

entry on smaller broker-dealers and new entrants, and a burden on competition.¹⁴⁰ The Commission does not believe that the Current Proposal would impose a burden on competition inconsistent with the Act because, as discussed above, viable alternatives to the Exchange's proposed services exist, both inside and outside the Data Center.

Finally, the Commission notes that several commenters believed the originally proposed NYSE Premium Connectivity Fee to be duplicative and an inequitable allocation of fees.¹⁴¹ Because the Exchange eliminated that fee in Amendment No. 3, the Commission believes that these concerns have been addressed.¹⁴²

Accordingly, the Commission finds that the Current Proposal is consistent with the Act.

V. Solicitation of Comments on Partial Amendment No. 4

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether partial Amendment No. 4 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-45 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSE-2016-45. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-45 and should be submitted on or before April 20, 2017.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1-4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1-4, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in partial Amendment No. 4¹⁴³ (1) removed reference to the National Stock Exchange (NSX) from its list of Third Party Systems, (2) added three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, (3) added connectivity fees for each of the newly added Third Party Data feeds. With respect to NSX, the Exchange represents that NSX was acquired by the NYSE Group on January 31, 2017, making it no longer a Third Party System. The Commission believes this characterization is consistent with the NYSE Group's similarly situated affiliated exchanges, NYSEArca and NYSEMKT, which, like NSX are solely within the NYSE Group's control. Regarding the ICE Data Services feeds, the Exchange notes that it has an indirect interest in these feeds because ICE Data Services is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. As represented in partial Amendment No. 4, the Exchange considers the ICE Data Services Consolidated Feed (like the NYSE Global Index feed), a Third Party Data Feed because it includes third party market data rather than exclusively the proprietary market data of the Exchange and its affiliated SROs,

NYSE MKT and NYSE Arca.¹⁴⁴ The Commission believes that partial Amendment No. 4 does not raise issues not previously raised in the proposed rule change, as modified Amendment Nos. 1-3, and addressed in Exchange Response Letters I, II, and III. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁴⁵ to approve the proposed rule change, as modified by Amendment Nos. 1-4, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴⁶ that the proposed rule change (SR-NYSE-2016-45) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-06258 Filed 3-29-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80303; File No. SR-FICC-2017-005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Centrally Cleared Institutional Triparty Service and Make Other Changes

March 24, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 9, 2017, 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 The Commission is publishing this notice to

¹⁴⁴ See *id.*

¹⁴⁵ 15 U.S.C. 78s(b)(2).

¹⁴⁶ See *id.*

¹⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 9, 2017, FICC filed this proposed rule change as an advance notice (SR-FICC-2017-803) with the Commission pursuant to Section 806(e)(1) 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) of the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

¹⁴⁰ See *supra* notes 75-81 and accompanying text.

¹⁴¹ See *supra* notes 70-72 and accompanying text.

¹⁴² The Commission believes that comments expressing concerns about proprietary market data fees more generally are outside the scope of the Current Proposal.

¹⁴³ See partial Amendment No. 4, *supra* note 14.

solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Government Securities Division ("GSD") Rulebook ("GSD Rules")⁴ that would (i) establish the "Centrally Cleared Institutional Triparty Service" or the "CCITTM Service"⁵ and thereby make central clearing available to the institutional triparty repurchase agreement ("repo") market⁶ and (ii) make other amendments and clarifications to the GSD Rules, as described below.

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.

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

1. Purpose

The proposed rule change would, among other things, make central clearing available to the institutional triparty repo market through the proposed CCIT Service.

The proposed CCIT Service would allow the submission of tri-party repo transactions in GCF Repo[®]⁷ Securities between Netting Members that participate in the GCF Repo Service⁸

⁴ Capitalized terms not defined herein are defined in the GSD Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

⁵ CCIT is a trademark of The Depository Trust & Clearing Corporation. Pursuant to this filing, "Centrally Cleared Institutional Triparty Service" or "CCIT Service" would be defined as "the service offered by the Corporation to clear institutional triparty repurchase agreement transactions, as more fully described in Rule 3B." Proposed GSD Rule 1, Definitions.

⁶ The proposed rule changes with respect to the establishment of the proposed CCIT Service are reflected in proposed GSD Rule 3B, and conforming changes are proposed to GSD Rules 1, 2, 2A (Section 2), 4 (Sections 1a and 7), 5, 22C, 24, 30 and 49.

⁷ GCF Repo is a registered trademark of FICC.

⁸ Pursuant to this filing, "GCF Repo Service" would be defined as "the service offered by the Corporation to compare, net and settle GCF Repo Transactions." Proposed GSD Rule 1, Definitions.

and institutional counterparties (other than investment companies registered under the Investment Company Act of 1940, as amended⁹ ("RICs")), where the institutional counterparties are the cash lenders in the transactions submitted to GSD. The proposed CCIT Service would create a new GSD limited service membership type for such institutional cash lenders, each referred to as a "Centrally Cleared Institutional Triparty Member" or "CCIT Member."¹⁰

This filing also contains proposed rule changes that are not related to the proposed CCIT Service that provide specificity, clarity and additional transparency to the GSD Rules.

