

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-104485; File No. SR-FICC-2025-025)

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules

December 22, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 2025, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.³ On December 19, 2025, FICC filed Partial Amendment No. 1 to the proposed rule change to make certain changes to the narrative description of the filing and exhibits provided by FICC.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter “the proposed rule change”), from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 12, 2025, FICC filed this proposed rule change as an advance notice (SR-FICC-2025-801) with the Commission 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, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Exchange Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at www.dtcc.com/legal/sec-rule-filings.

⁴ Partial Amendment No. 1 makes clarifications and corrections to the narrative description of the proposed rule change and Exhibit 5A of the filing. Specifically, the Amendment corrects the narrative description of a proposed change to the GSD Rules to accurately reflect the change, as it appears in Exhibit 5A. The Amendment also modifies Exhibit to correct a typographical error and mismarked rule text as compared to the currently effective GSD Rules. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

FICC is proposing a rule change related to its cross-margining arrangement (the "Cross-Margining Arrangement") with the Chicago Mercantile Exchange Inc. ("CME," and collectively with FICC, the "Clearing Organizations" or "Parties"). The proposed rule change consists of (i) a proposed Third Amended and Restated Cross-Margining Agreement (the "Third A&R Agreement") between FICC and CME, which would replace the Second Amended and Restated Cross-Margining Agreement between the Parties (the "Second A&R Agreement") in its entirety and would be incorporated into the FICC Government Securities Division ("GSD") Rulebook ("GSD Rules"), and (ii) a number of related rule changes to the GSD Rules. Together, the proposed changes would extend the availability of the Cross-Margining Arrangement to positions cleared and carried for customers by a dually registered broker-dealer ("BD") and futures commission merchant ("FCM") that is a common member of FICC and CME (an "Eligible BD-FCM").⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

⁵ The Commission recently approved FICC's proposed rule change to enter into the Second Amended and Restated Cross-Margining Agreement between FICC and CME. See Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend and Restate the Cross-Margining Agreement between FICC and CME, 90 FR 22538 (May 28, 2025). The Second A&R Agreement has thus been incorporated in the GSD Rules available at www.dtcc.com/legal/rules-and-procedures. Unless otherwise specified, capitalized terms not defined herein shall have the meanings ascribed to them in the GSD Rules.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Cross-Margining Arrangement allows FICC and CME to recognize for margin purposes the offsetting risk of certain positions in futures on U.S. Treasury securities and other interest rate futures and Treasury market transactions ("Eligible Positions") maintained by a member of both Clearing Organizations (a "Joint Clearing Member") for itself or certain eligible affiliates (an "Eligible Affiliate"), or by affiliated members of CME and FICC (each, a "Cross-Margining Affiliate," and each Joint Clearing Member and each Cross-Margining Affiliate, a "Cross-Margining Participant"), at the two Clearing Organizations in circumstances when the Clearing Organizations can look to all of those positions (and all associated margin) for performance of the Joint Clearing Member's or a pair of Cross-Margining Affiliates' obligations (the "Proprietary Cross-Margining Arrangement"). In particular, the Proprietary Cross-Margining Arrangement allows the Clearing Organizations to consider the net risk of a Joint Clearing Member's and its Eligible Affiliates' Eligible Positions or a pair of Cross-Margining Affiliates' Eligible Positions at FICC and CME when setting margin requirements for such positions.⁶ Any resulting margin reductions create capital efficiencies for the Cross-Margining Participants and their Eligible Affiliates and incentivize them to maintain or carry portfolios that present lower overall risk.

FICC and CME have submitted to the Commission and the Commodity Futures Trading Commission (the "CFTC") petitions for exemptive relief from certain provisions of the Commodity Exchange Act ("CEA") and Exchange Act that would enable FICC and CME to

⁶ See Section 4 of the Second A&R Agreement, supra note 4.

make cross-margining available to customers (other than an Eligible Affiliate) of an Eligible BD-FCM (“Cross-Margining Customers”).⁷ The proposed rule changes aim to set forth a customer cross-margining arrangement that is consistent with the descriptions in the Petitions and the requirements of the Proposed Orders (the “Customer Cross-Margining Arrangement”). The Customer Cross-Margining Arrangement would allow Cross-Margining Customers to benefit from the margin reductions that are currently only available to Cross-Margining Participants and their Eligible Affiliates under the Proprietary Cross-Margining Arrangement. As a result, it would facilitate access to clearing for indirect participants, promote the maintenance of more balanced portfolios that present lower risk, and enhance liquidity in, and otherwise promote the resilience and robustness of, the Treasury market.

The Third A&R Agreement would effectuate the Customer Cross-Margining Arrangement via the following features:

- Eligibility Criteria and Participation Requirements. The Third A&R Agreement would set out the eligibility criteria for a Joint Clearing Member and its Cross-Margining Customer to participate in the Customer Cross-Margining Arrangement, as well as the requirements that would apply to such a Joint Clearing Member and its Cross-Margining Customer. These include the requirements that:
 - A Joint Clearing Member be an Eligible BD-FCM;
 - Each Cross-Margining Customer be a “futures customer” within the meaning of CFTC Regulation 1.3 and a “Sponsored Member” or “Executing Firm Customer” as defined under the GSD Rules;
 - The Joint Clearing Member enter into a participant agreement with the Clearing Organizations; and

⁷ See Letter from the Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc. to Vanessa Countryman dated as of December 11, 2025 and filed as Confidential Exhibit 3B (the “SEC Petition”) and Letter from the Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc. to Christopher J. Kirkpatrick dated as of May 14, 2025 and filed as Confidential Exhibit 3C (the “CFTC Petition”), and collective with the SEC Petition, the “Petitions”, and the proposed Commission and CFTC orders as described in the Petitions, the “Proposed Orders”).

- The Joint Clearing Member enter into an agreement with each Cross-Margining Customer containing certain terms, including that the Cross-Margining Customer agrees to subordinate its claims under the Securities Investor Protection Act of 1970 (“SIPA”) and Subchapter III of Chapter 7 of the U.S. Bankruptcy Code in relation to its cross-margined positions and associated margin (the “Subordination Agreement”).

As discussed in greater detail below, these criteria and requirements for participation are designed to ensure that each participating Cross-Margining Customer and its Joint Clearing Member satisfy certain conditions set forth in the Proposed Orders.

- Customer Cross-Margining Accounts. The Third A&R Agreement would include provisions to enable Eligible BD-FCMs to establish “Customer Cross-Margining Accounts” for purposes of recording Eligible Positions at the Clearing Organizations (such Eligible Positions in a Customer Cross-Margining Account, “Customer Positions”) and set forth a definition of “Proprietary Cross-Margining Accounts” to refer to the accounts established by Eligible BD-FCMs at the Clearing Organizations for the purposes of recording positions subject to the Proprietary Cross-Margining Arrangement (“Proprietary Positions”).
- Margin Methodology. The Third A&R Agreement would include provisions describing the methodology for calculating potential reductions to the margin requirements for Customer Positions. As discussed in greater detail below, FICC is proposing to apply the same margin reduction methodology to Customer Positions as it applies to Proprietary Positions, with margin reductions calculated on a customer-by-customer basis for each Cross-Margining Customer.
- Default Management. The Third A&R Agreement would include provisions to address how the Clearing Organizations would manage a default of a Cross-Margining Participant (a “Defaulting Member”) carrying positions for Cross-Margining Customers. Under the Third A&R Agreement, the Clearing Organizations would follow substantially the same approach to handling Customer Positions carried by a Defaulting Member as applies to Proprietary Positions. However, Customer Positions and Proprietary Positions and associated margin would form part of separate “Liquidation Portfolios” and therefore would not be netted against one another in calculating Net Gain or Net Loss (or VM Net Gain or VM Net Loss) under the Cross-Margining Agreement. By virtue of these changes, the Clearing Organizations would not be able to apply Customer Positions or associated margin to the obligations arising under a Defaulting Member’s Proprietary Positions. The Third A&R Agreement would also include edits clarifying that the Clearing Organizations may “port” Customer Positions to another clearing member in a default scenario.

In addition to replacing the Second A&R Agreement with the Third A&R Agreement, FICC proposes the following changes to the GSD Rules to effectuate the Customer Cross-Margining Arrangement:

- Account Structure. FICC proposes to create a new Account type, the “Cross-Margining Customer Account,” for purposes of recording FICC-cleared Customer Positions.
- Margin Methodology and Treatment. As discussed in greater detail below, under the proposed changes, FICC would collect and hold Cross-Margining Customer Margin in a substantially similar manner to how it collects and holds “Segregated Customer Margin” (as defined under the GSD Rules), with certain adjustments to ensure consistency with the requirements of the Proposed Orders and the general requirements and conventions applicable to futures. Consistent with how it treats Segregated Customer Margin, FICC would credit all Cross-Margining Customer Margin collected from an Eligible BD-FCM to a securities account on its books and records in the name of the Eligible BD-FCM for the benefit of its customers (a “Cross-Margining Customer Margin Custody Account”). FICC would also agree to treat all assets credited to the Cross-Margining Customer Margin Custody Account as “financial assets” credited to a “securities account” for which FICC is the “securities intermediary,” as such terms are used in Article 8 of the Uniform Commercial Code as in effect in the State of New York (“NYUCC”). This treatment is designed to ensure that Cross-Margining Customer Margin does not form part of FICC’s bankruptcy estate and is not exposed to the claims of FICC’s general creditors, and is instead reserved for Eligible BD-FCMs claiming on behalf of their Cross-Margining Customers. Consistent with how it holds Segregated Customer Margin, FICC would hold Cross-Margining Customer Margin in a segregated account at a bank insured by the Federal Deposit Insurance Corporation and at the Federal Reserve Bank of New York (the “FRBNY”). In accordance with the Proposed Orders, any such account (other than one at the FRBNY) would need to be subject to a written notice consistent with the Proposed Orders.
- Conforming and Clarifying Changes. FICC proposes to make a number of clarifying and conforming edits to the GSD Rules, including (i) adding references to Cross-Margining Customer, Cross-Margining Customer Margin, Cross-Margining Customer Account, and Cross-Margining Customer Margin Requirements to relevant provisions that refer to Indirect Participants, initial margin collected by FICC, position accounts maintained by FICC, and FICC’s initial margin requirements; (ii) removing the existing prohibition under Section 10(e) of Rule 3A on Sponsored Members from participating in the Cross-Margining Arrangement; (iii) expanding Rule 43, which sets forth certain terms related to the Proprietary Cross-Margining Arrangement, to encompass the Customer Cross-Margining Arrangement; and (iv) removing references to the Market Professionals cross-margining arrangement, which is no longer offered by FICC.

The Third A&R Agreement would also include a number of clarifying and conforming edits, including to make clear that, with respect to both the Proprietary Cross-Margining Arrangement and Customer Cross-Margining Arrangement, FICC and CME would only manage a default of a Joint Clearing Member independently of one another if a joint management or buy-out by one of the Clearing Organizations were not legally permissible or possible or would result in substantially greater losses to each Clearing Organization.

In addition, the Second A&R Agreement is supplemented by a Service Level Agreement (“SLA”) between FICC and CME. FICC and CME will make edits to the SLA as necessary to ensure conformance with the proposed Third A&R Agreement.⁸

(i) The Proposed Third A&R Agreement

As noted above, FICC proposes to enter into the Third A&R Agreement with CME. The proposed changes to the Second A&R Agreement contained in the Third A&R Agreement are designed to make cross-margining available to Cross-Margining Customers consistently with the framework set out in the Proposed Orders. FICC believes that such amendments would promote the maintenance of more balanced portfolios that present lower risk and facilitate the access of indirect participants to central clearing in accordance with Rule 17ad-22 under the Exchange Act.

