC Clearing Fund and NYPC Original Margin[6] requirement for each participant. FICC would calculate those requirements using a Value-at-Risk ("VaR") methodology, with a 99 percent confidence level and a 3-day liquidation period for cash positions and a 1-day liquidation period for futures positions. In addition, each cross-margining participant's one-pot margin requirement would be subject to a daily back test, and a "coverage component" would be applied and charged to the participant in the event that the back test reflects insufficient coverage. The one-pot margin requirement for each participant would then be allocated between FICC and NYPC in proportion to the clearing organizations' respective "stand-alone" margin requirements – in other words, an amount reflecting the ratio of what each clearing organization would have required from that participant if it was not participating in the cross-margining program ("Constituent Margin Ratio"). The NYPC Agreement provides that either FICC or NYPC could, at any time, require additional margin to be deposited by a participant above what is calculated under the NYPC Agreement based upon the financial condition of the participant, unusual market conditions or other special circumstances. The standards that FICC proposes to use for these purposes are the standards currently contained in the GSD Rules, so that notwithstanding the calculation of a member's Clearing Fund requirement pursuant to the NYPC Agreement, FICC would still retain the rights contained within the GSD Rules to charge additional Clearing Fund under the circumstances specified in the GSD Rules. For example, the GSD Rules currently contain a provision providing that if a Dealer Netting Member falls below its minimum financial requirement it shall be required to post additional Clearing Fund equal to the greater of (i) $1 million or (ii) 25 percent of its Required Fund Deposit.

[6] Original Margin is the NYPC equivalent of the Clearing Fund.

FICC would utilize the same VaR engine for futures and cash positions. Under this method, the prior 250 days of historical information for futures positions and the prior 252 days of historical information for cash positions, including prices, spreads and market variables such as Treasury zero-coupon yields and London Interbank Offered Rate curves, are used to simulate the market environments in the forthcoming 1 day for futures positions and the forthcoming 3 days for cash positions. Projected portfolio profits and losses are calculated assuming these simulated environments will actually be realized. These simulations would be used to calculate VaR. Historical simulation is a continuation of the FICC margin methodology.

With respect to the confidence level, FICC currently utilizes extreme value theory to determine the 99th percentile of loss distribution. Upon implementation of the FICC-NYPC one-pot margining, FICC would utilize a front-weighting mechanism to determine the 99th percentile of loss distribution. This front-weighting mechanism would place more emphasis on more recent observations. Additionally, FICC's VaR engine would be enhanced to accommodate more securities; this means that certain CUSIPs which are now considered to be "non-priceable" (because, for example, of a lack of historical information regarding the security) and subject to a "haircut" requirement (i.e., fixed percentage charge) where offsets are not permitted, would be treated as "priceable" and therefore included in the core VaR calculation.

Based on preliminary analyses, FICC expects that the FICC VaR component of the Clearing Fund requirement may be reduced by as much as approximately 20 percent for common FICC-NYPC members as a result of the NYPC Arrangement. FICC has performed backtesting analysis to verify that there will be sufficient coverage after the FICC-NYPC cross-margining reductions are applied. Moreover, an independent firm has performed backtesting analysis of the FICC-NYPC one-pot methodology, as well as FICC's and NYPC's stand-alone methodologies.

Both such analyses demonstrated that the VaR methodologies provide coverage at the 99th confidence level.

In the event of the insolvency or default of a member that participates in the NYPC Arrangement, the positions in such participant's one-pot portfolio including, where applicable, the positions of its Permitted Margin Affiliate at NYPC, would be liquidated by FICC and NYPC as a single portfolio and the liquidation proceeds would be applied to the defaulting participant's obligations to FICC and NYPC in accordance with the provisions of the NYPC Agreement.

The NYPC Agreement provides for the sharing of losses by FICC and NYPC in the event that the one-pot portfolio margin deposits of a defaulting participant would not be sufficient to cover the losses resulting from the liquidation of that participant's trades and positions:

- If either clearing organization had a net loss ("worse-off party"), and the other had a net gain ("better-off party") that is equal to or exceeds the worse-off party's net loss, then the better-off party pays the worse-off party the amount of the latter's net loss. In this scenario, one clearing organization's gain would extinguish the entire loss of the other clearing organization.
- If either clearing organization had a net loss ("worse-off party") and the other clearing organization had a net gain ("better-off party") that is less than or equal to the worse-off party's net loss, then the better-off party would pay the worse-off party an amount equal to the net gain. Thereafter, if such payment did not extinguish the net loss of the worse-off party, the better-off party would pay the worse-off party an amount equal to the lesser of: (i) the amount necessary to ensure that the net loss of each clearing organization is in proportion to the Constituent Margin Ratio or (ii) the better-off party's "Maximum Transfer Payment" less the better-off party's net gain. The "Maximum Transfer