(i) Background on the Proposed CCIT Service

FICC believes that the tri-party repo market is critical to the stability of the U.S. financial system. The tri-party repo market creates market liquidity and price transparency for U.S. government and corporate securities, is interconnected with other payment clearing and settlement services that are central to the U.S. financial market, and serves as a critical source of funding for systemically important broker-dealers that make markets in U.S. government and corporate obligations.¹¹ At its peak in 2008, about \$2.8 trillion of securities were funded by tri-party repos.¹² Volumes shrank to \$1.6 trillion in the second half of the recent financial crisis and have been relatively steady around that level since then.¹³ Nonetheless, FICC believes the tri-party repo market remains a critical source of funding for broker-dealers and an important cash management tool for institutional counterparties.

In response to the 2008 financial crisis, regulators asked tri-party repo market participants to identify ways to reduce reliance on intraday credit, make risk management practices more robust to a broad range of events, and take

⁹ 15 U.S.C. 80a-1 *et seq.*

¹⁰ Pursuant to this filing, the term "Centrally Cleared Institutional Triparty Member" or "CCIT Member" would be defined as "a legal entity other than a Registered Investment Company approved to participate in the Corporation's CCIT Service as a cash lender." Proposed GSD Rule 1, Definitions.

¹¹ See Federal Reserve Bank of New York, Tri-Party Repo Infrastructure Reform, https://www.newyorkfed.org/banking/tpr_infr_reform.html (last visited Mar. 6, 2017).

¹² See A. Copeland et al., *The Tri-Party Repo Market before the 2010 Reforms*, Federal Reserve Bank of New York Staff Report No. 477 (Nov. 2010), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr477.pdf.

¹³ See Federal Reserve Bank of New York, Tri-Party Repo Volume, https://www.newyorkfed.org/data-and-analytics/data-visualization/tri-party-repo/index.html#interactive/volume/collateral_value (last visited Mar. 6, 2017).

steps to reduce the risk that a dealer's default could prompt destabilizing fire sales¹⁴ of its collateral by its lenders, with the goal of enhancing the tri-party repo market's ability to navigate stressed market conditions by implementing solutions that help mitigate risk and better safeguard the U.S. financial market.

Currently, FICC provides central clearing to a portion of the tri-party repo market. Specifically, GSD's GCF Repo Service provides central clearing to sell-side entities, such as dealers that enter into tri-party repo transactions in GCF Repo Securities with each other.¹⁵ There is currently no U.S. clearing organization that novates tri-party repos between sell-side firms and institutional counterparties.

FICC believes that central clearing of eligible tri-party repo transactions between GSD Netting Members and institutional counterparties through the proposed CCIT Service would help to safeguard the tri-party repo market in a number of ways. For example, the proposed CCIT Service would permit institutional firms that are eligible to participate in FICC as CCIT Members to benefit from FICC's guaranty of completion of settlement of their eligible tri-party repo transactions with Netting Members. FICC believes this would mitigate the risk of a large-scale exit by these institutional firms from the U.S. financial market in a stress scenario and therefore lower the risk of a liquidity drain in such a scenario. Specifically, to the extent institutional firms would otherwise be engaging in the same type of eligible tri-party repo trading activity outside of a central counterparty, having such activity novated to FICC and subject to FICC's guaranty of completion of settlement would reduce the risk that such institutional firms discontinue such trading activity in a Netting Member default situation.

Similarly, FICC believes that broadening the pool of tri-party repos eligible for central clearing at FICC through the proposed CCIT Service to institutional activity as well as sell-side activity would also reduce the potential for market disruption from fire sales by virtue of FICC's ability to centralize and control the liquidation of the portfolio

¹⁴ Fire sale risk is the risk of rapid asset sales of securities held by cash lenders when a dealer defaults. This rapid sale has the potential to create a market crisis because cash lenders are likely to sell large amounts of securities in a short period of time, which could dramatically reduce the price of such securities that such lenders are looking to sell.

¹⁵ According to FICC's data, during 2016, the average daily dollar value of compared GCF Repo Transactions was approximately \$114 billion.

of a defaulted Netting Member. Specifically, in a Netting Member default situation, the more institutional firms participate in FICC as CCIT Members, the more trading activity with the defaulted Netting Member could be centrally liquidated in an orderly manner by FICC rather than by individual counterparties in potential fire sale conditions.

Moreover, FICC believes that the proposed CCIT Service would decrease settlement and operational risk in the U.S. tri-party repo market as more tri-party repos for a greater number of Members would be eligible to be netted and subject to guaranteed settlement, novation, and independent risk management through FICC.