A. Eligibility Criteria and Participation Requirements

a. Eligibility Criteria for Joint Clearing Members

The Third A&R Agreement would set forth the eligibility criteria for a Cross-Margining Participant to participate in the Customer Cross-Margining Arrangement. To facilitate compliance with the conditions and limitations of the Proposed Orders, Section 2(a) of the Third

⁸ The SLA is provided as confidential Exhibit 3 to this proposed rule change.

A&R Agreement would provide that, to become a Cross-Margining Participant for the Customer Cross-Margining Arrangement and establish a Customer Cross-Margining Account, a Clearing Member would need to be a Joint Clearing Member that is both a BD registered with the Commission and an FCM registered with the CFTC (i.e., an Eligible BD-FCM).⁹ Section 3(a) of the Third A&R Agreement would further require that the Eligible BD-FCM hold the Cross-Margining Customer's Customer Positions at FICC and associated money, securities and property together with such customer's Customer Positions at CME and the associated "futures customer funds," as defined in CFTC Regulation 1.3, held by the Eligible BD-FCM, in a "futures account," as defined in CFTC Regulation 1.3, "in accordance with any conditions set forth in the regulatory approvals of [the Third A&R Agreement] issued by [the Commission] and CFTC and applicable law."¹⁰

In addition, the Eligible BD-FCM would be required to enter into a participant agreement with FICC and CME in the form of Appendix C to the Third A&R Agreement (the "Customer Cross-Margining Clearing Member Agreement"), which is further described below.¹¹ The definition of "Clearing Member Agreement" would correspondingly be amended to refer, with respect to the Proprietary Cross-Margining Arrangement, to the existing participant agreement currently in Appendix A or Appendix B of the Second A&R Agreement (the "Proprietary

⁹ See Section 2(a) of the proposed Third A&R Agreement.

¹⁰ See Section 3(a) of the proposed Third A&R Agreement.

¹¹ See *infra* Part 3(a)(i)(G) "Customer Cross-Margining Clearing Member Agreement;" Section 2(d) of the proposed Third A&R Agreement; Appendix C "Fixed Income Clearing Corporation / Chicago Mercantile Exchange Inc. Cross-Margining Participant Agreement (Common Member) [Customer Cross-Margining Program]" of the proposed Third A&R Agreement.

Clearing Member Agreement”), as applicable, and with respect to the Customer Cross-Margining Arrangement, to the Customer Cross-Margining Clearing Member Agreement.¹²

As a conforming change, Sections 2(a) and (c) and the first sentence of Section 2(a) of the Third A&R Agreement would also be amended to provide that the pre-existing language therein applies to a Cross-Margining Participant for the Proprietary Cross-Margining Arrangement.¹³

b. Definition of Customer and Non-Customer

The Customer Cross-Margining Arrangement would only be available for the positions carried by an Eligible BD-FCM for “Customers.” To ensure compliance with the limitations under the Proposed Orders of the types of persons eligible to be Cross-Margining Customers, the Third A&R Agreement would define “Customer” as an indirect clearing participant that meets the definition of futures customer set out in CFTC Regulation 1.3 and is a “Sponsored Member” or “Executing Firm Customer” as defined under the GSD Rules.¹⁴ CFTC Regulation 1.3 defines “futures customer” to mean any person who uses an FCM as an agent in connection with trading in any futures contract, but excludes persons whose futures positions are held in a “proprietary account.”¹⁵ Any Customer wishing to participate in the Customer Cross-Margining Arrangement

¹² See Section 1 of the proposed Third A&R Agreement.

¹³ See Sections 2(a), (c) of the proposed Third A&R Agreement.

¹⁴ See Section 1 of the proposed Third A&R Agreement.

¹⁵ See CFTC Regulation 1.3, definition of “futures customer” (defining “futures customer” as “any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or any option on such contract; Provided, however, an owner or holder of a proprietary account as defined in this section shall not be deemed to be a futures customer within the meaning of sections 4d(a) and 4d(b) of the [CEA], the regulations in this chapter that implement sections 4d and 4f of the [CEA] and [CFTC Regulation] § 1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a futures customer within the meaning of the [CEA] and [CFTC Regulations] §§ 1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the [CEA].”); CFTC Regulation 1.3, definition of “proprietary account” (defining “proprietary

would need to enter into an agreement with its Eligible BD-FCM that includes certain terms described in greater detail below (the “Customer Agreement”).¹⁶ Because affiliates of the Eligible BD-FCM would generally have their CME-cleared futures positions held in a proprietary account of the Eligible BD-FCM, such affiliates would not constitute “futures customers” under CFTC Regulation 1.3. However, Eligible Affiliates would continue to be able to access cross-margining under the Proprietary Cross-Margining Arrangement so long as they constitute “Non-Customers.”¹⁷ The Third A&R Agreement would revise the definition of “Non-Customer” to mean any affiliate of the Eligible BD-FCM or any person that is an officer, director, partner or other related person of the Eligible BD-FCM (i) that is not a “customer” of the Eligible BD-FCM within the meaning of SIPA, Subchapter III of Chapter VII of the U.S. Bankruptcy Code, or Exchange Act Rule 15c3-3, and (ii) whose CME-cleared positions are carried in a proprietary account of the Eligible BD-FCM.¹⁸

c. Relationship Between the Clearing Organizations and Cross-Margining Customers

Because a Cross-Margining Customer’s participation in the Customer Cross-Margining Arrangement would be intermediated through the Eligible BD-FCM, Section 2(a) of the Third

account” as “futures, commodity option, or swap trading account carried on the books and records of” a person or entity for such person or entity itself or certain affiliates, as well as such account “of which ten percent or more is owned by. . . or an aggregate of ten percent or more of which is owned by more than one” such persons, entities, or affiliates).

¹⁶ See *infra* Part 3(a)(i)(H) “Customer Agreement.”

¹⁷ See Section 3(b) of the proposed Third A&R Agreement (allowing the transactions, positions and margin that are maintained by an “Eligible Affiliate” to be maintained in a Cross-Margining Account provided that certain conditions, which are not proposed to be modified in the Third A&R Agreement, are satisfied); Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend and Restate the Cross-Margining Agreement between FICC and CME, 90 FR 31043 (July 11, 2025).

¹⁸ See Section 1 of the proposed Third A&R Agreement.

A&R Agreement would specify that the Clearing Organizations would have no obligation to deal directly with a Cross-Margining Customer, and that a Cross-Margining Customer would have no right to assert a claim against a Clearing Organization with respect to, nor would a Clearing Organization be liable to a Cross-Margining Customer for, any obligations of a Clearing Organization in connection with the Cross-Margining Customer's participation in the Customer Cross-Margining Arrangement pursuant to the Third A&R Agreement.¹⁹ These terms are consistent with those applicable to Eligible Firm Customers under the GSD Rules, as well as those applicable to customers under CME's rules.²⁰

B. Customer Cross-Margining Account

To effectuate the Customer Cross-Margining Arrangement, the Third A&R Agreement would include changes to enable an Eligible BD-FCM to establish a "Customer Cross-Margining Account" separate from any of its "Proprietary Cross-Margining Accounts."

A Customer Cross-Margining Account would be defined as, with respect to FICC, an Indirect Participants Account (as defined in the GSD Rules) at FICC maintained for Cross-Margining Customers and identified in FICC's books and records as being subject to the Third A&R Agreement (which, as discussed below, would be the "Cross-Margining Customer Account" under the GSD Rules) and with respect to CME, an account carried on the books and records of CME for an Eligible BD-FCM, which contains only the positions, transactions, and margin of that Eligible BD-FCM's Cross-Margining Customers.²¹ A Proprietary Cross-Margining Account would be defined as, with respect to FICC, a Proprietary Account at FICC

¹⁹ See Section 2(a) of the proposed Third A&R Agreement.

²⁰ See GSD Rules, Rule 2, Section 4; Rule 8, Section 6(c)-(e); CME Rulebook, Rule 803.

²¹ See *id.*

(as defined in the GSD Rules) or an Indirect Participants Account at FICC that is maintained for Non-Customers and identified in FICC’s books and records as being subject to the Third A&R Agreement, and, with respect to CME, an account carried on the books and records of CME for an Eligible BD-FCM, which contains only the positions, transactions, and margin of the “proprietary accounts” (as defined in CFTC Regulation 1.3) of the Eligible BD-FCM.²²

The Third A&R Agreement would also define “Cross-Margining Account” to mean either a Proprietary Cross-Margining Account or a Customer Cross-Margining Account.²³ An Eligible BD-FCM would be required to designate each Cross-Margining Account it opens at the Clearing Organizations as either a Customer Cross-Margining Account or a Proprietary Cross-Margining Account.²⁴

C. Margin Methodology

The Third A&R Agreement would also specify how potential margin reductions would be calculated for Customer Positions carried in a Customer Cross-Margining Account. As with Proprietary Positions, each Clearing Organization would calculate the margin savings that would result from viewing the “Combined Portfolio” of CME-cleared Customer Positions and FICC-cleared Customer Positions as a single portfolio rather than as separate standalone portfolios. The Clearing Organizations would then compare the respective margin reduction percentages, and each would then reduce the margin required for the Combined Portfolio by the lower percentage (subject to a cap of 80%). For Customer Positions, this process would occur on a Cross-Margining Customer-by-Cross-Margining Customer basis. In other words, each Cross-Margining

²² See id.

²³ See Section 1 of the proposed Third A&R Agreement.

²⁴ See Section 2(a) of the proposed Third A&R Agreement.

Customer's Customer Positions would form part of a separate Combined Portfolio. This customer-by-customer approach is consistent both with how futures contracts are required to be margined under the rules of the CFTC, as well as how FICC margins Segregated Indirect Participant positions.²⁵

To implement this margin reduction methodology, the Third A&R Agreement would redefine "Combined Portfolio" to mean, in the case of a Pair of Cross-Margining Accounts consisting of Proprietary Cross-Margining Accounts, all Eligible Positions in such Cross-Margining Accounts, and in the case of a Pair of Cross-Margining Accounts consisting of Customer Cross-Margining Accounts, all Eligible Positions of a single Customer in such Cross-Margining Accounts.²⁶ The term "Pair of Cross-Margining Accounts," in turn, would be defined to mean a Customer Cross-Margining Account at CME and a Customer Cross-Margining Account at FICC or a Proprietary Cross-Margining Account at CME and a Proprietary Cross-Margining Account at FICC.²⁷ The Third A&R Agreement would clarify that an Eligible BD-FCM would only be able to establish one Pair of Cross-Margining Accounts for each type of Indirect Participants Account offered at FICC under the GSD Rules and that the Customer Positions of the same Cross-Margining Customer may not be maintained in multiple Pairs of Cross-Margining Accounts of the same Eligible BD-FCM.²⁸ This limitation is aimed at ensuring that, as is the case with futures contracts, an Eligible BD-FCM would not be permitted to

²⁵ 17 C.F.R. § 39.13(g)(8)(i); GSD Rules, Rule 4, Section 1b(b).

²⁶ See Section 1 of the proposed Third A&R Agreement.

²⁷ See id.

²⁸ See Section 2(d) of the proposed Third A&R Agreement.

establish a separate account at the Clearing Organization for a particular customer or group of customers.