Payment" would be defined with respect to each clearing organization to mean an amount equal to the product of (i) the sum of the margin reductions of the clearing organizations and (ii) the other clearing organization's Constituent Margin Ratio – in other words, the amount by which the other clearing organization reduced its margin requirements in reliance on the cross-margining arrangement. In this scenario, one clearing organization's gain does not completely extinguish the entire loss of the other clearing organization, and the better-off clearing organization would be required to make an additional payment to the worse-off clearing organization. This potential additional payment would be capped as described in this paragraph.

- If either clearing organization had a net loss, and the other had the same net loss, a smaller net loss, or no net loss, then:
  - In the event that the net losses of the clearing organizations were in proportion to the Constituent Margin Ratio, no payment would be made.
  - In the event that the net losses of the clearing organizations were not in proportion to the Constituent Margin Ratio, then the clearing organization that had a net loss which was less than its proportionate share of the total net losses incurred by the clearing organizations ("better-off party") would pay the other clearing organization ("worse-off party") an amount equal to the lesser of: (i) the better-off party's Maximum Transfer Payment or (ii) the amount necessary to ensure that the clearing organizations' respective net losses were allocated between them in proportion to the Constituent Margin Ratio.
- If FICC had a net gain after making a payment as described above, FICC would pay to NYPC the amount of any deficiency in the defaulting member's customer segregated

funds accounts or, if applicable, such defaulting member's Permitted Margin Affiliate held at NYPC up to the amount of FICC's net gain.

- If FICC received a payment under the Netting Contract and Limited Cross-Guaranty ("Cross-Guaranty Agreement") to which it is a party (i.e., because FICC had a net loss), and NYPC had a net loss, FICC would share the cross-guaranty payment with NYPC pro rata, where such pro rata share is determined by comparing the ratio of NYPC's net loss to the sum of FICC's and NYPC's net losses.[7] This allocation is appropriate because the "single pot" combines FICC and NYPC proprietary positions into a unified portfolio that would be margined and liquidated as a single unit. This requirement would not apply after NYPC becomes a party to the Cross-Guaranty Agreement. The GSD Rules would further provide that in the event of a close out of a cross-margining participant under the NYPC Agreement, FICC would offset its liquidation results first with NYPC because the liquidation will essentially be of a single portfolio and then present its results for purposes of the Cross-Guaranty Agreement.

The GSD Rules would further provide that FICC would offset its liquidation results in the event of a close out of a cross-margining participant in the NYPC Agreement first with NYPC because the liquidation would essentially be of a single Margin Portfolio and then would present its results for purposes of the multilateral Cross-Guaranty Agreement.

2. Other GSD Proposed Rule Changes

The proposed rule filing would allow FICC to permit margining of positions held in accounts of an affiliate of a member within GSD, akin to the inter-affiliate margining in the

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[7] The other parties to the Cross-Guaranty Agreement are The Depository Trust Company, National Securities Clearing Corporation and The Options Clearing Corporation.

CME Arrangement and the proposed NYPC Arrangement. Thus, as in those arrangements, if a GSD member defaults, its GSD Clearing Fund deposits, cash settlement amounts and other available collateral would be available to FICC to cover the member's default, as would the GSD Clearing Fund deposits and available collateral of any Permitted Margin Affiliate with which it cross-margins.

Loss Allocation

Under the current loss allocation methodology in GSD Rule 4, Clearing Fund and Loss Allocation, GSD allocates losses first to the most recent counterparties of a defaulting member. The proposed changes to GSD Rule 4 would delete this step in the loss allocation methodology in order to achieve a more equitable result. Instead, any loss allocation would first be made against the retained earnings of FICC attributable to GSD in an amount up to 25 percent of FICC's retained earnings or such higher amount as may be approved by the Board of Directors of FICC.