Depending on the nature of their GSD-cleared portfolios and the purposes for which Netting Members borrow cash from institutional tri-party money lenders through the proposed CCIT Service, the proposed CCIT Service would also provide Netting Members with the potential for more efficient use of collateral.¹⁶ Novation of tri-party repo borrowing activity to FICC through the proposed CCIT Service may also afford Netting Members the ability to offset on their balance sheets their obligations to FICC on CCIT Transactions against their obligations to FICC on other eligible FICC-cleared activity, as well as take lesser capital charges than would be required to the extent they engaged in the same borrowing activity outside of a central counterparty.¹⁷ By potentially alleviating balance sheet and capital constraints on their Netting Member counterparties, participation in FICC as CCIT Members may afford eligible institutional firms increased lending capacity and income.

¹⁶ The potential for more efficient use of collateral by Netting Members relates to the fact that, to the extent they borrow cash today via tri-party repo, Netting Members are required to collateralize their tri-party cash lenders, typically to a 102 percent haircut for GSD eligible securities. See SIFMA, US Repo Market Fact Sheet 2016, p. 3, <https://www.sifma.org/WorkArea/DownloadAsset.aspx?id=8589961606> (last visited Mar. 6, 2017). Such collateral is separate and apart from the Clearing Fund that Netting Members are required to post to FICC to support their sell-side activity in the same asset classes. If a Netting Member's tri-party borrowing activity were novated to FICC through the proposed CCIT Service, its Clearing Fund requirement to FICC could potentially be reduced to the extent it has offsetting cash lending activity within GSD.

¹⁷ Netting Members interested in such relief should discuss this matter with their accounting and regulatory capital experts.

(ii) Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service

A. Proposed Changes to GSD Rule 1 (Definitions)

FICC is proposing to amend the "Applicant Questionnaire" definition to delete the reference to "Rule 2" because this questionnaire is not mentioned in GSD Rule 2; however, it is mentioned in other GSD Rules, including, but not limited to, proposed GSD Rule 3B. In light of the fact that proposed GSD Rule 3B would provide that references to a "Member" in other GSD Rules would not apply to CCIT Members unless specifically noted as such in proposed GSD Rule 3B or in such other GSD Rules, FICC is also proposing to amend the "Applicant Questionnaire" definition to specifically refer to CCIT Members.

FICC is proposing to add the following defined terms, which relate to the proposed CCIT Service: "CCIT," "CCIT Account," "CCIT Daily Repo Interest," "CCIT MRA Account," "CCIT Transaction," "Centrally Cleared Institutional Triparty Member or CCIT Member," "Centrally Cleared Institutional Triparty Service or CCIT Service," "Joint Account," "Joint Account Submitter" and "Joint Account Submitter Agreement."

FICC is proposing to amend the definition of "Contract Value" to refer to a CCIT Transaction. FICC is also proposing to make a grammatical correction to this definition.

FICC is proposing to amend the definition of "Controlling Management" in order to incorporate concepts that apply to CCIT Members and Registered Investment Company Netting Members and applicants to become such.

FICC is proposing to amend the definition of "GCF Net Funds Borrower Position" to refer to CCIT Transactions and to add an explicit definition for the term "GCF Net Funds Borrower."

FICC is proposing to amend the definition of "GCF Net Funds Lender Position" to refer to CCIT Members and CCIT Transactions and to include an explicit definition for the term "GCF Net Funds Lender," which would include a Netting Member or a CCIT Member, as applicable.

FICC is proposing to amend the definition of "GCF Net Settlement Position" and "GCF Repo Security" to refer to CCIT Transactions.

FICC is proposing to include "GCF Repo Service" as a defined term in order to facilitate the drafting of proposed GSD Rule 3B, which covers the proposed CCIT Service.

FICC is proposing to amend the definitions of "Invoice Amount," "Member," "Miscellaneous Adjustment Amount" and "Net Assets" to refer to a CCIT Member.

FICC is also proposing to amend the definition of a "Tier Two Member" (previously referred to in the GSD Rules as a "Tier Two Netting Member") to include a CCIT Member.

B. Proposed Changes to GSD Rule 2 (Members)

FICC is proposing to amend GSD Rule 2 (Members) to include CCIT Members as a membership type and to make conforming changes that accommodate this inclusion.

C. Proposed Changes to GSD Rule 2A (Initial Membership Requirements)

FICC is proposing to amend Section 2 of GSD Rule 2A (Initial Membership Requirements) to make conforming changes to accommodate the revised term "Tier Two Member."

D. Proposed GSD Rule 3B (Centrally Cleared Institutional Triparty Service)

FICC is proposing to add GSD Rule 3B, entitled "Centrally Cleared Institutional Triparty Service." This new rule would govern the proposed CCIT Service and would be comprised of 17 sections, each of which is described immediately below.

Proposed GSD Rule 3B, Section 1 (General)

Section 1 of proposed GSD Rule 3B would be a general provision regarding the GSD Rules applicable to CCIT Members and to Netting Members that participate in the proposed CCIT Service.