In addition to these changes, the Third A&R Agreement would include conforming changes in Section 4 to make clear that the margin calculations are performed on the Combined Portfolio and to provide that Sections 4(c) and 4(e), concerning the ability of the Clearing Organizations to require margin equal to or in excess of the Standalone Margin Requirement, would apply in relation to each Cross-Margining Account.²⁹ The Third A&R Agreement would also make conforming changes to a number of defined terms by:

- Revising the definition of “Cross-Margin Requirement” to refer to the joint amount of Margin required by FICC and CME in connection with a Combined Portfolio as provided for in Section 4(a) of the Third A&R Agreement;
- Revising definitions of “Margin Reduction” and “Variation Margin” to clarify that these terms apply separately with respect to Proprietary Cross-Margining Accounts and Customer Cross-Margining Accounts;
- Further revising the “Variation Margin” definition to reflect that amounts may be owed by or to a Cross-Margining Customer in relation to positions recorded in a Customer Cross-Margining Account;
- Revising the definition of “Stand-Alone Margin Requirement” to provide that it is determined with respect to a particular Cross-Margining Account, and that with regard to a Stand-Alone Margin Requirement of FICC, such requirement is calculated without regard to any netting across positions of multiple Executing Firm Customers in the same Agent Clearing Member Omnibus Account (as such terms are defined in the GSD Rules);
- Revising the definition of “Margin” to include Cross-Margining Customer Margin securing the obligations of a Cross-Margining Customer and to contemplate a Joint Clearing Member having multiple Cross-Margining Accounts; and
- Removing the definition of “Cross-Margin Positions,” which would no longer be used.³⁰

²⁹ See Sections 4(a), (c), and (e) of the proposed Third A&R Agreement.

³⁰ See Section 1 of the proposed Third A&R Agreement.

Section 6(b) of the Third A&R Agreement would be revised to require FICC and CME to notify each other in the event a material problem arises with respect to a Cross-Margining Customer in the same manner as they are currently required to do with respect to Cross-Margining Participants.³¹

D. Default Management

The Third A&R Agreement would include certain adjustments to the default management provisions to describe how the Clearing Organizations would address a default of an Eligible BD-FCM that is carrying Customer Positions for Cross-Margining Customers, elaborate on the steps the Clearing Organizations may take in a joint liquidation, and clarify when the Clearing Organizations may manage the default of a Cross-Margining Participant independently of one another.

The Third A&R Agreement would subject Customer Positions to substantially the same default management process as Proprietary Positions. In particular, under Section 7(b) of the Third A&R Agreement, the Clearing Organizations would attempt in good faith to jointly transfer, liquidate, or close-out the Proprietary Positions or Customer Positions, which may include a joint liquidating auction so that hedged positions can be closed-out simultaneously or, in the case of a transfer of Customer Positions, so that the positions of each Cross-Margining Customer in a Combined Portfolio can, if feasible, be transferred to the same clearing firm. Section 7(b) would further provide that if one Clearing Organization determines that such joint action is not feasible or advisable for any Liquidation Portfolio, then either Clearing Organization could buy-out the Proprietary Positions or Customer Positions in such Liquidation Portfolio at the other Clearing Organization in accordance with the existing terms of the Third

³¹ See Section 6(b) of the proposed Third A&R Agreement.

A&R agreement related to buy-outs. Lastly, Section 7(b) would provide that if one Clearing Organization determines that neither the joint transfer, liquidation, or close-out option nor the buy-out option is legally permissible or possible as to a particular Liquidation Portfolio, or if such methods would result in substantially greater losses to each Clearing Organization than in the case of a separate liquidation by each Clearing Organization, the Clearing Organizations could conduct separate liquidations in accordance with the existing terms related to such separate liquidations.³² The Clearing Organizations do not foresee particular circumstances that could lead to separate liquidations being applicable. To the contrary, the Clearing Organizations believe it is highly unlikely that they would engage in separate liquidations. However, the Clearing Organizations believe it is prudent to have a separate liquidation option so that there is a clear methodology in the very unlikely event that some unforeseen circumstance causes it not to be possible or legally permissible to conduct a joint liquidation or buy-out or for such methods to result in substantially greater costs.

The Third A&R Agreement would also include provisions designed to ensure that Customer Positions and associated margin are not used by either Clearing Organization to satisfy obligations arising from Proprietary Positions. The principal mechanism to achieve this would be a new concept of a “Liquidation Portfolio,” which would be defined as, with respect to a Defaulting Member, all such Defaulting Member’s Proprietary Cross-Margining Account(s) or all such Defaulting Member’s Customer Cross-Margining Account(s).³³ The definitions of “Collateral on Hand,” “Net Gain,” “Net Loss,” “Cross-Margin VM Gain,” “Cross-Margin VM Loss,” “Other VM Gain,” “Liquidation Cost,” and “Share of the Cross-Margining Requirement,”

³² See Section 7(b) of the proposed Third A&R Agreement.

³³ See Section 1 of the proposed Third A&R Agreement.

in turn, would be revised so that they are separately determined by reference to each Liquidation Portfolio, rather than to a Defaulting Member or Cross-Margining Account.³⁴ The Third A&R Agreement would also provide for the concept of a “Related GSD Account,” which would be defined as, with respect to a Liquidation Portfolio of a Defaulting Member consisting of Proprietary Cross-Margining Accounts, the “Proprietary Accounts” (as defined in the GSD Rules) of the Defaulting Member at FICC, and with respect to a Liquidation Portfolio of a Defaulting Member consisting of Customer Cross-Margining Accounts, the Indirect Participant Account(s) of the Defaulting Member at FICC.³⁵

In addition, the Third A&R Agreement would revise Sections 7(b) through (g) to clarify that the provisions thereof would apply separately to each Liquidation Portfolio. These changes include replacing certain references to “Cross-Margining Account” with “Liquidation Portfolio,”³⁶ additional language specifying that provisions apply with respect to each Liquidation Portfolio,³⁷ and deletions of language providing for liquidation actions or calculations to be performed with respect to a Defaulting Member.³⁸ In addition, as mentioned above, the definition of “Combined Portfolio” would be revised to mean, in the case of a Pair of Cross-Margining Accounts consisting of Proprietary Cross-Margining Accounts, all Eligible Positions in such Cross-Margining Accounts, and in the case of a Pair of Cross-Margining

³⁴ Id.

³⁵ Id.

³⁶ See Sections 7(c), (d), and (e) of the proposed Third A&R Agreement.

³⁷ See Sections 7(b), (c), (e), (f), and (g) of the proposed Third A&R Agreement.

³⁸ See Section 7(c) of the proposed Third A&R Agreement.

Accounts consisting of Customer Cross-Margining Accounts, all Eligible Positions of a single Customer in such Cross-Margining Accounts.³⁹

By virtue of these changes, upon a default of a Joint Clearing Member, the Proprietary Positions and associated margin of the Joint Clearing Member would be closed-out and netted into a single Net Gain or Net Loss, and the Customer Positions and associated margin would be separately close-out and netted into a separate Net Gain or Net Loss. As a result of these separate calculations, Customer Positions and associated margin could not be used to satisfy obligations arising under any Proprietary Positions. Similarly, variation margin gains in respect of Customer Positions would not be available to address losses on Proprietary Positions. However, the definition of “Other VM Gains” would be modified to make clear that, if there were Cross-Margin VM Gains in relation to Proprietary Positions at a time when the Clearing Organization with those Cross-Margin VM Gains also had losses on account of Customer Positions, the VM Gains may first be applied to satisfy the losses on the Customer Positions before being remitted to the other Clearing Organization.⁴⁰

Although the Clearing Organizations would generally close-out and net the Liquidation Portfolios of a Defaulting Member separately, Section 7(a) of the Third A&R Agreement would provide that the decision as to whether to commence the liquidation process with respect to a Joint Clearing Member would be made based on the Joint Clearing Member itself, rather than a particular Liquidation Portfolio. In accordance with this framework, Section 7(a) of the Third A&R Agreement would provide that if one Clearing Organization decides not to take default action against a Defaulting Member following a Default Event (the “Non-Liquidating CO”), the

³⁹ See Section 1 of the proposed Third A&R Agreement.

⁴⁰ See id.

Non-Liquidating CO shall immediately require the Defaulting Member to pay the Non-Liquidating CO in immediately available funds the sum of (x) its Margin Reduction at the other Clearing Organization for all Combined Portfolios of the Defaulting Member, and (y) its Margin Reduction at the Non-Liquidating CO for all Combined Portfolios of the Defaulting Member, within one hour of demand.⁴¹

E. Conforming Changes

The Third A&R Agreement would also include a number of conforming changes in light of the addition of the Customer Cross-Margining Arrangement. These would include new recitals which describe the purpose of the Third A&R Agreement as to establish the Customer Cross-Margining Arrangement, introduce defined terms for the “Proprietary Cross-Margining Arrangement” and “Customer Cross-Margining Arrangement,” and define the prior versions of the agreement as the “Original Agreement,” the “First A&R Agreement,” and the “Second A&R Agreement.” They would also include non-substantive revisions and movements of defined terms as shown in Exhibit 5 to conform to the addition of the Customer Cross-Margining Arrangement and the provisions described above.⁴²

The Third A&R Agreement would also revise Section 3(b), which sets out certain requirements applicable to positions of Eligible Affiliates, to provide that it does not apply to Proprietary Positions of a Joint Clearing Member or to Customer Positions.⁴³

⁴¹ See Section 7(a) of the proposed Third A&R Agreement.

⁴² See Section 1 of the proposed Third A&R Agreement; see, e.g., Section 3(c) of the proposed Third A&R Agreement (updating references to “Cross-Margining Account(s)” to refer to “Proprietary Cross-Margining Account(s)”; Section 7(a) of the proposed Third A&R Agreement (updating a reference to “Eligible Affiliates” to refer to “Eligible Affiliates or Customers”).

⁴³ See Section 3(b) of the proposed Third A&R Agreement.

In addition, the Third A&R Agreement would revise Section 7(i) to clarify that the requirement for a Defaulting Member to reimburse a Clearing Organization in the event that the Clearing Organization is obligated to make a guaranty payment to the other Clearing Organization in respect of an obligation of such Defaulting Member applies in respect of the obligations of any Cross-Margining Customer.⁴⁴

F. Clarifying Edits

The Third A&R Agreement would also include a number of clarifying edits not specifically related to the Customer Cross-Margining Arrangement. Specifically, Section 2(f) of the Third A&R Agreement would specify that FICC or CME may terminate the participation of a particular Cross-Margining Participant with respect to some or all Cross-Margining Accounts of the Cross-Margining Participant upon two business days' prior written notice to the other Clearing Organization, provided that no such termination would be effective with respect to any reimbursement obligation or guaranty with respect to such Cross-Margining Participant that was incurred prior to such termination, or with respect to Section 7 of the Third A&R Agreement until the Stand-Alone Margin Requirement with respect to each Cross-Margining Account subject to such termination has been fully satisfied.⁴⁵

The Third A&R Agreement would also include a new Section 5 to make clear that, as is currently the case, the collateral acceptable to satisfy the Cross-Margin Requirement must meet the respective eligibility requirements of the Clearing Organization to which the collateral is posted.⁴⁶

⁴⁴ See Section 7(i) of the proposed Third A&R Agreement.

⁴⁵ See Section 2(f) of the proposed Third A&R Agreement.

⁴⁶ See Recitals, Section 1, and Section 5 of the proposed Third A&R Agreement.

