

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101455; File No. SR-FICC-2024-802)

October 28, 2024

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Partial Amendment No. 1 to Advance Notice to Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) to Address the Conditions of Note H to Rule 15c3-3a

On March 14, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-FICC-2024-802 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> In the advance notice, FICC proposes to modify its Government Securities Division (“GSD”) Rulebook (“GSD Rules”) to calculate, collect, and hold margin for proprietary transactions of a direct participant separately from margin submitted to FICC by a direct participant on behalf of indirect participants and to address conditions of Note H to Rule 15c3-3a under the Exchange Act (the “Advance Notice”).<sup>3</sup> The Advance Notice was published for public comment in the *Federal Register* on March 28, 2024.<sup>4</sup> Upon publication of notice of

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

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

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

<sup>4</sup> Securities Exchange Act Release No. 99845 (Mar. 22, 2024), 89 FR 21586 (Mar. 28, 2024) (File No. SR-FICC-2024-802) (“Notice of Filing”). On March 14, 2024, FICC filed the Advance Notice as a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21603 (Mar. 28, 2024) (File No. SR-FICC-2024-007) (“Proposed Rule Change”). On April 24, 2024, 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, pursuant to section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2)(ii). Securities Exchange Act Release No. 100022 (Apr.

filing of the Advance Notice, the Commission extended the review period of the Advance Notice for an additional 60 days because the Commission determined that the Advance Notice raised novel and complex issues.<sup>5</sup>

On April 24, 2024, the Commission requested additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission's period of review of the Advance Notice until 120 days from the date the information requested by the Commission was received by the Commission.<sup>6</sup> On June 25, 2024, the Commission received FICC's response to the Commission's request for additional information.<sup>7</sup> On September 24, 2024, the Commission requested additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission's period of review of the Advance Notice until 120 days from the date the

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24, 2024), 89 FR 34289 (Apr. 30, 2024) (File No. SR-FICC-2024-007). On June 21, 2024, the Commission published in the *Federal Register* an Order Instituting Proceedings to determine whether to approve or disapprove the proposed rule change. Securities Exchange Act Release No. 100401 (Jun. 21, 2024), 89 FR 53690 (Jun. 27, 2024) (File No. SR-FICC-2024-007). On September 18, 2024, the Commission designated a longer period for Commission action on the proceedings to determine whether to disapprove the proposed rule change, until November 10, 2024. Securities Exchange Act Release No. 101082 (Sep. 18, 2024), 89 FR 77949 (Sep. 24, 2024) (File No. SR-FICC-2024-007).

<sup>5</sup> Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the financial market utility ("FMU") with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H); *see supra* note 4, 89 FR at 21602 (explaining the Commission's rationale for determining that the proposed changes in the Advance Notice raise novel and complex issues).

<sup>6</sup> *See* 12 U.S.C. 5465(e)(1)(D). A memo regarding the Request for Additional Information and the tolled period of review is *available at* <https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802-462751-1210414.pdf>.

<sup>7</sup> *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); A memo regarding its receipt of FICC's response to the Request for Additional Information is *available at* <https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802-494123-1433426.pdf>.

information requested by the Commission was received by the Commission.<sup>8</sup>

The Commission has received comments regarding the substance of the Advance Notice.<sup>9</sup> The Commission also received a letter from FICC responding to the comments.<sup>10</sup>

Pursuant to Section 806(e)(1) of the Clearing Supervision Act and Rule 19b-4(n)(1)(i) under the Exchange Act, notice is hereby given that on October 25, 2024, FICC filed with the Commission Partial Amendment No. 1 as described in Item I below.<sup>11</sup> The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons.

I. Summary of the Terms of Substance of Partial Amendment No. 1 to the Advance Notice

FICC filed Partial Amendment No. 1 to its previously submitted Advance Notice, which would make several changes to FICC's GSD Rules to (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants; (2) simplify and revise the account types through which Members may record transactions at FICC and adopt a new Rule 2B to provide clearer public disclosures

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<sup>8</sup> See 12 U.S.C. 5465(e)(1)(D). A memo regarding the Request for Additional Information and the tolled period of review is *available at* <https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802-524215-1504462.pdf>.