Section 1 of proposed GSD Rule 3B would establish that CCIT Members would be governed by proposed GSD Rule 3B, and that references to the term "Member" in other GSD Rules would not apply to CCIT Members unless specifically noted as such in proposed GSD Rule 3B or in such other GSD Rules. Section 1 of proposed GSD Rule 3B would also make clear that a Netting Member must be a participant of the GCF Repo Service in order to be a counterparty to a CCIT Member in a CCIT Transaction and that, in addition to the GSD Rules governing Netting Members, Netting Members that submit CCIT Transactions would also be subject to the provisions of proposed GSD Rule 3B and other GSD Rules applicable to CCIT Transactions.

Proposed GSD Rule 3B, Section 2 (Eligibility for Membership: CCIT Member)

Section 2 of proposed GSD Rule 3B would establish the initial membership eligibility requirements for applicants that wish to become CCIT Members.

Under Section 2 of proposed GSD Rule 3B, a legal entity would be eligible to apply to become a CCIT Member if it satisfies the following requirements: (i) Financial responsibility and ability to pay anticipated fees pursuant to the GSD Rules, including having minimum Net Assets¹⁸ of \$100 million, or a prescribed multiplier of \$100 million in the case of applicants whose financial statements are prepared other than in accordance with U.S. generally accepted accounting principles;¹⁹ (ii) operational capability (applicable to a Joint Account Submitter, if relevant) to communicate with FICC and fulfill anticipated commitments to and meet other operational requirements of FICC; (iii) provision of an opinion of counsel acceptable to FICC that the GSD Rules would be enforceable against such applicant if it were to become a CCIT Member; and (iv) provision of an opinion of counsel (if required by FICC in its sole discretion) acceptable to FICC that, in the event FICC were to cease to act for the applicant after such applicant becomes a CCIT Member, FICC would be able to exercise the remedies described in the GSD Rules.

In addition, FICC would have the sole discretion to determine whether the applicability of any enumerated Disqualification Criteria (as set forth in Section 2 of proposed GSD Rule 3B) should be the basis for denial of the membership application.

Section 2 of proposed GSD Rule 3B also states that FICC would retain the right to deny membership to an applicant if FICC becomes aware of any factor or circumstance about the applicant or its Controlling

¹⁸ Pursuant to the GSD Rules, the term "Net Assets" means "the difference between the total assets and the total liabilities of a Netting Member." GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members. With respect to a CCIT Member applicant, the determination as to whether the applicant satisfies the minimum Net Asset requirement under Section 2 of proposed GSD Rule 3B would be based on financial disclosures provided by the applicant as part of the membership application process.

¹⁹ FICC may impose greater standards on the applicant based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC and the overall financial condition of the applicant. Proposed GSD Rule 3B, Section 2.

Management²⁰ which may affect the suitability of that particular applicant as a Member of GSD. Further, applicants would be required to inform FICC as to any member of their Controlling Management that is or becomes subject to Statutory Disqualification.

Section 2 of proposed GSD Rule 3B also includes provisions that would allow CCIT Members to be represented by a Joint Account.²¹

In the market today, some institutional cash lenders submit trades as a "joint account" rather than at the individual legal entity level. This means that two or more institutional cash lenders create a joint account and have a submitter (such as their agent lender) conduct the trading on their behalf. The proposed rule changes would accommodate this structure and would provide that two or more approved CCIT Members may be represented by a Joint Account Submitter,²² provided that the applicable CCIT Members enter into a Joint Account Submitter Agreement with FICC. This agreement would permit CCIT Transactions to be submitted through a Joint Account on behalf of the CCIT Members. If FICC terminates a Joint Account Submitter Agreement, such Joint Account Submitter would no longer be permitted to represent the CCIT Members in the Joint Account. Each such CCIT Member would then be required to assume the duties of the Joint Account Submitter or appoint a new Joint Account Submitter subject to the requirements of the GSD Rules.

Proposed GSD Rule 3B, Section 3 (Membership Application Process To Become a CCIT Member)

Section 3 of proposed GSD Rule 3B would establish the membership application process that would be

²⁰ Pursuant to this filing, the term "Controlling Management" would be revised to mean "the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant or Member or such other individuals or entities with direct or indirect control over the applicant or Member; provided that with respect to a Registered Investment Company Netting Member or an applicant to become a Registered Investment Company Netting Member, the term 'Controlling Management' shall include the investment manager." Proposed GSD Rule 1, Definitions.

²¹ Pursuant to this filing, "Joint Account" would be defined as "two or more CCIT Members represented by a Joint Account Submitter." Proposed GSD Rule 1, Definitions.

²² Pursuant to this filing, the term "Joint Account Submitter" would be defined as "an authorized entity that (i) is acting as agent for two or more CCIT Members that are trading and submitting CCIT Transactions as a Joint Account and (ii) has been appointed by each such CCIT Member pursuant to a Joint Account Submitter Agreement." Proposed GSD Rule 1, Definitions.

required of each applicant to become a CCIT Member.