In addition, the titles of the Proprietary Cross-Margining Agreements in Appendix A and Appendix B of the Third A&R Agreement would be amended to specify that they are for use in connection with the Proprietary Cross-Margining Arrangement.⁴⁷

G. Customer Cross-Margining Clearing Member Agreement

As described above, an Eligible BD-FCM would be required to enter into the Customer Cross-Margining Clearing Member Agreement in order to participate in the Customer Cross-Margining Agreement. The Customer Cross-Margining Clearing Member Agreement would be set forth in Appendix C to the Third A&R Agreement.⁴⁸

The Customer Cross-Margining Clearing Member Agreement would be modeled on the Proprietary Clearing Member Agreement in Appendix A of the Second A&R Agreement (the “Existing Joint Clearing Member Proprietary Clearing Member Agreement”), with changes designed to facilitate compliance with the conditions in the Proposed Orders and to clarify the rights and obligations of the Clearing Organizations, the Eligible BD-FCM, and the Cross-Margining Customers.⁴⁹

The first three paragraphs of the Customer Cross-Margining Clearing Member Agreement would be substantially identical to those of the Existing Joint Clearing Member Proprietary Clearing Member Agreement, except that the first paragraph would note that the

⁴⁷ See Appendix A “Fixed Income Clearing Corporation / Chicago Mercantile Exchange Inc. Cross-Margining Participant Agreement (Common Member) [Proprietary Cross-Margining Program]” of the proposed Third A&R Agreement; Appendix B “Fixed Income Clearing Corporation / Chicago Mercantile Exchange Inc. Cross-Margining Participant Agreement (Common Member) [Proprietary Cross-Margining Program]” of the proposed Third A&R Agreement.

⁴⁸ See Appendix C “Fixed Income Clearing Corporation / Chicago Mercantile Exchange Inc. Cross-Margining Participant Agreement (Common Member) [Customer Cross-Margining Program]” of the proposed Third A&R Agreement.

⁴⁹ See *id.*

Eligible BD-FCM is electing to become a Cross-Margining Participant for purposes of the Customer Cross-Margining Arrangement, rather than the Cross-Margining Arrangement generally, and the third paragraph (concerning the Eligible BD-FCM's payment obligations) would reference the payment obligations arising in respect of Customer Cross-Margining Accounts.

The Customer Cross-Margining Clearing Member Agreement would provide that the Eligible BD-FCM makes application to the Clearing Organizations to establish a Customer Cross-Margining Account at CME and one or more Customer Cross-Margining Accounts at FICC in the name of the Eligible BD-FCM, and clarify that each such account would be in addition to any Proprietary Cross-Margining Account of the Eligible BD-FCM established pursuant to the Third A&R Agreement. The Customer Cross-Margining Clearing Member Agreement would provide that each Customer Cross-Margining Account shall be limited to transactions and positions carried by the Eligible BD-FCM for Cross-Margining Customers who have signed a Customer Agreement. The Eligible BD-FCM would be required to agree that it shall not commence clearing transactions through or carrying positions in a Customer Cross-Margining Account for any Cross-Margining Customer until such Cross-Margining Customer has executed a Customer Agreement.

The Eligible BD-FCM would be required under the Customer Cross-Margining Clearing Member Agreement to indemnify and hold harmless the Clearing Organizations, their respective directors, officers and employees and each person, if any, who controls either of the Clearing Organizations against any claims, losses, liabilities and expenses, including, without limitation, reasonable legal fees and expenses and amounts paid or payable in settlement of any action, proceeding or investigation arising from any claim by any party resulting from the carrying of

positions in a Customer Cross-Margining Account that belong to any person other than a Cross-Margining Customer for whom a Customer Agreement is in effect.

The Customer Cross-Margining Clearing Member Agreement would provide that the Eligible BD-FCM, as agent for each of its Cross-Margining Customers, (i) unconditionally promises immediate payment of any payment or reimbursement obligations to a Clearing Organization arising under the Third A&R Agreement or the GSD Rules or rules of CME in respect of a Cross-Margining Customer's positions in a Customer Cross-Margining Account, and (ii) agrees that each Cross-Margining Customer is bound by the GSD Rules and the rules of CME as applicable to them and by the provisions of the Customer Cross-Margining Clearing Member Agreement and the Third A&R Agreement. The Eligible BD-FCM would also be required to represent and warrant to the Clearing Organizations that it has full power and authority to bind each of its Cross-Margining Customers to the terms in the foregoing sentence.

The Customer Cross-Margining Clearing Member Agreement would also provide for the Eligible BD-FCM to pledge, as security for its and its Cross-Margining Customers' present and future payment and reimbursement obligations to FICC and CME arising from its Customer Cross-Margining Accounts or otherwise under the Customer Cross-Margining Clearing Member Agreement on behalf of itself and each Cross-Margining Customer, and grant to each Clearing Organization a first priority continuing security interest in, lien on and right of set-off against all of the positions, margin deposits or other property held by or subject to the control of or owing from either Clearing Organization including any and all Net Gains in respect of the Eligible BD-FCM's Customer Cross-Margining Accounts and the proceeds in respect thereof.

The Eligible BD-FCM would also provide for the Eligible BD-FCM to agree that (i) the rights of each Clearing Organization set forth in the preceding paragraph are in addition to any

other rights arising out of the NYUCC or other statute, common law, or governmental regulation, or under their respective rules, (ii) the Eligible BD-FCM will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action necessary or desirable and reasonably requested by FICC or CME to create, preserve, perfect or validate the security interest or lien granted in this paragraph, to enable such Clearing Organization to exercise or enforce its rights, (iii) the Eligible BD-FCM will promptly give notice to the Clearing Organizations of, and defend against, any suit, action, proceeding or lien that involves or could adversely affect the security interest and lien granted by the Eligible BD-FCM, and (iv) the Eligible BD-FCM authorizes FICC to comply with CME's entitlement orders with respect to any Cross-Margining Customer Margin pursuant to the Third A&R Agreement without further consent of the Eligible BD-FCM or Cross-Margining Customer for whom such Cross-Margining Customer Margin is held. Clauses (i) through (iii) broadly align with the Existing Joint Clearing Member Proprietary Clearing Member Agreement, while clause (iv) would be designed to facilitate the perfection of CME's security interest in the Cross-Margining Customer Margin and help ensure that Cross-Margining Customer Margin is treated as "customer property" under Part 190 of the CFTC's regulations, as described in the Petitions.

The Customer Cross-Margining Clearing Member Agreement would contain the same provision regarding the disclosure of Clearing Data as in the Existing Joint Clearing Member Proprietary Clearing Member Agreement. Consistently with the Existing Joint Clearing Member Proprietary Clearing Member Agreement, it would also provide that neither FICC nor CME guarantees to the Eligible BD-FCM that the calculation of the margin reduction for a Combined Portfolio pursuant to the Third A&R Agreement will yield any, or the highest possible, margin reduction for the Combined Portfolio. The Customer Cross-Margining Clearing Member

Agreement would also, as in the Existing Joint Clearing Member Proprietary Clearing Member Agreement, provide that, without limiting any provision of the GSD Rules, the rules of CME or any other agreement between the Eligible BD-FCM and FICC or CME, any transfer by the Eligible BD-FCM or any Cross-Margining Customer of any rights it may have in the Net Gain (or any component thereof) shall be null and void and, in any event, subject to the prior payment in full of all payment and reimbursement obligations under the Third A&R Agreement. The Customer Cross-Margining Clearing Member Agreement would contain the same representations as the Existing Joint Clearing Member Proprietary Clearing Member Agreement, except those concerning the proprietary nature of the positions and Eligible Affiliates.

The Customer Cross-Margining Clearing Member Agreement would specify that the Eligible BD-FCM may terminate the Customer Cross-Margining Clearing Member Agreement upon two business day's written notice to FICC and CME, and that such termination shall be effective upon written acknowledgement by both FICC and CME provided that (i) all positions in the Customer Cross-Margining Accounts have been closed-out or transferred to other accounts in accordance with the GSD Rules or the rules of CME, and (ii) all Stand-alone Margin Requirement in respect of any such transferred positions and all obligations of the Eligible BD-FCM to the Clearing Organizations in respect of the Customer Cross-Margining Accounts have been fully satisfied.

The Customer Cross-Margining Clearing Member Agreement would also specify that either Clearing Organization may terminate the Eligible BD-FCM's participation with respect to any Customer Cross-Margining Account (defined as an "Affected Customer Cross-Margining Account") of the Eligible BD-FCM at any time upon written notice to the other Clearing Organization pursuant to the Third A&R Agreement and to the Eligible BD-FCM. In connection

with such termination, the Clearing Organizations would be permitted to require the Eligible BD-FCM to close-out or transfer all positions in the Affected Customer Cross-Margining Accounts in accordance with the GSD Rules or the rules of CME, and the Customer Cross-Margining Clearing Member Agreement would thereupon terminate with respect to Affected Customer Cross-Margining Accounts, provided that the Stand-alone Margin Requirement in respect of the transferred positions and all obligations of the Eligible BD-FCM to the Clearing Organizations in respect of the Affected Customer Cross-Margining Accounts have been fully satisfied.

The Customer Cross-Margining Clearing Member Agreement would also include the same governing law, choice-of-jurisdiction, and execution in counterparts provisions as the Existing Joint Clearing Member Proprietary Clearing Member Agreement. The Customer Cross-Margining Clearing Member Agreement would also provide that it would become effective upon the later of execution of the Customer Cross-Margining Clearing Member Agreement, or on the receipt of all necessary regulatory approvals from the Commission and the CFTC.

H. Customer Agreement

The Customer Agreement would include the terms of the Subordination Agreement and acknowledgements corresponding to the disclosures required by the Proposed Orders.⁵⁰ In particular, the Customer Agreement would require the Cross-Margining Customer to acknowledge and agree that:

- it agrees to the terms of the Subordination Agreement, under which the Cross-Margining Customer agrees that all of its Customer Positions and Customer Property (including any margin at FICC) (i) will not receive customer treatment under the Exchange Act or SIPA or be treated as “customer property” as defined in 11 U.S.C. § 741 in a liquidation of Clearing Member, and (ii) will be subject to any applicable protections under Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code and rules and regulations thereunder including Part 190 of the CFTC’s Regulations (“Part

⁵⁰ See Appendix C, Exhibit I “Customer Required Terms Annex or Agreement” of the proposed Third A&R Agreement.

190”), and that the Cross-Margining Customer’s claims to “customer property” as defined in SIPA or 11 U.S.C. § 741 against the Eligible BD-FCM with respect to its Customer Positions and Customer Property (including any margin held at FICC) will be subordinated to the claims of all other customers, as the term “customer” is defined in 11 U.S.C. § 741 or SIPA;⁵¹

- all money, securities and property deposited with the Eligible BD-FCM by the Cross-Margining Customer to margin, guarantee or secure Customer Positions (the “Customer Property”) will be held in a “futures account” as defined in CFTC Regulation 1.3 and subject to CEA Section 4d(a) and (b);⁵²
- its Customer Positions and associated margin may be commingled with the positions and property of other customers of the Eligible BD-FCM and may be used by the Eligible BD-FCM to purchase, margin, secure, settle, or otherwise carry positions on behalf of the Cross-Margining Customer or other futures customers of the Eligible BD-FCM;⁵³
- property held in connection with Customer Positions will be treated in a manner consistent with the CFTC Order and that such property held on the Cross-Margining Customer’s behalf by the Eligible BD-FCM will be customer property received by an FCM to be accounted for, treated and dealt with by such FCM in a manner consistent with Section 4d of the CEA;⁵⁴
- in the event a Clearing Organization suspends or ceases to act for Clearing Member, it shall be within the sole discretion of the Clearing Organizations to determine whether to transfer, liquidate, or settle Customer Positions in the relevant Customer Cross-Margining Account;⁵⁵
- its participation in the Customer Cross-Margining Arrangement is subject to the terms of (i) the Third A&R Agreement, (ii) the Customer Cross-Margining Clearing Member Agreement, and (iii) the GSD Rules and the rules of CME;⁵⁶ and
- if CME determines at any time that any Eligible Positions of the Cross-Margining Customer cleared through the Customer Cross-Margining Account at CME are non-risk reducing, CME may either restrict the Cross-Margining Customer from adding

⁵¹ See id., Section 2(b).