<sup>9</sup> Comments on the Advance Notice are *available at* <https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802.htm>. Comments on the Proposed Rule Change are *available at* <https://www.sec.gov/comments/sr-ficc-2024-007/srficc2024007.htm>. Because the proposals contained in the Proposed Rule Change and the Advance Notice are the same, the Commission considers all comments received on the proposal, regardless of whether the comments are submitted with respect to the Advance Notice or the Proposed Rule Change. The comment letters to the Proposed Rule Change and Advance Notice also contained comments on the substance of another FICC proposed rule change, FICC-2024-005. The Commission will only be considering comments relevant to this proposal and will address the comments on the other proposed rule change in a separate order.

<sup>10</sup> See Letter from Laura Klimpel, Managing Director, Head of Fixed Income and Financing Solutions, Depository Trust & Clearing Corporation, (Aug. 1, 2024) ("FICC Letter").

<sup>11</sup> Text of the proposed changes made by the Partial Amendment No. 1 to the Advance Notice is *available at* <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>. 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 or in the Advance Notice.

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

Regarding the changes described in (3) above, Partial Amendment No. 1 makes several changes to the requirements regarding Segregated Customer Margin. First, as originally proposed, the Advance Notice requires FICC to establish and maintain on its books and records a Segregated Customer Margin Custody Account corresponding to each Segregated Indirect Participants Account.<sup>12</sup> Partial Amendment No. 1 deletes and replaces language in Rule 4, Section 1a, requiring Segregated Customer Margin credited to a Segregated Customer Margin Custody Account to be used exclusively to settle and margin Transactions in U.S. Treasury securities recorded in the corresponding Segregated Indirect Participants Account, with language requiring Segregated Customer Margin credited to a Segregated Customer Margin Custody Account to secure Transactions recorded in the corresponding Segregated Indirect Participants Account and satisfy payment and delivery obligations owing to the Corporation (including liquidating or otherwise using such Segregated Customer Margin to obtain relevant cash or securities) in connection with a default in respect of such Transactions.

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<sup>12</sup> Notice of Filing *supra* note 4.

Similarly, Partial Amendment No. 1 deletes and replaces language in Rule 4, Section 5 regarding the use of Clearing Fund and Segregated Customer Margin requiring FICC to only use the portion of Segregated Customer Margin that supports each Segregated Indirect Participant's Transactions. The Advance Notice stated that FICC could use that portion to secure or settle the obligations of that Segregated Indirect Participant, and of the Sponsoring Member or Agent Clearing Member with respect to the obligations of that Segregated Indirect Participant, whereas Partial Amendment No. 1 replaces this language to state that FICC may only use that portion of Segregated Customer Margin to secure the Transactions of that Segregated Indirect Participant recorded in the corresponding Segregated Indirect Participants Account and satisfy payment and delivery obligations owing to FICC (including liquidating or otherwise using such Segregated Customer Margin to obtain relevant cash or securities) in connection with a default in respect of such Transactions. Additionally, Partial Amendment No 1. clarifies language in that portion of Rule 4 regarding FICC's prohibition on using Segregated Customer Margin from one Segregated Indirect Participant's Transactions to secure or settle another Segregated Indirect Participant's Transaction by deleting reference to the term "settle" and replacing with satisfying payment or delivery obligations in connection with another Segregated Indirect Participant's Transaction.