If a loss still remained, GSD would divide the loss between the FICC Tier 1 Netting Members and the FICC Tier 2 Netting Members. "Tier One Netting Member" and "Tier Two Netting Member" have been introduced in the GSD Rules to reflect two different categories which have been designated as such by FICC for loss allocation purposes. Currently, only investment companies registered under the Investment Company Act of 1940, as amended, would qualify as Tier 2 Netting Members. Tier 2 Netting Members would only be subject to loss to the extent they traded with the defaulting members, due to regulatory requirements applicable to them.

Tier 1 Netting Members would be allocated the loss applicable to them first by assessing the Clearing Fund deposit of each such member in the amount of up to $50,000, equally. If a

loss remains, Tier 1 Netting Members would be assessed ratably in accordance with the respective amounts of their Required Fund Deposits based on the average daily amount of the member's Required Fund Deposit over the prior twelve months. Consistent with the current Rules, GSD members that are acting as Inter-Dealer Brokers would be limited to a loss allocation of $5 million in respect of their inter-dealer broker activity.

Margin Calculation—Intraday Margin Calls

In order to facilitate the NYPC Arrangement, GSD is proposing to adopt the futures clearing house convention of calculating Clearing Fund requirements twice per day. GSD would retain its regular calculation and call as set out in the GSD Rules. An additional daily intra-day calculation and call ("Intraday Supplemental Clearing Fund Deposit") would be made subject to a threshold that would be identified in FICC's risk management procedures. In addition, the GSD would process a mark-to-market pass-through twice per day, instead of the current practice of once daily. The second collection and pass-through of mark-to-market amounts would include a limited set of components to be defined in FICC's risk management procedures. All mark-to-market debits would be collected in full. FICC would pay out mark-to-market credits only after any intra-day Clearing Fund deficit is met.

Since GSD would be recalculating and margining a GSD Member's exposure intra-day, the margin calculation methodology set forth in GSD Rule 4, Clearing Fund and Loss Allocation, would be revised to eliminate the Margin Requirement Differential component of the FICC Clearing Fund calculation. In addition, GSD Rule 4 would be revised to provide that in the case of a Margin Portfolio that contains accounts of a Permitted Margin Affiliate, FICC would apply the highest VaR confidence level applicable to the GSD Member or the Permitted Margin Affiliate. Application of a higher VaR confidence levels would result in a higher margin rate.

Consistent with current GSD Rules, a minimum Required Fund Deposit of $5 million would apply to a member that maintains broker accounts.

Consolidated Funds-Only Settlement

The funds-only settlement process at GSD currently requires a member to appoint a settling bank that will settle the member's net debit or net credit amount due to or from the division by way of the National Settlement Service of the Board of Governors of the Federal Reserve System ("NSS"). Any funds-only settling bank that would settle for a member that is also an NYPC member or that would settle for a member and a Permitted Margin Affiliate that is an NYPC member would have its net-net credit or debit balances at each clearing corporation, other than balances with respect to futures positions of a "customer" as such term is defined in CFTC Regulation 1.3(k), aggregated and netted for operational convenience and would pay or be paid such netted amount. The proposed rule change makes clear that, notwithstanding the consolidated settlement, the member would remain obligated to GSD for the full amount of its funds-only settlement amount.

Submission of Locked-in Trades from NYPC

The current GSD Rules allow for submission of "locked-in trades" (i.e., trades that are deemed compared when the data on the trade is received from a single source) submitted by a locked-in trade source on behalf of a GSD Member. Currently, designated locked-in trade sources are Federal Reserve Banks on behalf of the Treasury Department, Freddie Mac and GCF-Authorized Inter-Dealer Brokers for GCF Repo transactions. Under the proposed rule change, GSD Rule 6C, Locked-In Comparison, would be amended to include NYPC as an additional locked-in trade source. This would be necessary because there would be futures transactions cleared by NYPC that would proceed to physical delivery. NYPC would submit the

trade data as a locked-in trade source for processing through FICC, identifying the GSD Member that had authorized FICC to accept the locked-in trade from NYPC. Once these transactions are submitted to FICC, they would no longer be futures but rather would be in the form of buy-sells eligible for processing by GSD. As would be the case with other locked-in trade submissions accepted by FICC, the GSD Member designated in the trade information would have executed FICC documentation evidencing to FICC its authorization of NYPC.