Under Section 3 of proposed GSD Rule 3B, each applicant would be required to complete all documents and it or its Joint Account Submitter, as applicable, would be required to fulfill, within the timeframes established by FICC, any operational testing requirements and related reporting requirements that may be imposed by FICC to ensure the operational capability of the applicant. In addition, each applicant would be required to complete and deliver a FATCA Certification to FICC, and if the applicant is an FFI Member,²³ the applicant would also be required to certify and periodically recertify that it is FATCA Compliant, unless such requirements have been explicitly waived in writing by FICC, and no such waiver would be issued if it would cause FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. The applicant would also be required to indemnify FICC as a result of its failing to be FATCA Compliant. Section 3 of proposed GSD Rule 3B would also provide for confidential treatment of information furnished to FICC pursuant to proposed GSD Rule 3B.

In connection with FICC's evaluation of an applicant, FICC would be able to: (i) If applicable, contact the applicant's primary regulatory authority, other examining authority or regulator, or any self-regulatory organization of which the applicant is a member and request from such authority or organization any records, reports or other information that, in their judgment, may be relevant to the application; (ii) examine the books, records and operational procedures of, and inspect the premises of, the applicant or its Controlling Management as they may be related to the business to be conducted through GSD; and (iii) take such other evidence or make such other inquiries as is necessary, including sworn or unsworn testimony, to ascertain relevant facts bearing upon the applicant's qualifications.

Section 3 of proposed GSD Rule 3B would make clear that, notwithstanding that FICC has approved an application to become a CCIT Member, if a material change in the condition of the applicant

²³ Pursuant to GSD Rule 1, the term "FFI Member" means "any Person that is treated as a non-U.S. entity for U.S. federal income tax purposes." For the avoidance of doubt, the term FFI Member also includes "any Member that is a U.S. branch of an entity that is treated as a non-U.S. entity for U.S. federal income tax purposes." GSD Rules, *supra* note 4.

or its Controlling Management were to occur, which in the judgment of FICC could bring into question the applicant's ability to perform as a CCIT Member, and such material change were to become known to FICC prior to the applicant's commencing use of GSD's services, FICC would have the right to stay commencement of the applicant's use of GSD's services until a reconsideration by FICC of the applicant's financial responsibility and operational capability could be completed. As a result of such reconsideration, FICC could determine to withdraw approval of an application to become a CCIT Member or condition the approval upon the furnishing of additional information or assurances.

Section 3 of proposed GSD Rule 3B would also state that FICC could deny an application to become a CCIT Member upon FICC's determination that FICC does not have adequate personnel, space, data processing capacity, or other operational capability at that time to perform its services for the applicant without impairing the ability of FICC to provide services for its existing Members (including CCIT Members), to assure the prompt, accurate, and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this provision would be approved as promptly as the capabilities of FICC permit.

Upon FICC's denial of an application to become a CCIT Member, FICC would furnish the applicant with a concise written statement setting forth the specific grounds under consideration upon which any such denial may be based and would notify the applicant of its right to request a hearing, such request to be filed by the applicant with FICC pursuant to GSD Rule 37 (Hearing Procedures).

Proposed GSD Rule 3B, Section 4 (Membership Agreement)

Section 4 of proposed GSD Rule 3B would govern the agreements that CCIT Member applicants would be required to sign and deliver to FICC.

Section 4 of proposed GSD Rule 3B would describe the terms of the membership agreement that every CCIT Member applicant would be required to execute with FICC and, in the case of CCIT Member applicants that intend to participate in the proposed CCIT Service through a Joint Account, this section would require that such applicants also execute a Joint Account Submitter Agreement with FICC. This section would also specify the rights, obligations, and liability that a CCIT

Member that participates in the proposed CCIT Service would have vis-à-vis its Joint Account Submitter, as well as the conditions under which FICC would be able to terminate the Joint Account Submitter Agreement. It should be noted that the Joint Account Submitter in its capacity as such would not be a Member.

Proposed GSD Rule 3B, Section 5 (On-Going Membership Requirements)

Section 5 of proposed GSD Rule 3B would establish on-going membership requirements and would make clear that the initial eligibility qualifications and standards for CCIT membership would be continuing membership requirements. Additional on-going membership requirements would also apply to CCIT Members as described below.

Each CCIT Member would be required to submit the following to FICC: (i) Disclosure on at least an annual basis regarding such CCIT Member's Net Assets, and (ii) any financial statements the CCIT Member makes publicly available. In addition, each CCIT Member would be required to submit such other reports, financial, and other information as FICC from time to time may reasonably require. The time periods prescribed for submission of required disclosure would be set forth in notices posted to FICC's Web site and/or distributed by FICC from time to time. It would be the CCIT Member's responsibility to retrieve all notices daily from FICC's Web site.

In addition, a CCIT Member would be required to submit written notice of any CCIT Reportable Event²⁴ at least 90 calendar days prior to the effective date of such CCIT Reportable Event, unless the CCIT Member demonstrates that it could not have reasonably done so, and provides notice, both orally and in writing, to FICC as soon as possible.