Second, as originally proposed, the Advance Notice requires FICC to hold all Segregated Customer Margin in an account at a bank within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation or at the Federal Reserve Bank of New York, which account shall be segregated from any other account of the Corporation and used exclusively to hold Segregated Customer Margin.<sup>13</sup> Additionally, the Advance Notice requires Segregated Customer Margin to be subject to a written notice of the bank or Federal Reserve

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<sup>13</sup> *Id.*

Bank provided to and retained by the Corporation that the Segregated Customer Margin in the account is being held by the bank or Federal Reserve Bank pursuant to SEC Rule 15c3-3 and is being kept separate from any other accounts maintained by the Corporation or any other person at the bank or Federal Reserve Bank.<sup>14</sup> Partial Amendment No. 1 revises the Advance Notice to insert text that clarifies that FICC shall not only hold Segregated Customer Margin in an account of FICC at a bank within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation, but shall also hold Segregated Customer Margin in an account at a bank that is also a qualified custodian under the Investment Company Act of 1940,<sup>15</sup> as amended.<sup>16</sup> Additionally, the Advance Notice inserts text that clarifies that not only is each account holding Segregated Customer Margin being held by a bank or Federal Reserve Bank pursuant to SEC Rule 15c3-3 is being kept separate from any other accounts maintained by FICC or any other person at the bank or Federal Reserve Bank, but also requires these accounts to not be commingled with any other accounts maintained by FICC or any other persona at the bank or Federal Reserve Bank.

Third, as originally proposed, the Advance Notice requires any interest earned on Segregated Customer Margin to be paid by FICC to the Netting Member.<sup>17</sup> Partial Amendment No. 1 inserts language to clarify that any interest earned on Segregated Customer Margin consisting of cash shall be paid to the Netting Member for the benefit of, and as agent for, its Segregated Indirect Participants.

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<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>16</sup> Notice of Filing *supra* note 4.

<sup>17</sup> *Id.*

Fourth, as originally proposed, the Advance Notice would apply three requirements to each Segregated Customer Margin Requirement for a particular Segregated Indirect Participants Account: (1) A minimum of 40 percent of the Segregated Customer Margin Requirement for such Account shall be satisfied with cash and/or Eligible Clearing Fund Treasury Securities; (2) the lesser of \$5,000,000 or 10 percent of the Segregated Customer Margin Requirement for the Account must be made and maintained in cash; and (3) a minimum of the product of \$1 million and the number of Segregated Indirect Participants whose Transactions are recorded in such Segregated Indirect Participants Account must be made and maintained in cash.<sup>18</sup> Partial Amendment No. 1 would revise the Advance Notice by deleting the second requirement regarding the lesser of \$5,000,000 or 10 percent of the Segregated Customer Margin Requirement for the Account must be made and maintained in cash.

Fifth, as originally proposed, FICC had the discretion to retain some or all of the Excess Segregated Customer Margin if the Member had an outstanding payment or margin obligation to FICC with respect to the Transactions of any Segregated Indirect Participant.<sup>19</sup> Partial Amendment No. 1 would revise the Advance Notice by adding text that clarifies the FICC shall not retain the Excess Segregated Customer Margin with respect to the Transactions of a Segregated Indirect Participant when they have determined, in their sole discretion, that such outstanding payment or margin obligation is unrelated to the Transactions of that Segregated Indirect Participant.

Sixth, Partial Amendment No. 1 would make the following change to the Margin Component Schedule in the Advance Notice regarding Segregated Customer Margin

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Requirement Calculations.<sup>20</sup> As originally proposed, each Segregated Indirect Participant would be required to deposit in the Segregated Indirect Participants Account Required Fund Deposit the greater of the (i) the sum of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges; and (ii) a minimum charge of \$1 million. Partial Amendment No. 1 would revise the Advance Notice by inserting text to clarify that FICC may, in its sole discretion, adjust the minimum charge of \$1 million in the Segregated Indirect Participants Account Required Fund Deposit if FICC determines that a different minimum charge would be appropriate and consistent with achieving its backtesting coverage target and that Members would be notified of any such adjustment by an Important Notice.

Seventh, Partial Amendment No. 1 would add text to Rule 3A, Section 3, as proposed to be amended by SR-FICC-2024-005,<sup>21</sup> to state that a Sponsored Member may be a series of a limited liability company, statutory trust, or other legal entity.