Deletion of Category 1/Category 2 Distinction

The proposed rule change would delete the legacy characterization of certain types of members as either "Category 1" or "Category 2", a distinction that currently applies to Dealer Netting Members, Futures Commission Merchant Netting Members and Inter-Dealer Broker Netting Members at GSD. Historically, the two categories were used to margin lower capitalized members (i.e., Category 2) at a higher rate. With the adoption of the VaR margin methodology, this distinction is no longer necessary. Rather than margin Netting Members at higher rates solely due to a single static capitalization threshold, FICC is able, by use of the VaR margin methodology, to margin Netting Members at a higher rate by applying a higher confidence level against any Netting Member which, regardless of size, FICC believes may pose a higher risk.

With the deletion of the Category 1/Category 2 distinction, Section 1 of GSD Rule 13, Funds-Only Settlement, is proposed to be changed to provide that all Netting Members could receive forward mark adjustment payments, subject to FICC's general discretion to withhold credits that would be otherwise due to a distressed Netting Member.

Amendment of CME Agreement

The proposed NYPC Arrangement would necessitate an amendment to the CME Agreement to clarify that the NYPC Arrangement would take priority over the CME

Arrangement when determining residual FICC positions that would be available for cross-margining with the CME. In addition, when calculating and presenting liquidation results under the CME Agreement, the amendment would provide that FICC's liquidation results would include FICC's liquidation results in combination with NYPC's liquidation results because the NYPC Agreement would provide for a right of first offset between FICC and NYPC. The CME Agreement showing the proposed changes was filed as an attachment to the proposed rule change as part of Exhibit 5.

3. Summary of Other Proposed Changes to Rule Text

In GSD Rule 1, Definitions, the following definitions are proposed to be added, revised or deleted:

The terms "Broker Account" and "Dealer Account" would be added to the text of the GSD Rules. A "Broker Account" is an account that is maintained by an inter-dealer broker netting member, or a segregated broker account of a netting member that is a not an inter-dealer broker netting member. An account that is not a Broker Account is referred to as a Dealer Account.

"Coverage Charge" would be revised to refer to the additional charge with respect to the member's Required Fund Deposit (rather that its VaR Charge) which brings the member's coverage to a targeted confidence level.

"Current Net Settlement Positions" would be corrected to clarify its current intent, that it is calculated with respect to a certain Business Day and not necessarily on that day, since it may be calculated after market close on the day prior to its application (i.e., before or after midnight between the close of business one day and the open of business on the next day).

"Excess Capital Differential" would be corrected to refer to the amount by which a member's VaR Charge exceeds its Excess Capital, instead of by reference to the amount by which its required Clearing Fund deposit exceeds its Excess Capital.

"Excess Capital Premium Calculation Amount" would be deleted because, with the introduction of VaR methodology, the calculation is no longer applicable. The terms "Excess Capital Differential" and "Excess Capital Ratio" would be amended to delete archaic references to "Excess Capital Premium Calculation Amount" and to refer instead to the comparison of a member's capital calculation to its VaR Charge. In addition, the text of Section 14 of GSD Rule 3 would be amended to provide that the Excess Capital Premium charge applies to any type of entity that is a GSD Netting Member rather than limiting its applicability to only the specified types formerly identified in the text.

"Excess Capital Ratio" would be amended to mean the quotient resulting from dividing the amount of a member's VaR Charge by its Excess Net Capital.

"GSD Margin Group" would be added to refer to the GSD Accounts within a Margin Portfolio.

"Margin Portfolio" would be added to refer to the positions designated by the member as grouped for cross-margining, subject to the rules set forth in GSD Rule 4. Dealer Accounts and Broker Accounts could not be combined in a common Margin Portfolio. A Sponsoring Member Omnibus Account could not be combined with any other Accounts.

"Unadjusted GSD Margin Portfolio Amount" would be added to define the amount calculated by GSD with regard to a Margin Portfolio, before application of premiums, maximums or minimums. It includes the VaR Charge and the Coverage Charge for GSD. In the case of a cross-margining participant of GSD, the Unadjusted GSD Margin Portfolio Amount

also would include the cross-margining reduction, if any.

The terms “Category 2 Gross Margin Amount”, “Margin Adjustment Amount”, “Repo Volatility Factor” and “Revised Gross Margin Amount” would be deleted from GSD Rule 1 since they are no longer used elsewhere in the GSD Rules. The Schedule of Repo Volatility Factors would be deleted because it is no longer applicable.