⁵² See id., Section 2(a).

⁵³ See id., Section 2(c).

⁵⁴ See id.

⁵⁵ See id., Section 2(d).

⁵⁶ See id., Section 3.

positions or require the Cross-Margining Customer to move or liquidate Eligible Positions in the Customer Cross-Margining Account at CME;⁵⁷

The Customer Agreement would also require the Cross-Margining Customer to pledge, as security for the Cross-Margining Customer's present and future payment and delivery obligations in respect of its Customer Positions (including, without limitation, any obligation of the Cross-Margining Customer to reimburse the Eligible BD-FCM as a result of the Eligible BD-FCM's performance of such obligations), and grant to the Eligible BD-FCM a continuing security interest in, lien on and right of set-off against its right, entitlement, and interest in all of positions in each Customer Cross-Margining Account, all margin posted by the Cross-Margining Customer in connection with such positions, and the proceeds in respect thereof.⁵⁸ The Customer Agreement would also require the Cross-Margining Customer to agree that the Eligible BD-FCM may enter into agreements with the Clearing Organizations on the Cross-Margining Customer's behalf as set forth in the Customer Cross-Margining Clearing Member Agreement.⁵⁹

(ii) Other Proposed Changes to the GSD Rules

A. Overview

FICC is proposing to make a number of changes to the GSD Rules to effectuate the Customer Cross-Margining Arrangement.

First, FICC proposes to create a new position Account type, the "Cross-Margining Customer Account," in which Customer Positions would be recorded. The Cross-Margining Customer Account would constitute an "Indirect Participants Account." A Netting Member that

⁵⁷ See *id.*

⁵⁸ See *id.*, Section 4.

⁵⁹ See *id.*, Section 5.

is an Eligible BD-FCM and approved participant in the Customer Cross-Margining Arrangement would be permitted to designate an Indirect Participants Account (other than a Segregated Indirect Participants Account) as a Cross-Margining Customer Account.⁶⁰ Any such designation would constitute a representation to FICC by the Netting Member that the Netting Member has complied with all regulatory requirements applicable to it in connection with its participation in the Customer Cross-Margining Arrangement, including the conditions in the Proposed Orders, and this representation would be deemed repeated each time the Netting Member deposits Cross-Margining Customer Margin.

Second, FICC proposes to adopt rule changes to set forth how FICC would calculate, collect, and hold margin for positions recorded in a Cross-Margining Customer Account. As noted above, FICC proposes to collect and hold Cross-Margining Customer Margin pursuant to substantially similar provisions as apply to Segregated Customer Margin, with certain modifications to satisfy the requirements of the Proposed Orders and align with the treatment of futures margin. Specifically:

- Consistent with Segregated Customer Margin and in accordance with the Proposed Orders, FICC would credit all Cross-Margining Customer Margin deposited by a Netting Member to a “securities account,” as defined in the NYUCC,⁶¹ on its books and records maintained for that Netting Member for the benefit of its Cross-Margining Customers (i.e., a Cross-Margining Customer Margin Custody Account). The GSD Rules would further provide that all cash and securities credited to the Cross-Margining Customer Margin Custody Account shall be treated as “financial assets” within the meaning of Article 8 of the NYUCC, New York shall be the “securities intermediary’s jurisdiction” for purposes of the NYUCC and New York law shall govern all issues specified in Article 2(1) of the Hague Securities

⁶⁰ As mentioned above, the Third A&R Agreement would provide that a Netting Member may only designate one Sponsoring Member Omnibus Account and one Agent Clearing Member Omnibus Account as a Cross-Margining Customer Account. See Section 2(d) of the proposed Third A&R Agreement.

⁶¹ NYUCC § 8-501(a).

Convention.⁶² Such provisions are designed to ensure the Cross-Margining Customer Margin would not form part of FICC's estate in the event FICC became subject to insolvency proceedings. They would also facilitate the ability of CME to perfect its security interest in the Cross-Margining Customer Margin. Such perfection would serve to protect CME, and in turn both the Cross-Margining Customers and the non-participating futures customers in the event of a Cross-Margining Participant default. It would also aim to ensure that the Cross-Margining Customer Margin is treated as "customer property" under Part 190 in the event of an Eligible BD-FCM's insolvency, by helping to establish that the Cross-Margining Customer Margin is held to secure the futures positions of customers.

- In accordance with the Proposed Orders, FICC would hold Cross-Margining Customer Margin in (i) an account of FICC at a bank insured by the Federal Deposit Insurance Corporation ("FDIC") that is segregated from any other account of FICC and used exclusively to hold Cross-Margining Customer Margin, and (ii) an account at the FRBNY that is segregated from any other account of FICC and used exclusively to hold Segregated Customer Margin and Cross-Margining Customer Margin. The GSD Rules would provide that any such account (other than one at the FRBNY) would need to be subject to a written notice consistent with the Proposed Orders.
- The same requirements applicable to Segregated Customer Margin with respect to the form and composition of eligible collateral, the minimum amounts of cash and Eligible Clearing Fund Treasury Securities, substitution and withdrawal, and treatment of excess margin would be applicable to Cross-Margining Customer Margin, except that (i) a Netting Member's rights or FICC's obligation with respect to any excess Cross-Margining Customer Margin would be subject to the Third A&R Agreement and the Customer Cross-Margining Clearing Member Agreement, and (ii) FICC would be permitted to retain the excess Cross-Margining Customer Margin deposited by a Netting Member with respect to a Cross-Margining Customer when the Netting Member has any outstanding payment or margin obligation arising from any Customer Positions, including those of another Cross-Margining Customer.

With regard to calculation, FICC proposes that, as with Segregated Customer Margin and in accordance with the requirements of the Proposed Orders, FICC would calculate the margin requirement in respect of each Cross-Margining Customer Account (the "Cross-Margining Customer Margin Requirement") on a gross (i.e., Cross-Margining Customer-by-Cross-

⁶² NYUCC § 8-102(9); NYUCC § 8-110(e); The Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649 (entered into force Apr. 1, 2017).

Margining Customer) basis, as though each Cross-Margining Customer were a separate Netting Member. However, such margin requirement would be subject to any margin reduction pursuant to the Third A&R Agreement (which, as discussed above, would be determined using the same margin reduction methodology under Proprietary Cross-Margining Arrangement).

Third, FICC proposes to provide that Cross-Margining Customer Margin would be pledged to FICC to secure all obligations of the Netting Member and its Cross-Margining Customers arising under Customer Positions.⁶³

Fourth, FICC proposes to remove the existing Section 10(e) of Rule 3A, which currently prohibits Sponsored Members from participating in the Cross-Margining Arrangement.

Fifth, FICC proposes to make conforming changes to Rule 43, which sets out the terms related to Cross-Margining Arrangements, so that the Rule encompasses the Customer Cross-Margining Arrangement. In particular, FICC proposes to specify in Rule 43 that a Netting Member that is an Eligible BD-FCM may become a Cross-Margining Participant in connection with the Customer Cross-Margining Arrangement with the consent of FICC and CME. An Eligible BD-FCM would become such a Cross-Margining Participant and be permitted to establish a Cross-Margining Customer Account upon acceptance by FICC and CME of an executed Customer Cross-Margining Clearing Member Agreement. FICC further proposes to make clear that if FICC becomes obligated to make a payment to CME pursuant to the cross-guaranty under the Third A&R Agreement in relation to the obligations of a Cross-Margining Customer, both the Cross-Margining Customer and the relevant Eligible BD-FCM would be

⁶³ We note that in this regard, unlike Segregated Customer Margin, FICC would be able to use all Cross-Margining Customer Margin to satisfy the obligations arising from all Customer Positions recorded in the same Cross-margining Customer Account, even if such Customer Positions are not the particular ones of the individual Cross-Margining Customer that posted such margin. This treatment would be consistent with how futures customer margin is generally treated.

responsible for the reimbursement obligation that is owed to FICC as a result. If FICC receives a payment from CME pursuant to the Third A&R Agreement in connection with the Customer Cross-Margining Arrangement, FICC would not be permitted to apply such payment to any obligation other than the obligations of Cross-Margining Customers (whether or not arising in connection with any Eligible Positions).

Lastly, FICC proposes to remove provisions relating to “Market Professional” and “Market Professional Agreement for Cross-Margining” from the GSD Rules. Those provisions were adopted in connection with a “market professional” cross-margining program between FICC and New York Portfolio Clearing, LLC.⁶⁴ That program—which permitted certain “market professional” customers of Netting Members to participate in cross-margining—is no longer active as New York Portfolio Clearing, LLC has since become defunct.

B. Summary of Proposed Rule Changes

To effectuate the proposed changes described above, FICC proposes to make the following amendments to its Rules.

New Defined Terms. FICC would revise Rule 1 to add the following new defined terms: (1) “Cross-Margining Customer,” (2) “Cross-Margining Customer Account,” (3) “Cross-Margining Customer Margin Custody Account,” (4) “Cross-Margining Customer Margin,” (5) “Cross-Margining Customer Margin Requirement,” and (6) “Customer Cross-Margining Arrangement.”

The term “Cross-Margining Customer” would mean a Sponsored Member or Executing Firm Customer whose Transactions are recorded in a Cross-Margining Customer Account.

⁶⁴ See Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Expand the One-Pot Cross-Margining Program With New York Portfolio Clearing, LLC to Certain “Market Professionals,” 77 FR 30032 (May 21, 2012).

The term “Cross-Margining Customer Account” would mean an Indirect Participants Account maintained by FICC for a Sponsoring Member or an Agent Clearing Member that has been designated pursuant to Rule 2B for purposes of recording Transactions of Cross-Margining Customers.

The term “Cross-Margining Customer Margin Custody Account” would mean a securities account within the meaning of the NYUCC maintained by FICC, in its capacity as securities intermediary as such term is used in the NYUCC, for an Agent Clearing Member or Sponsoring Member for the benefit of such Member’s Cross-Margining Customers.

The term “Cross-Margining Customer Margin” would mean all securities and funds deposited by a Sponsoring Member or an Agent Clearing Member with FICC to satisfy its Cross-Margining Customer Margin Requirement.

The term “Cross-Margining Customer Margin Requirement” would mean the amount of cash or Eligible Clearing Fund Securities that an Agent Clearing Member or Sponsoring Member is required to deposit with FICC to support the obligations arising from Transactions recorded in its Cross-Margining Customer Accounts. Specifically, a Netting Member’s Cross-Margining Customer Margin Requirement would be the amount of the item listed in Section 2(a)(vii) of Rule 4 (as described below). This definition would specify that references to the Cross-Margining Customer Margin Requirement “for” or “with respect to” a particular Cross-Margining Customer Account or Cross-Margining Customer (or similar language) would mean the portion of a Netting Member’s Cross-Margining Customer Margin Requirement arising from such Account or Cross-Margining Customer.