Regarding the changes described in (4) above, Partial Amendment No. 1 would add language to clarify how the definition of Current Net Settlement Position relates to Sponsored GC Trades and that the definition does not refer to calculating the Net Settlement Position under Rule 11. As originally proposed, the definition stated that, if a Current Net Settlement Position recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account is not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant, including because one or more transactions recorded in the Account did not settle on its original Scheduled Settlement Date, then, for purposes of calculating the relevant Netting Member's

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<sup>20</sup> *Id.*

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



Sponsoring Member Omnibus Account Required Fund Deposit or Segregated Customer Margin Requirement for such Account, FICC shall allocate the positions in the manner specified. In Partial Amendment No. 1, the definition states if a Current Net Settlement Position recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account is not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant, including because one or more transactions (other than Sponsored GC Trades) recorded in the Account did not settle on its original Scheduled Settlement Date (such failure to settle would not occur with respect to Sponsored GC Trades), then, for purposes of calculating the relevant Netting Member's Sponsoring Member Omnibus Account Required Fund Deposit or Segregated Customer Margin Requirement for such Account and not for purposes of calculating the Net Settlement Position under Rule 11, FICC shall allocate the positions in the manner specified.<sup>22</sup>

Regarding the changes described in (5) above, Partial Amendment No. 1 makes several changes to the Advance Notice and existing rules regarding the use of the term Brokered Transactions, including changes to its definition. Specifically, Partial Amendment No. 1 would delete and add text to the definition of Brokered Transaction to clarify that a Brokered Transaction means the side of a transaction, including a Repo Transaction, that is submitted to the Corporation for Novation by an Inter-Dealer Broker Netting Member calling for the delivery of an Eligible Netting Security, or the posting of cash or an Eligible Netting Security as collateral, that such Inter-Dealer Broker Netting Member enters into with another Netting Member or a Sponsored Member or Executing Firm Customer through the Inter-Dealer Broker Netting Member's own trading platform. As initially proposed, the definition of Brokered

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<sup>22</sup> Partial Amendment No. 1 would also amend the definition of Netting Member Capital to use the defined terms Net Assets and Equity Capital.

Transaction referred only to any transaction, including a Repo Transaction, calling for the delivery of an Eligible Netting Security, or the posting of cash or an Eligible Netting Security as collateral.

Partial Amendment No. 1 also revises text proposed in SR-FICC-2024-005 regarding the treatment of Agent Clearing Transactions and deletes reference to the term Brokered Transactions, such that Brokered Transactions would not be excluded from being an Agent Clearing Transaction.

Additionally, Partial Amendment No. 1 makes the following changes to delete references to the term Brokered Transactions: (i) amends text from the Advance Notice regarding Rule 1, to remove the term Brokered Transactions from the definition of Dealer Account; (ii) revises Rule 4, Section 7 regarding loss allocation for Inter-Dealer Broker Netting Members, to replace a reference to a Segregated Repo Account, with a reference to a Broker Account, and to remove a reference to a Non-IDB Repo Broker, as the Advance Notice deletes the use of that term from the Rules; and (iii) amends existing Rule 3A Section 5 regarding Sponsored Member Trades and deletes reference to the term Brokered Transactions, such that the text now states that Sponsored Member Trades (other than Sponsored GC Trades) may be any type of transaction eligible for submission to FICC for netting with the exception of Netting Eligible Auction Purchases and GCF Repo Transactions.

Finally, Partial Amendment No. 1 makes several technical and conforming changes throughout the Advance Notice, such as renumbering section numbers to reflect the addition of new sections.

Partial Amendment No. 1 would not change the purpose of, or statutory basis for the Advance Notice. All other representations in the Advance Notice remain as stated therein and no

other changes are being made.

## II. Solicitation of Comments

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

### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-FICC-2024-802 on the subject line.

### Paper Comments:

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

All submissions should refer to File Number SR-FICC-2024-802. This file number should be included on the subject line if 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website at (<https://dtcc.com/legal/sec-rule-filings.aspx>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FICC-2024-802 and should be submitted on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(31).