In Section 2 of GSD Rule 3, Ongoing Membership Requirements, the requirement that GCF counterparties submit information relating to the composition of their NFE-related accounts, would be amended to require the submission of such information periodically, rather than on a quarterly basis. GSD currently requires this information every other month and by this change, FICC could institute periodic reporting on a schedule that is appropriate at such time, in response to current conditions.

In Section 9 of GSD Rule 4, Clearing Fund and Loss Allocation, concerning the return of excess deposits and payments, FICC’s discretion to withhold the return of excess Clearing Fund to a member that has an outstanding payment obligation to FICC would be changed to refer to FICC’s determination that the member’s anticipated transactions or obligations in the near future (rather than specifying over the next 90 calendar days, as in the current text) may reasonably be expected to be materially different than those of the recent past rather than the 90 prior calendar days, as in the current text.

In addition, technical and clarifying changes are proposed to be made to the rules and cross-references to rule sections contained throughout. The rules have been reviewed by FICC and proposed to be corrected as needed to reflect the correct rule section references as originally intended.

The proposed rule change to permit cross-margining of positions held at FICC and NYPC may increase the available offsets among positions held at FICC and NYPC, thereby allowing a more efficient use of participant collateral and promoting efficiencies in the fixed income securities marketplace. The proposed rule change is therefore consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder because it supports the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any negative impact, or impose any burden, on competition. To the contrary, FICC believes NYPC would be a powerful catalyst for competition by offering all FICC members as well as other futures exchanges and DCOs an equal opportunity to benefit from the innovative efficiencies of "one-pot" portfolio margining. FICC states that, because of these unique and groundbreaking open access policies, NYPC would set a new industry standard as the most fair, open and accessible DCO in the market.

The NYPC Arrangement has been structured in a way that access to, and the benefits of, the "single pot" are provided to other futures exchanges and DCOs on fair and reasonable terms as described below. The proposed single pot is required to be accessed by other futures exchanges and DCOs via NYPC.[8] As described below, this is done to ensure the uniformity and

[8] Section 16 of the NYPC Agreement provides that FICC covenants and agrees that, during the term of the NYPC Agreement: (i) NYPC-cleared contracts shall have priority for margin offset purposes over any other cross-margining agreement; (ii) FICC will not enter into any other cross-margining agreement if such agreement would adversely affect the priority of NYPC and FICC under the NYPC Agreement with respect to available assets; and (iii) FICC will not, without the prior written consent of NYPC, amend the CME Agreement, if such further amendment would adversely affect NYPC's right to cross-margin positions in eligible products prior to any cross-margining of CME positions with FICC-cleared contracts or adversely affect the priority of NYPC and FICC under the NYPC Agreement with respect to available assets.

consistency of risk methodologies and risk management, to simplify and standardize operational requirements for new participants and to maximize the effectiveness of the one-pot arrangement.

The proposed one-pot cross-margining method would allow members to post margin based on the net risk of their aggregate positions across asset classes, thereby releasing excess capital into the economy for more efficient use. By linking positions in fixed income securities held at FICC with interest rate products traded on NYSE Liffe U.S. and other designated contract markets ("DCMs"), the proposal between FICC and NYPC has the potential to create a substantial pool of highly correlated assets that are capable of being cross-margined. This pool will deepen as more DCOs and DCMs join NYPC, creating the potential for even greater margin and risk offsets.

NYPC will initially clear certain contracts transacted on NYSE Liffe U.S. NYPC will clear for additional DCMs that are interested in clearing through NYPC as soon as it is feasible for NYPC do so. Such additional DCMs will be treated in the same way as NYSE Liffe US, i.e., they must: (i) be eligible under the rules of NYPC, (ii) contribute to NYPC's guaranty fund, (iii) demonstrate that they have the operational and technical ability to clear through NYPC and (iv) enter into a clearing services agreement with NYPC.

Moreover, NYPC has also committed to admit other DCOs as limited purpose participants as soon as it is feasible, thereby allowing such DCOs to participate in the one-pot margining arrangement with FICC through their limited purpose membership in NYPC.[9] Such DCOs will be required to satisfy pre-defined, objective criteria set forth in NYPC's rules.[10] In particular, such DCOs must: (i) submit trades subject to the limited purpose participant

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[9] See NYPC Agreement, Section 14.