CCIT Members that are FFI Members would also be subject to FATCA-related reporting requirements.

Section 5 of proposed GSD Rule 3B would provide that a CCIT Member that fails to submit required information within the prescribed timeframes and in the manner requested by FICC would be

subject to the applicable fines noted under "Failure to Timely Provide Financial and Related Information" and "Reportable Events—Fine for Failure of Timely Notification," as applicable, in the *Fine Schedules* of the GSD Rules.

FICC could, from time to time, require CCIT Members or their Joint Account Submitters, as applicable, to fulfill certain operational testing requirements and related reporting requirements to ensure the continuing operational capability of the CCIT Members. FICC would assess a fine or terminate the membership of any CCIT Member that does not fulfill any such operational testing and related reporting requirements within the timeframes established by FICC. If a Joint Account Submitter does not fulfill any such operational testing and related reporting requirements within the timeframes established by FICC, FICC could terminate the Joint Account Submitter Agreements for any or all CCIT Members that such Joint Account Submitter represents.

A CCIT Member would also be required to promptly inform FICC, both orally and in writing, if it no longer is in compliance with any of the relevant qualifications and standards for admission to membership set forth in proposed GSD Rule 3B. Notification would be required within two Business Days from the date on which the CCIT Member first learns of its non-compliance. FICC would assess a \$1,000.00 fine against any CCIT Member that fails to notify FICC. In addition, a CCIT Member would be required to notify FICC within two Business Days of learning that an investigation or proceeding to which it is or is becoming the subject of would cause the CCIT Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in proposed GSD Rule 3B. However, the CCIT Member would not be required to notify FICC if doing so would cause the CCIT Member to violate an applicable law, rule, or regulation.

If with respect to a CCIT Member: (i) The CCIT Member fails to maintain the relevant standards and qualifications for admission to membership, including, but not limited to, minimum capital standards, operational testing, and related reporting requirements imposed by FICC from time to time; (ii) the CCIT Member violates any GSD Rule or other agreement with FICC; (iii) the CCIT Member fails to satisfy in a timely manner any obligation to FICC; (iv) there is any CCIT Reportable Event relating to such Member; or (v) FICC otherwise deems it necessary or advisable, in order to (a) protect FICC,

²⁴ Proposed GSD Rule 3B would define a "CCIT Reportable Event" as "(i) an event that would, after giving effect thereto, cause a material change in the control, ownership or management of the CCIT Member, or that could have a material impact on such CCIT Member's business and/or financial condition; (ii) material changes in the CCIT Member's business lines, including new business lines undertaken; or (iii) any litigation which could reasonably be anticipated to have a material negative effect on the CCIT Member's financial condition or ability to conduct business." Proposed GSD Rule 3B, Section 5(c).

its Members (including CCIT Members), or its creditors or investors; (b) safeguard securities and funds in the custody or control of FICC or for which FICC is responsible; or (c) promote the prompt and accurate processing, clearance or settlement of securities transactions, FICC would undertake appropriate action to determine the status of the CCIT Member and its continued eligibility. In addition, FICC could review the financial responsibility and operational capability of the CCIT Member and/or its Controlling Management to the extent provided in the GSD Rules and otherwise require from the CCIT Member additional reporting of its financial or operational condition at such intervals and in such detail as FICC determines, and would make a determination as to whether such CCIT Member should be placed on the Watch List by FICC consistent with the provisions of Section 5 of proposed GSD Rule 3B (described below).

In addition, if FICC has reason to believe that a CCIT Member may fail to comply with any of the GSD Rules, FICC could require the CCIT Member to provide FICC, within such timeframe, in such detail, and pursuant to such manner as FICC determines, with assurances in writing of a credible nature that the CCIT Member shall not, in fact, violate the GSD Rules. Each CCIT Member, or any applicant to become such, would be required to furnish to FICC such adequate assurances of the CCIT Member's financial responsibility and operational capability as FICC could at any time or from time to time deem necessary or advisable in order to (i) protect FICC, its Members (including CCIT Members), or its creditors or investors; (ii) safeguard securities and funds in the custody or control of FICC or for which FICC is responsible; or (iii) promote the prompt and accurate processing, clearance or settlement of securities transactions. Upon the request of a CCIT Member or applicant to become such, FICC could choose to confer with the CCIT Member or applicant before or after requiring it to furnish adequate assurances pursuant to this proposed GSD Rule 3B.

Adequate assurances of financial responsibility or operational capability of a CCIT Member or applicant to become such, as could be required by FICC pursuant to proposed GSD Rule 3B, could include, but would not be limited to, as appropriate in the context of the CCIT Member's use of GSD's services: (i) Imposing restrictions or modifications on the CCIT Member's use of GSD's services (whether generally, or with respect to certain transactions); or (ii) requiring additional

reporting by the CCIT Member of its financial or operational condition at such intervals and in such detail as FICC determines.