The term “Customer Cross-Margining Arrangement” would mean a Cross-Margining Arrangement pursuant to which a Cross-Margining Participant, at the discretion of FICC and in

accordance with the provisions of Rule 43, may elect to have any of its Cross-Margining Customers' margin requirement in respect of Eligible Positions at FICC and such Cross-Margining Customer's margin requirements in respect of Eligible Positions at a clearing organization for a board of trade designated as a contract market under Section 5 of the CEA that has entered into a Cross-Margining Agreement with FICC (an "FCO") calculated by taking into consideration the net risk of such Eligible Positions at each of the clearing organizations.

Revisions to Defined Terms. In addition, FICC would make conforming revisions to the following defined terms in Rule 1: (1) "Cross-Margining Affiliate," (2) "Cross-Margining Agreement" (3) "Current Net Settlement Positions," (4) "Indirect Participants Account," and (5) "Type of Account" and "Type."

FICC proposes to amend the definition to "Cross-Margining Affiliate" to remove existing prong (ii), which relates to the "market professional" cross-margining program.

FICC proposes to amend the definition to "Cross-Margining Agreement" to encompass the Customer Cross-Margining Arrangement by specifying that the applicable Cross-Margining Participant may have any of its Cross-Margining Customers' margin requirement in respect of Eligible Positions at FICC and such Cross-Margining Customer's margin requirements in respect of Eligible Positions at a relevant FCO calculated by taking into consideration the net risk of such Eligible Positions at each of the clearing organizations. FICC also proposes to remove the last sentence of this definition, which relates to the "market professional" cross-margining program.

FICC proposes to make conforming edits to the definition of "Current Net Settlement Positions" to add references to "Cross-Margining Customer," "Cross-Margining Customer Account," and "Cross-Margining Customer Margin Requirement" after each reference to

“Segregated Indirect Participant,” “Segregated Indirect Participants Account,” and “Segregated Customer Margin Requirement,” respectively.

FICC proposes to amend the definitions of “Indirect Participants Account,” “Type of Account” and “Type” to include a Cross-Margining Customer Account.

Removal of defined terms. FICC proposes to remove the following defined terms from Rule 1: (1) “Market Professional” and (2) “Market Professional Agreement for Cross-Margining.”

Establishment of Cross-Margining Customer Accounts. FICC proposes to amend Section 3 of Rule 2B to provide that a Cross-Margining Customer Account may not be designated as a Segregated Indirect Participants Account.

In addition, FICC proposes to add a new Section 3a of Rule 2B to provide that (i) a Netting Member that is an Eligible BD-FCM and has been approved to become a Cross-Margining Participant in a Customer Cross-Margining Arrangement pursuant to a Cross-Margining Agreement may designate any of its Indirect Participants Accounts (other than a Segregated Indirect Participants Account) as a Cross-Margining Customer Account; (ii) any such designation of an Account shall constitute a representation to FICC by the Netting Member that the Netting Member has complied with all regulatory requirements applicable to it in connection with its participation in the Customer Cross-Margining Arrangement, including the conditions in the Proposed Orders; and (iii) the Netting Member shall be deemed to repeat this representation each time it deposits Cross-Margining Customer Margin.

Treatment of Cross-Margining Customer Margin. FICC proposes to make the following changes in relation to FICC’s calculation, collection, and holding of Cross-Margining Customer Margin:

FICC proposes to amend Section 1a of Rule 4 to make clear that FICC's account at the FRBNY that is currently used to hold Segregated Customer Margin would also hold Cross-Margining Customer Margin.

FICC proposes to renumber current Section 1b of Rule 4 to Section 1c and add a new Section 1b. The new Section 1b would provide that:

- Each Netting Member shall deposit Cross-Margining Customer Margin with FICC in an amount equal to its Cross-Margining Customer Margin Requirement, which requirement shall be determined in accordance with Rule 4 and the Margin Component Schedule. The timing of the satisfaction of the Cross-Margining Customer Margin Requirement shall be determined in accordance with the provisions of Section 9 of Rule 4.
- FICC shall establish and maintain on its books and records a Cross-Margining Customer Margin Custody Account to which all Cross-Margining Customer Margin deposited with FICC shall be credited. The Cross-Margining Customer Margin credited to a Cross-Margining Customer Margin Custody Account shall be used exclusively to secure the present and future payment and reimbursement obligations of the Netting Member and its Cross-Margining Customers in relation to Eligible Positions of the Netting Member's Cross-Margining Customers at FICC and CME.
- All assets credited to each Cross-Margining Customer Margin Custody Account shall be treated as "financial assets" within the meaning of Article 8 of the NYUCC. New York is the "securities intermediary's jurisdiction" for purposes of the NYUCC and New York law shall govern all issues specified in Article 2(1) of the Hague Securities Convention.
- FICC shall hold all Cross-Margining Customer Margin in an account of FICC at an FDIC-insured bank within the meaning of the Exchange Act that is a qualified custodian under the Investment Company Act of 1940, as amended, or at the FRBNY. Any account at an FDIC-insured bank shall be segregated from any other account of FICC and shall be used exclusively to hold Cross-Margining Customer Margin, and shall be subject to a written notice of the bank provided to and retained by FICC consistent with the Proposed Orders. The account at the FRBNY shall be segregated from any other account of FICC and shall be used exclusively to hold Cross-Margining Customer Margin and Segregated Customer Margin (the account at the FRBNY would not be subject to a written notice).

FICC proposes to amend current Section 1b (to be renumbered as Section 1c) of Rule 4 to (i) add references to "Cross-Margining Customer Accounts" after references to "Segregated Indirect Participants Accounts" in current Section 1b(a), and (ii) add a new sentence at the end of current Section 1b(b) to provide that FICC would calculate the Cross-Margining Customer

Margin Requirement for a Cross-Margining Customer Account as the sum of the requirements applicable to each Cross-Margining Customer whose Transactions are recorded in such Account, as though each such Cross-Margining Customer were a separate Netting Member with a single Margin Portfolio consisting of such Transactions, in accordance with the Margin Component Schedule.

FICC proposes to amend Section 2 of Rule 4 by (i) adding references to “Cross-Margining Customer Margin Requirement” after references to “Segregated Customer Margin Requirement” in the title of Section 2 and Section 2(a), and (ii) adding a new clause (vii) of Section 2(a) to specify that the Cross-Margining Customer Margin Requirement would be an amount calculated with respect to the Netting Member’s Cross-Margining Customer Accounts.

FICC proposes to add a new Section 2c of Rule 4 entitled “Cross-Margining Customer Margin Requirement” to provide that (i) each Netting Member shall deposit any Cross-Margining Customer Margin with FICC by the Required Fund Deposit Deadline through a separate Deposit ID established by the Netting Member for each Cross-Margining Customer Account, and (ii) FICC shall report the Cross-Margining Customer Margin Requirements to each Netting Member twice daily in a Report which shall specify the Cross-Margining Customer Margin Requirement for each Cross-Margining Customer Account.

FICC proposes to add a new Section 3(d) of Rule 4 and insert it before the last sentence of Section 3. The new Section 3(d) would provide that each Cross-Margining Customer Margin Requirement for a particular Cross-Margining Customer Account would be subject to the requirements that (i) a minimum of 40 percent of the Cross-Margining Customer Margin Requirement for such Account shall be satisfied with cash and/or Eligible Clearing Fund Treasury Securities, and (ii) a minimum of the product of \$1 million and the number of Cross-

Margining Customers whose Transactions are recorded in such Cross-Margining Account must be made and maintained in cash. In addition, FICC proposes to amend the last sentence of Section 3 by adding a reference to “Cross-Margining Customer Margin Requirement” after the reference to “Segregated Indirect Participants Requirement.”

FICC proposes to amend Section 3a of Rule 4 to add a reference to “Cross-Margining Customers” after the reference to “Segregated Indirect Participants.” FICC also proposes to amend Section 3b of Rule 4 to add a reference to “Cross-Margining Customer Margin Custody Account” after the reference to “Segregated Customer Margin Custody Account.”

FICC proposes to amend Sections 3a, 3b, and 9 of Rule 4 to add references to “Cross-Margining Customer Margin,” after each reference to “Segregated Customer Margin.” FICC also proposes to amend Sections 3b and 9 of Rule 4 to add references to “Cross-Margining Customer Margin Requirement,” after each reference to “Segregated Customer Margin Requirement.”

FICC proposes to add a new Section 4(c) of Rule 4 to provide that (i) as security for any and all obligations and liabilities of a Netting Member and any of its Cross-Margining Customers to FICC arising out of or in connection with any Cross-Margining Customer Accounts of such Netting Member or Transactions recorded therein, each such Netting Member on behalf of itself and its Cross-Margining Customers grants to FICC a first priority perfected security interest in its right, title and interest in and to all Cross-Margining Customer Margin, each Cross-Margining Customer Margin Custody Account, and all distributions thereon and proceeds thereof, and (ii) FICC shall be entitled to exercise the rights of a pledgee under common law and a secured party under Articles 8 and 9 of the NYUCC with respect to such assets.

FICC proposes to amend Section 5 of Rule 4 by (i) adding a reference to “Cross-Margining Customer Margin” after the reference to “Segregated Customer Margin” in the title of

Section 5, and (ii) adding a new paragraph at the end of Section 5 to provide that FICC shall only use Cross-Margining Customer Margin deposited by a Netting Member to (A) secure the Transactions of Cross-Margining Customers of such Netting Member recorded in any Cross-Margining Customer Account and satisfy payment and delivery obligations owing to FICC (including liquidating or otherwise using such Cross-Margining Customer Margin to obtain relevant cash or securities) in connection with a default in respect of such Transactions; and (B) for investment in U.S. Treasury securities with a maturity of one year or less.

FICC proposes to amend Section 10 of Rule 4 by (i) adding a reference to “Cross-Margining Customer Margin” after the reference to “Segregated Customer Margin” in the title of Section 10, (ii) amending the first paragraph of Section 10 to require FICC to separately determine whether the amount of Cross-Margining Customer Margin supporting a Cross-Margining Customer’s Transactions is in excess of the Cross-Margining Customer Margin Requirement for such Cross-Margining Customer (“Excess Cross-Margining Customer Margin”), and (iii) adding a new Section 10(c) to provide that upon a Member’s request, and in accordance with such procedures as FICC may set forth from time to time, the Corporation shall return to the Member its Excess Cross-Margining Customer Margin, subject to the minimum amount of cash or Eligible Clearing Fund Securities required to be maintained pursuant to the GSD Rules (valued at their collateral value on the day of such withdrawal) and the terms of the Third A&R Agreement and Customer Cross-Margining Clearing Member Agreement, as the Member requests, provided that, subject to the Third A&R Agreement and the Customer Cross-Margining Clearing Member Agreement, and except to the extent required by applicable law or authorized by the Commission, FICC shall not retain Excess Cross-Margining Customer Margin due to any obligations of the Member unrelated to a Cross-Margining Customer Account of such

Member. Section 10(c) of Rule 4 would further provide that FICC may, at its discretion, retain some or all of the Excess Cross-Margining Customer Margin if the Member has an outstanding payment or margin obligation to the Corporation with respect to the Transactions of any Cross-Margining Customer.