[10] NYPC's rules can be viewed as part of NYPC's DCO registration application on the CFTC's website (www.cftc.gov), as well as on NYPC's website (www.nypclear.com).

agreement between NYPC and each DCO that would otherwise be cleared by the DCO to NYPC, with NYPC acting as central counterparty and DCO with respect to such trades,[11] (ii) be eligible under the rules of NYPC and agree to be bound by the NYPC rules,[12] (iii) contribute to NYPC's guaranty fund,[13] (iv) provide clearing services to unaffiliated markets on a "horizontal" basis (i.e., not limit their provision of clearing services on a vertical basis to a single market or limited number of markets)[14] and (v) agree to participate using the uniform risk methodology and risk management policies, systems and procedures that have been adopted by FICC and NYPC for implementation and administration of the NYPC Arrangement.[15] Reasonable clearing fees will be allocated between NYPC and the limited purpose participant DCO as may be agreed by NYPC and the DCO, taking into account factors such as the cost of services (including capital expenditures incurred by NYPC), technology that may be contributed by the limited purpose participant, the volume of transactions, and such other factors as may be relevant.

As a basic structure, FICC and NYPC anticipate that the limited purpose participant agreement will encompass the foregoing requirements for limited purpose membership contained in NYPC's rules. Because each DCO could present different operational issues, terms beyond the basic rules provisions will be discussed on a case-by-case basis and reflected in the respective limited purpose participant agreement accordingly. FICC and NYPC envision that a

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[11] See NYPC Rule 801(b)(1).

[12] See NYPC Rule 801(b)(2).

[13] Pursuant to NYPC Rule 801(b)(3), limited purpose participants will be required to make a contribution to the NYPC guaranty fund in form and substance similar to and in an amount not less than the NYSE guaranty, which will initially consist of a $50,000,000 guaranty secured by $25,000,000 in cash during the first year of NYPC's operations.

[14] See NYPC Rule 801(c)(1)(i).

[15] See NYPC Rule 801(c)(1)(ii).

possible structure for DCO limited purpose participation could be an omnibus account, with the DCO limited purpose participant essentially acting as a processing agent for its clearing members vis-a-vis NYPC with respect to the submission of eligible positions of the DCO's clearing members to NYPC for purposes of inclusion in the one-pot arrangement with FICC. In order for their eligible positions to be included in the single pot, clearing members of the DCO limited purpose participant would need to authorize the DCO to submit their positions to NYPC. Under such a structure, the DCO would be responsible for fulfilling all margin and guaranty fund requirements associated with the activity in the omnibus account.

With respect to both the clearance of trades for unaffiliated DCMs and the admission of DCOs as limited purpose participants, NYPC has committed that it will complete the substantial operational effort of admitting and integrating another DCM or DCO as soon as feasible, but no later than 24 months from the start of operations. FICC states that this provision is necessary to the effective implementation of the one-pot cross-margining methodology and that this narrow window of time is required to allow for refinement and enhancement of certain systems post go-live, to allow time for the possible simultaneous integration with multiple major clearing members so that fair market access is assured, and to allow time for the completion of the material operational challenge of connecting and integrating with the separate technologies of other DCMs and/or DCOs. However, this period does not preclude NYPC from engaging in discussions with other DCMs and DCOs immediately, and NYPC is currently, in fact, having such discussions with interested parties. NYPC anticipates that it will be able to complete the integration of additional DCMs and/or DCOs in advance of that two-year period.

DCMs and DCOs will be required to contribute to the NYPC guaranty fund in the same manner as NYSE Euronext has done. This provision is designed to ensure that the financial

resources supporting NYPC remain robust as the risks of new DCMs and/or DCOs are introduced. As NYPC's business grows over time and more participants join NYPC and contribute to the guaranty fund, FICC would expect that the contribution from DCMs (including NYSE Euronext) and DCOs could be reduced across these entities on a pro rata basis as concentration risk is reduced. It should be noted that exchange contribution to clearing organization default resources is standard practice both in the U.S. and in Europe.

FICC further believes that the NYPC Arrangement meets the competition standard of Section 17A of the Exchange Act, which provides that the rules of a clearing agency may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed one-pot method of cross-margining will allow NYPC to compete in the market for clearing U.S. dollar denominated interest rate futures products. NYPC, in turn, will commit to provide fair access to all DCMs and DCOs that are interested in participating as described above. FICC members and other market participants will benefit greatly from the entry of NYPC as a competitor in the U.S. futures market via greater competition, increased capital and operational efficiencies, and enhanced transparency.