Section 5 of proposed GSD Rule 3B would provide that in the event that a CCIT Member fails to satisfy the relevant requirements of any GSD Rules, FICC would cease to act for the CCIT Member, unless the CCIT Member requests that such action not be taken and FICC determines that it is appropriate instead to establish a time period (the "Noncompliance Time Period"), which would be no longer than 30 calendar days (unless otherwise determined by FICC), during which the CCIT Member would be required to resume compliance with such requirements. In the event that the CCIT Member is unable to satisfy such requirements within the Noncompliance Time Period, FICC would cease to act for the CCIT Member. If FICC takes any cease to act action pursuant to this provision, it would be required to promptly file with its records and with the Commission a full report of such actions, and the reasons thereof. Notwithstanding anything to the contrary in Section 5 of proposed GSD Rule 3B, if FICC, in its sole discretion, determines that a CCIT Member's financial condition has significantly deteriorated during a Noncompliance Time Period, FICC could immediately cease to act for the CCIT Member.

Section 5 of proposed GSD Rule 3B would require that CCIT Members and their Joint Account Submitters, as applicable, comply with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions regulations in connection with their use of GSD's services. As part of their compliance with global sanctions regulations, all CCIT Members and their Joint Account Submitters would be prohibited from conducting any transaction or activity through FICC which they know to violate global sanctions regulations. CCIT Members subject to the jurisdiction of the U.S. would be required to periodically confirm that they and their Joint Account Submitters, as applicable, have implemented a risk-based program reasonably designed to comply with applicable sanctions regulations issued by the Office of Foreign Assets Control. Failure to do so in the manner and timeframes set forth by FICC from time to time would result in a \$5,000.00 fine.

Section 5 of proposed GSD Rule 3B would also prohibit a CCIT Member that is an FFI Member from conducting CCIT Transactions or activity through FICC if such CCIT Member is not FATCA

Compliant, unless such requirement has been explicitly waived in writing by FICC with respect to the specific CCIT Member. In addition, CCIT Members that are FFI Members would be required, as applicable under FATCA, to certify and periodically recertify to FICC that they are FATCA Compliant by providing to FICC a FATCA Certification. Failure to do so in the manner and timeframes set forth by FICC from time to time would result in a fine, unless such requirement has been explicitly waived in writing by FICC with respect to the specific CCIT Member. Nevertheless, no waiver would be issued if it would cause FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. A CCIT Member that is an FFI Member would also be required to indemnify FICC for losses, liabilities, or expenses sustained by FICC as a result of such CCIT Member failing to be FATCA Compliant.

Section 5 of proposed GSD Rule 3B would also provide that a CCIT Member and its Controlling Management's books and records, insofar as they relate to such CCIT Member's transactions processed through FICC, would be required to be open to the inspection of the duly authorized representatives of FICC upon reasonable prior notice and during the CCIT Member's or its Controlling Management's normal business hours. Each CCIT Member would be required to furnish to FICC all such information about the CCIT Member's and its Controlling Management's business and transactions as FICC may require; provided that (i) the aforesaid rights of FICC would be subject to any applicable laws, rules, or regulations of regulatory bodies having jurisdiction over the CCIT Member or its Controlling Management that relate to the confidentiality of records; and (ii) if the CCIT Member ceases membership, FICC would have no right to inspect the CCIT Member's or its Controlling Management's books and records or to require information relating to transactions wholly subsequent to the time when the CCIT Member ceases membership.

Section 5 of proposed GSD Rule 3B would also provide that a CCIT Member could be monitored for financial and/or operational factors as FICC deems necessary to protect FICC and its Members from undue risk. CCIT Members would not be assigned a rating from the Credit Risk Rating Matrix; however, they could be included on the Watch List at FICC's discretion. Placement on the Watch List would result in a more thorough monitoring of the CCIT Member's financial and/or

operational condition, as applicable, and activities by FICC. FICC could require CCIT Members placed on the Watch List to make more frequent financial disclosures, possibly including interim and/or pro forma reports. A CCIT Member would be placed on the Watch List if FICC takes any action against such CCIT Member pursuant to Section 5(f) of proposed GSD Rule 3B. A CCIT Member would continue to be included on the Watch List until the condition(s) that resulted in its placement on the Watch List improved to the point where the condition(s) are no longer present or a determination is made by FICC that close monitoring is no longer warranted.

Proposed GSD Rule 3B, Section 6 (Voluntary Termination)

Section 6 of proposed GSD Rule 3B would establish the requirements regarding a CCIT Member's election to voluntarily terminate its GSD membership.

A CCIT Member would be permitted to elect to terminate its membership by providing FICC with 10 Business Days' written notice of such termination; however, FICC, in its discretion, could accept such termination within a shorter notice period. FICC's acceptance, which would be no later than 10 Business Days after receipt of the written notice, would be evidenced by a notice to Members (including CCIT Members) announcing the CCIT Member's termination and the effective date of the termination of the CCIT Member (the "Termination Date"). As of the Termination Date, a CCIT Member that terminates its membership in GSD would no longer be eligible or required to submit to FICC data on trades and would no longer be eligible to have its trade data submitted by a Joint Account Submitter, unless the Board determines otherwise in order to ensure an orderly liquidation of the CCIT Member's positions. Section 6 of proposed GSD Rule 3B would provide that a CCIT Member's voluntary termination of membership would not affect its obligations to FICC, or the rights of FICC, with respect to transactions submitted to FICC before the Termination Date.