FICC proposes to amend the Margin Component Schedule to set out how Cross-Margining Customer Margin Requirements would be determined. Specifically, FICC proposes to insert a new paragraph at the end of Section 1 to provide that (i) on each Business Day, each Netting Member for which FICC maintains a Cross-Margining Customer Account shall be required to deposit with FICC Cross-Margining Customer Margin equal to the sum of all Cross-Margining Customer Margin Requirements for all such Accounts, (ii) each Cross-Margining Customer Margin Requirement shall equal the sum of the amounts calculated pursuant to Section 3a of the Margin Component Schedule for each Cross-Margining Customer whose Transactions are recorded in the relevant Cross-Margining Customer Account, and (iii) each such calculation shall be performed twice daily or on a more frequent basis if FICC deems it appropriate pursuant to the Margin Component Schedule and subject to the provisions of Rule 4. Further, FICC proposes to add a new Section 3a to the Margin Component Schedule titled “Cross-Margining Customer Margin Requirement Calculations” to set out how specifically such requirement would be calculated, which would be substantially identical to how Segregated Customer Margin Requirement is calculated as set out in Section 3 of the Margin Component Schedule. Finally, FICC proposes to amend Section 5 to add references to “Cross-Margining Customer,” “Cross-Margining Customer Account,” and “Cross-Margining Customer Margin Requirement” after each reference to “Segregated Indirect Participant,” “Segregated Indirect Participants Account,” and “Segregated Customer Margin Requirement,” respectively.

Description of the Customer Cross-Margining Arrangement. FICC proposes to amend Rule 43 to explicitly describe the Customer Cross-Margining Arrangement as follows:

FICC proposes to add a new Section 2(c) of Rule 43 to provide that (i) a Netting Member that is an Eligible BD-FCM may become a Cross-Margining Participant in connection with the Customer Cross-Margining Arrangement with the consent of FICC and CME, and (ii) an Eligible BD-FCM that would become such a Cross-Margining Participant shall be permitted to establish a Cross-Margining Customer Account upon acceptance by FICC and CME of an executed Customer Cross-Margining Clearing Member Agreement.

FICC proposes to amend Section 3 of Rule 43 to provide that, if FICC becomes obligated to make a payment to CME pursuant to the cross-guaranty under the Third A&R Agreement in relation to the obligations of a Cross-Margining Participant, its Cross-Margining Affiliate, or its Cross-Margining Customer, the Cross-Margining Participant (and, if FICC becomes obligated to make such a payment in respect of the obligations of a Cross-Margining Customer, the Cross-Margining Customer) shall thereupon immediately be obligated, whether or not FICC has then made payment to CME, to pay to FICC the amount of the reimbursement obligation that is owed to FICC as a result.

FICC proposes to add a new sentence at the end of Section 5 of Rule 43 to provide that, if FICC receives a payment from CME pursuant to the Third A&R Agreement in connection with the Customer Cross-Margining Arrangement, FICC would not be permitted to apply such payment to any obligation other than the obligations of Cross-Margining Customers (whether or not arising in connection with any Eligible Positions).

Conforming and clarifying Changes. FICC proposes to make the following conforming or clarifying changes:

FICC proposes to amend Section 4(b)(i) of Rule 2A to make clear that an applicant to become a Netting Member must have sufficient financial ability to make anticipated required deposits to not only Clearing Fund and Segregated Customer Margin, but also any Cross-Margining Customer Margin.

FICC proposes to remove Section 10(e) of Rule 3A to remove the current prohibition of Sponsored Members from participating in any Cross-Margining Arrangements, and accordingly renumber current Section 10(f) of Rule 3A to Section 10(e).

FICC proposes to remove (i) the language in parentheses in the first sentence of Section 1 of Rule 13, (ii) the second sentence in Section 2(b) of Rule 22A, and (iii) the portions of Sections 2(a) and 2(b) of Rule 43 that are crossed out in Exhibit 5, because those provisions relate to the “market professional” cross-margining program, which is no longer active and would not be used if the Customer Cross-Margining Arrangement becomes available.

(iii) Implementation of the Proposal

The proposed Third A&R Agreement would not become effective and replace the Second A&R Agreement until the latest of (i) the date on which all necessary regulatory approvals of the proposed Third A&R Agreement have been received by FICC and CME and (ii) a date agreed by FICC and CME.⁶⁵ Not later than two (2) business days following the date of the Commission’s approval of the proposed rule changes, FICC would add a legend to the proposed Third A&R Agreement to state that the specified changes are approved but not yet operative. The legend would also include the file number of the approved proposed rule change, and would state that once operative, the legend would automatically be removed from the proposed Third A&R

⁶⁵ See Section 18(j) of the proposed Third A&R Agreement.

Agreement. FICC would issue a notice to members providing notice of the specific operative date at least two weeks prior to such date.

2. Statutory Basis

FICC believes that the proposed rule change is consistent with Section 17A of the Exchange Act⁶⁶ and the rules thereunder applicable to FICC.

Section 17A(b)(3)(F) of the Exchange Act, requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁶⁷ FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in its custody or control for which it is responsible for a number of reasons.

First, the proposed Third A&R Agreement and the proposed changes to the GSD Rules would provide for funds and securities posted by Cross-Margining Participants in respect of Customer Positions, i.e., Cross-Margining Customer Margin, to be credited to the Cross-Margining Customer Margin Custody Account and treated as financial assets within the meaning of the NYUCC. These changes would have the effect of making FICC the “securities intermediary” in respect of such Cross-Margining Customer Margin and the Eligible BD-FCM, on behalf of its Cross-Margining Customers, the “entitlement holder” under the NYUCC.⁶⁸ By virtue of these designations, the Cross-Margining Customer Margin held by FICC would be unavailable to satisfy the claims of FICC’s general creditors and would be reserved for the Eligible BD-FCM (on behalf of its Cross-Margining Customers), including in an FICC

⁶⁶ 15 U.S.C. 78q-1.

⁶⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁶⁸ NYUCC § 8-102(7) (“‘Entitlement holder’ means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary...”).

insolvency.⁶⁹ Furthermore, the proposed changes would prohibit FICC from using Cross-Margining Customer Margin, except to satisfy the obligations arising from Customer Positions of the Cross-Margining Participant that posted such margin. Accordingly, it would reduce the possibility of such margin being exposed to loss on account of not only FICC's insolvency, but also the default of the Cross-Margining Participant or another Netting Member. The proposed changes would thus assure the safeguarding of the Cross-Margining Customer Margin.

Second, the proposed changes adopting and implementing the Customer Cross-Margining Arrangement would reduce the likelihood of FICC, each Netting Member, and indirect participants incurring a loss on account of a default by aligning each Cross-Margining Customer's margin requirements with the risk of such Cross-Margining Customer's Eligible Positions. Such alignment would serve to incentivize a Cross-Margining Customer to maintain portfolios that present lower risk because such lower risk would generally lead to lower margin requirements. Lower risk portfolios, in turn, would serve to reduce the risk of such Cross-Margining Customer's default and the Cross-Margining Participant's and FICC's exposure thereto. Accordingly, by allowing a Cross-Margining Customer to engage in cross-margining activity, the proposed changes would serve to promote the risk-reducing effects of cross-margining that are currently only available to Cross-Margining Participants and their Eligible Affiliates. They would thus serve to enhance FICC's ability to safeguard the securities and funds in its control or for which it is responsible.

⁶⁹ See UCC § 8-503(a) ("To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8-511"). The exceptions to the foregoing rule in Section 8-511 only apply in the event that the securities intermediary has pledged the financial assets underlying the security entitlements to creditors, which would not be relevant here. See UCC § 8-511(b)-(c).

The lower margin requirements which would result from these changes would also incentivize Cross-Margining Customers to post initial margin in respect of their Eligible Positions, rather than rely on their Eligible BD-FCM to do so. Currently, FICC understands that it is common practice for Sponsoring Members and Agent Clearing Members to use their own assets to satisfy the FICC initial margin requirements associated with FICC-cleared positions that Eligible BD-FCMs carry for their customers.⁷⁰ This increases the costs to Sponsoring Members and Agent Clearing Members of offering customer clearing services and limits their capacity to do so. As a result of the proposed changes adopting and implementing the Customer Cross-Margining Arrangement, a Cross-Margining Customer's Eligible Positions at FICC would be eligible for a margin reduction if the Cross-Margining Customer posts the initial margin instead of requiring its Eligible BD-FCM to do so. It would thus incentivize Cross-Margining Customers to post such margin, which would likely result in an associated cost reduction from their Eligible BD-FCMs. Such posting would, in turn, serve to reduce Eligible BD-FCMs' risk to their Cross-Margining Customers and thereby promote the safeguarding of securities and funds in FICC's control or for which it is responsible.

The proposed changes adopting and implementing the Customer Cross-Margining Arrangement would also promote the safeguarding of funds and securities for which FICC is responsible by ensuring that Customer Positions and Cross-Margining Customer Margin benefit from the customer protection regime applicable to futures contracts and associated margin. They would do this by requiring that Customer Positions and Cross-Margining Customer Margin be carried by the Cross-Margining Participant in a futures account and by satisfying the conditions

⁷⁰ See Treasury Market Practices Group, Consultative White Paper: Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices (Feb. 26, 2025).

necessary under the Proposed Orders to allow the Cross-Margining Participant to do that. Because the Customer Positions and Cross-Margining Customer Margin would be carried in a futures account, an Eligible BD-FCM would generally be required to safeguard Customer Positions and Cross-Margining Customer Positions to a substantially similar extent as is required for futures and associated margin. Furthermore, by requiring that Customer Positions and Cross-Margining Customer Margin be carried in a futures account and satisfying the other conditions of the Proposed Orders, the proposed changes would help to ensure that Customer Positions and Cross-Margining Customer Margin constitute “customer property” for purposes of Part 190 and that Cross-Margining Customer claims therefor constitute the claims of “customers” on account of their “net equity” within the meaning of Part 190.⁷¹ Part 190 provides that, in the insolvency of an FCM, “customer property” shall be distributed to “customers” ratably on the basis of their “net equity” claims, in priority to all other claims (except administrative claims related to the administration of customer property).⁷² Accordingly, by ensuring that Customer Positions and Cross-Margining Customer Margin constitute “customer property” and that Cross-Margining Customer claims therefore constitute “customer” “net equity” claims, the proposed changes would aim to provide Cross-Margining Customers with the same priority right to receive distributions on their allowed claims with respect to the Customer Positions and Cross-Margining Customer Margin as other public customers of the insolvent Eligible BD-FCM have in respect of their futures positions and associated margin. Accordingly, it would promote the safeguarding of Cross-Margining Customer Margin and the cash and securities distributed in respect of Customer Positions from the insolvency of the Cross-Margining Participant.

⁷¹ See 17 C.F.R. §§ 190.01; 190.08; 190.09(a)(1)(i)(A).

⁷² See 17 C.F.R. § 190.09.