FICC's cross-margining arrangement with NYPC will enable NYPC to provide an innovative and highly efficient clearing solution to the U.S. futures market, while, at the same time, providing enhanced cross-margining benefits to FICC members. By their terms, the rules and provisions governing the FICC-NYPC proposal would not affect the ability of another clearing organization to access NYPC, only the means of such access. As stated above, any qualified DCO may access the single pot and NYPC will offer the service on non-discriminatory terms to all qualified participants. FICC states that these unprecedented open access provisions are far superior to the cross-margining arrangements offered by any of NYPC's competitors and

that there is no other clearinghouse in the global futures market that is similarly obligated by charter to inter-operate with other DCMs and/or DCOs, including, potentially, direct competitors.

With the recent passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[16] which states that "under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization",[17] this type of open access clearing for futures becomes even more difficult to achieve unless accomplished through industry-led initiative. NYPC's unprecedented admission policy sets such a new industry standard by both providing market participants with a real alternative from the dominant vertical clearing model and creating a level playing field that will enable multiple new entrants to compete in the U.S. futures market.

FICC strongly believes that the ability to deliver one-pot margin efficiencies depends on FICC's ability to appropriately manage its risk, which FICC believes can best be achieved by requiring other DCOs to link into NYPC to join the one-pot arrangement. Utilizing NYPC as a standardized portal for the one-pot arrangement provides FICC with needed assurance, in light of NYPC's contractual obligations to FICC, that operational issues and risk methodologies and management are understood, uniform and consistent for all participants in the one-pot arrangement. Without such a mechanism, this transformative innovation could not be delivered to the marketplace in a manner that minimizes systemic risk, thereby depriving the U.S. futures market of the most promising opportunity it has seen to-date for true competition.

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[16] Pub. L. No. 111-203 (July 21, 2010). See Dodd-Frank Wall Street Reform and Consumer Protection Act § 725(h),

[17] See Section 725(h) of the Dodd-Frank Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Prior to submitting this rule filing to the Commission, FICC received a letter in 2009 from the ELX Futures Exchange which encouraged FICC to reconsider its plan to enter into a relationship with NYSE. FICC has also received two letters from NASDAQ OMX in 2010 questioning the manner in which DTCC determined to enter into the joint venture with NYSE to form NYPC, arguing that the venture is contrary to DTCC's mission and suggesting that DTCC consider instead an enhanced form of "two-pot" cross-margining. FICC will notify the Commission of any additional written comments.

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

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

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act and with respect to the following:

- The Commission requests comment on all aspects of the proposed single pot margining arrangement, including the risk management of the combined positions cleared by GSD and NYPC. What unique risk management issues does a single pot cross margining

arrangement raise in comparison with the two pot arrangements previously approved by the Commission? Would the VaR margining methodology proposed to be used by FICC as the administrator of the single-pot margining arrangement adequately measure the risk exposures of the positions? Are there other risk management standards or requirements that should be established regarding a single-pot margining methodology?

- The Commission requests comment on the proposed loss allocation between FICC and NYPC. Does the loss allocation arrangement, in all scenarios, fairly reflect the risks presented by each clearing entity? Does it pose any undue risks to either FICC or NYPC or to any of their participants? If so, how would those risks be remediated?
- The Commission requests comment on the burden on competition, if any, that the proposed single pot cross margining arrangement may have. Does the proposal to admit other DCOs as limited purpose participants of NYPC mitigate any perceived burden on competition? If not, why not? Is there a more effective means of address concerns related to competition?
- The Commission requests comment on the implementation timeframe for the single pot margining arrangement and on the potential 24 month time period before unaffiliated DCOs or DCMs are admitted to the cross-margining arrangement. What are commenters views on the proposed time period? Is a shorter or longer time period justified based on the operational issues associated with starting the new cross-margining arrangement?
- The Commission requests comment on the proposed guarantee fund contribution required of all DCOs (including NYPC) and DCMs. Is a sizable guarantee fund contribution needed to assure the safeguarding of securities and funds within the cross-margining arrangement? Is a higher or lower contribution justified? What is the impact on

competition of such a requirement?

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commissions Internet comment form (http://www.sec.gov/rules/sro.shtml) or Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2010-09 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FICC-2010-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of FICC and on FICC's website at http://dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-09.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly**.** All submissions should refer to File Number SR-FICC-2010-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy
Secretary

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[18] 17 CFR 200.30-3(a)(12).