In addition, the proposed changes would promote the safeguarding of funds and securities for which FICC is responsible by ensuring that customers of an Eligible BD-FCM that do not participate in cross-margining under the Customer Cross-Margining Arrangement (as well as Cross-Margining Customers in relation to positions and margin not subject to the arrangement) remain entitled to the full suite of protections under Section 15(c)(3) of the Exchange Act, Rule 15c3-3 under the Exchange Act, and SIPA. The proposed changes are designed to ensure this protection by requiring that Cross-Margining Customers enter into a Customer Agreement that includes the terms of the Subordination Agreement. Pursuant to such terms, each Cross-Margining Customer would agree that its claims to “customer property” as defined in SIPA or 11 U.S.C. § 741 against the Cross-Margining Participant with respect to its Customer Positions at FICC and associated Cross-Margining Customer Margin will be subordinated to the claims of all other customers.⁷³ Such subordination is designed to ensure that the claims of Cross-Margining Customers in relation to Customer Positions or Cross-Margining Customer Margin do not dilute the claims of non-participating customers of Eligible BD-FCMs in relation to Segregated Customer Margin (as well as any claims Cross-Margining Customers in relation to Segregated Customer Margin) in a SIPA proceeding. Accordingly, the Cross-Margining Arrangement would help to ensure that such Segregated Customer Margin remains safeguarded to the same extent as would be the case in the absence of the Customer Cross-Margining Arrangement.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national

⁷³ See Appendix C, Exhibit I “[Customer Required Terms Annex or Agreement]” of the proposed Third A&R Agreement.

system for the prompt and accurate clearance and settlement of securities transactions.⁷⁴ For the reasons set out below, FICC believes that the proposed rule change would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The proposed changes would extend the existing cross-margining arrangement to Customer Positions, which is currently only available for clearing members (and certain Eligible Affiliates) at FICC and CME with respect to proprietary positions. By doing so, the proposed changes would serve to eliminate impediments to Cross-Margining Customers submitting transactions for central clearing. Specifically, the proposed rule change would serve to align the margin requirements for Customer Positions with the risk the positions present. As a result, they would eliminate impediments to clearing that can arise from unduly high margin requirements. Furthermore, by aligning margin requirements with risk, the proposed changes would incentivize market participants to submit more Treasury securities transactions eligible to be cross-margined to be cleared at FICC. The maintenance of such incentives to submit transactions for clearance and settlement at FICC would promote the diversity and scope of market participants able to utilize FICC's multilateral netting, trade guaranty and centralized default management services. Therefore, the proposed rule change would also serve to promote prompt and accurate clearance and settlement of securities transactions.⁷⁵ Accordingly, FICC believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.⁷⁶

⁷⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁵ Id.

⁷⁶ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17ad-22(e)(6)(i) under the Exchange Act requires that a covered clearing agency establish a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and, if the covered clearing agency provides central counterparty services for U.S. Treasury securities, calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities.⁷⁷ FICC believes that the proposed changes would ensure the satisfaction of these requirements.

First, the Customer Cross-Margining Arrangement would produce margin levels commensurate with the risks and particular attributes of the Eligible Positions. This is because FICC would calculate initial margin requirements for Customer Positions using the same methodology as under the Proprietary Cross-Margining Arrangement, with each Cross-Margining Customer treated effectively as an independent Netting Member. The Commission recently approved this methodology, finding in particular that it satisfied the requirements of Rule 17ad-22(e)(6).⁷⁸

Second, the proposed changes would provide that FICC-cleared Customer Positions of a Cross-Margining Customer would be recorded in a Cross-Margining Customer Account, which

⁷⁷ 17 CFR 240.17ad-22(e)(6)(i).

⁷⁸ See Order Granting Approval of Proposed Rule Change To Amend and Restate the Cross-Margining Agreement Between FICC and CME, Securities Exchange Act Release No. 98327 (Sept. 8, 2023), 88 FR 63185 (Sept. 14, 2023).

account would be a separate Type of Account for purposes of the GSD Rules.⁷⁹ By virtue of these changes, the margin applicable to Customer Positions would be calculated separately and independently of the margin for any positions recorded in a different Type of Account, including any Proprietary Account of the Cross-Margining Participant. In addition, the proposed rule changes would provide for Customer Cross-Margining Margin to be collected and held in substantially a similar manner to Segregated Customer Margin. The Commission recently approved FICC's arrangements for Segregated Customer Margin, finding in particular that they "should ensure that a Netting Member's proprietary transactions are not netted with indirect participant transactions for margin calculations and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member's proprietary transactions." Accordingly, the proposed rule change would ensure compliance with Rule 17ad-22(e)(6)(i).

Rule 17ad-22(e)(4)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁸⁰ FICC believes that the proposed changes would ensure that FICC continues to effectively measure and manage its credit exposure to participants by maintaining sufficient financial resources to cover its exposure thereto with a high degree of confidence. This is because, under the Customer Cross-Margining Arrangement, FICC would calculate the margin

⁷⁹ See Section 1, "Definitions." of the proposed Third A&R Agreement.

⁸⁰ 17 CFR 240.17ad-22(e)(4)(i).

requirement applicable to Customer Positions on a gross (i.e., Cross-Margining Customer-by-Cross-Margining Customer) basis, with margin reductions for offsetting positions calculated using a methodology that the Commission recently approved.⁸¹ Examining the similar customer-by-customer gross margining arrangements adopted by FICC for Segregated Indirect Participants, the Commission found that they would “better isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant’s risk exposures.”⁸² In addition, the proposed rule change would require each Eligible BD-FCM for whom FICC maintains one or more Cross-Margining Customer Account(s) to deposit to FICC cash or eligible securities to meet the Cross-Margining Customer Margin Requirement that is calibrated to the risks of each Cross-Margining Customer’s portfolio. Such Eligible BD-FCM would also be required to enter into a Customer Cross-Margining Clearing Member Agreement with FICC and CME, pursuant to which the Eligible BD-FCM would pledge to FICC, on behalf of itself and each Cross-Margining Customer, the positions and margin subject to the Customer Cross-Margining Arrangement at both FICC and CME. This pledge, coupled with the cross-guarantee set forth in the Third A&R Agreement, would ensure that FICC and CME are able to look to the full portfolio of Customer Positions and associated margin at FICC and CME in order to satisfy any obligations arising under Customer Positions. Accordingly, the proposed changes would ensure that FICC will have

⁸¹ See Self-Regulatory Organizations; the Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change To Amend and Restate the Cross-Margining Agreement Between FICC and CME, 88 FR 63185 (Sept. 15, 2023).

⁸² See Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, 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, 89 FR 93763, 93776 (Nov. 27, 2024).

sufficient resources to rely on to cover cross-margining exposures under the Customer Cross-Margining Arrangement.

Rule 17ad-22(e)(18)(iv)(C) under the Exchange Act requires, among other things, that a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. As described above, the proposed changes would expand the Cross-Margining Arrangement, which currently is only available for proprietary positions of Cross-Margining Participants and those of their Eligible Affiliates, to Customer Positions. This expansion would serve to facilitate access for indirect participants to FICC's clearance and settlement services for Treasury transactions by aligning the margin requirements applicable to such participants' positions with the risk those positions present. Such alignment would serve to eliminate impediments to access that can arise when there is a mismatch between margin and risk. Furthermore, by creating an incentive for Cross-Margining Customers to cover the margin requirements for their own positions, the proposed rule change would serve to reduce the need for Netting Members to use their own resources to cover such margin obligations. As a result, it would reduce the costs and increase the capacity of Netting Members to provide clearing services, which would in turn allow Netting Members to increase the volume of transactions they clear and reduce the prices at which they provide such clearing services. Moreover, by creating significant cost savings and efficiencies for Cross-Margining Customers that consolidate offsetting positions into a single clearing member regardless of execution counterparty, the proposed changes would create a natural incentive for Netting Members to offer done-away clearing services. For such Netting Members, carrying Treasury securities positions entered into

by a customer with other parties would provide a potential opportunity to reduce the risk of the customer's futures positions and earn clearing revenue without the cost of funding the customer's margin obligations, and such clearing services could create opportunities to increase the Netting Member's scope of customers. Therefore, the proposed changes would facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.⁸³

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

FICC believes that the proposed changes to the GSD Rules and the Third A&R Agreement would promote competition by enabling customers of Eligible BD-FCMs to benefit from cross-margining.

As described above, under the Existing Agreement, cross-margining is currently only available for a Cross-Margining Participant's proprietary positions and those of an Eligible Affiliate. Accordingly, customers of Cross-Margining Participants are not able to benefit from cross-margining; they must continue to have their Eligible Securities Positions margined without regard to potential risk offsets involving other Eligible Futures Positions. By extending availability of cross-margining to Customer Positions, the proposed rule change would serve to place customers of Eligible BD-FCMs on a more level playing field with Cross-Margining Participants and Eligible Affiliates. It would ensure that such customers have the ability to achieve similar margin efficiencies and pursue similar trading strategies on similar terms as Cross-Margining Participants and Eligible Affiliates. As a result, the proposed changes would improve competitive parity in the U.S. Treasury market between direct participants and indirect participants at FICC.

⁸³ 17 CFR 240.17ad-22(e)(18)(iv)(C).

The proposed rule change would also promote competition by allowing all customers of Eligible BD-FCMs, rather than only market professionals or a similar subset, to access central clearing. As a result, the proposed rule change would ensure that introducing cross-margining maintains competitive parity among customers of Eligible BD-FCMs.

FICC believes that the proposed rule change would introduce a burden of competition as between Eligible BD-FCMs and other Netting Members because the Customer Cross-Margining Arrangement would only be available for Customer Positions carried by Eligible BD-FCMs. However, FICC believes that this burden on competition is necessary in order to ensure that Customer Positions and associated Cross-Margining Customer Margin are safeguarded pursuant to robust customer protections. In particular, the dual registration of an Eligible BD-FCM as a broker-dealer and FCM is necessary to ensure that the Customer Positions and associated margin can be carried in a futures account under the CEA and applicable CFTC regulations and that they benefit from the Part 190 distributional rules in the event of the clearing member's failure. FICC has concluded that it would not be feasible to achieve similar customer protections if Customer Positions were carried at a Netting Member not registered as a BD and FCM. Indeed, FICC has observed that other U.S. cross-margining arrangements involving customers similarly require such dual registration as a condition to participation in the arrangement.⁸⁴

⁸⁴ See Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Cleared Swaps and Security-Based Swaps That Are Credit Default Swaps, Securities Exchange Act Release No. 93501 (Nov. 1, 2021), 86 FR 61357 (Nov. 5, 2021); Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps, Securities Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012); Order, Treatment of Funds Held in Connection with Clearing by LCH SA of Single-Name Credit Default Swaps, Including Spun-Out Component Transactions (Nov. 1, 2021); Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (Jan. 14, 2013).

In addition, the proposed rule change would promote competition by providing market participants with greater flexibility in the methods through which transactions in U.S. Treasury securities can be cleared. With the introduction of the Customer Cross-Margining Arrangement, clearing members will be able to offer a wider variety of clearing methods to their indirect participant customers. Such indirect participants will accordingly be able to participate in a wider variety of clearing methods, and will be able to choose whether to clear transactions under the Customer Cross-Margining Arrangement or whether to clear transactions at FICC without engaging in cross-margining.

Accordingly, the proposed rule change would promote competition by allowing Cross-Margining Customers to obtain the benefits associated with cross-margining, ensuring that Cross-Margining Customers are not at an undue competitive disadvantage relative to clearing members and certain Eligible Affiliates who are currently able to access such benefits under the Proprietary Cross-Margining Arrangement, and providing market participants with greater flexibility in the access models available for the clearing of transactions in U.S. treasury securities.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should

submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at www.sec.gov/rules-regulations/how-submit-comment. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

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

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

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

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FICC-2025-025 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-2025-025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of FICC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is

obscene or subject to copyright protection. All submissions should refer to File Number SR-FICC-2025-025 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

⁸⁵ 17 CFR 200.30-3(a)(12).