Proposed GSD Rule 3B, Section 7 (Loss Allocation Obligations of CCIT Members)

CCIT Members would only be permitted to participate in the proposed CCIT Service as cash lenders, and FICC would have a perfected security interest in each CCIT Member's underlying repo securities. In the event that a CCIT Member defaults or becomes insolvent, FICC would obtain and deliver the

underlying repo securities to the Netting Member with whom the defaulted CCIT Member had open CCIT Transactions. As a result of FICC's perfected security interest, CCIT Members would not present market risk because FICC would not be required to take market action in order to obtain the underlying repo securities. In light of the foregoing, FICC believes it is appropriate from a risk management perspective not to require a Required Fund Deposit from CCIT Members.

However, FICC does propose to establish loss allocation obligations for CCIT Members, and Section 7 of proposed GSD Rule 3B would set forth such obligations.

In particular, Section 7 of proposed GSD Rule 3B provides that Section 7 of GSD Rule 4 (Clearing Fund and Loss Allocation), which covers loss allocation generally, would apply to CCIT Members as Tier Two Members. Section 7 of proposed GSD Rule 3B and Section 7 of GSD Rule 4, together, would provide that CCIT Members would be responsible for the total amount of loss allocated to them. With respect to CCIT Members with a Joint Account Submitter, loss allocation would be calculated at the Joint Account level and then applied pro rata to each CCIT Member within the Joint Account based on the trade settlement allocation instructions. If, at the time FICC calculates loss allocation, the trade settlement allocation instructions to the individual CCIT Member level have not yet been received by FICC, the CCIT Members in the Joint Account would be required to provide the allocation to FICC within the timeframes set by FICC in its discretion.

Proposed GSD Rule 3B, Section 8 (Obligations Under Rule 4 Regarding Netting Members That Participate in the CCIT Service)

Section 8 of proposed GSD Rule 3B would establish the applicability of GSD Rule 4 (Clearing Fund and Loss Allocation) to Netting Members with respect to their CCIT Transactions.

Section 8 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 4 would apply to the CCIT Service activity of Netting Members in the same manner that such provisions apply to Netting Members' GCF Repo Transaction activity.

Proposed GSD Rule 3B, Section 9 (Trade Submission and the Comparison System)

Section 9 of proposed GSD Rule 3B would establish trade submission and comparison requirements for CCIT Transactions.

With respect to trade submission, Section 9 of proposed GSD Rule 3B would permit CCIT Members (whether submitting individually or through a Joint Account) to submit only CCIT Transactions to FICC. FICC would leverage its existing GCF Repo Service infrastructure and operations to process CCIT Transactions, subject to certain differences given the nature of the CCIT Transactions and certain industry conventions applicable to such transactions, which FICC wishes to accommodate in its processing. CCIT Transactions would be required to be in Generic CUSIP Numbers approved by FICC for the GCF Repo Service.

Each CCIT Member would be required to maintain two accounts at the GCF Clearing Agent Bank(s) at which Netting Members with whom the CCIT Member enters into CCIT Transactions maintain accounts. CCIT Members acting through a Joint Account would be required to cause the Joint Account Submitter to maintain two accounts for the Joint Account activity at the GCF Clearing Agent Bank(s) at which the Netting Members with whom the CCIT Members enter into CCIT Transactions maintain accounts. One account at each such GCF Clearing Agent Bank would be designated for the CCIT Member's activity with FICC, and the second account would be designated for purposes of the committed liquidity facility to which the CCIT Member would be subject. This facility is described in Section 14 of proposed GSD Rule 3B.

With respect to trade comparison, Section 9 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 5 (Comparison System) would apply to CCIT Transactions, subject to the following: (i) "Member," when used in GSD Rule 5 (Comparison System), would include a CCIT Member or a Joint Account Submitter acting on behalf of a CCIT Member, as applicable; (ii) with respect to Section 3 (Trade Submission Communication Methods) of GSD Rule 5, CCIT Transactions could only be submitted using the Interactive Submission Method or FICC's web interface; and (iii) with respect to Section 4 (Submission Size Alternatives) of GSD Rule 5, CCIT Transactions would be required to be submitted exactly as executed.

Also with respect to trade comparison, FICC would permit CCIT Transactions to be submitted for either Bilateral Comparison or Locked-In Comparison. Currently, in the GCF Repo Service (which the CCIT Service would be leveraging), transactions are submitted for Locked-In Comparison. Because institutional tri-party repo

transactions are typically transacted on a bilateral basis, FICC wishes to accommodate this convention and allow CCIT Transactions to be submitted for either Bilateral Comparison or Locked-In Comparison.

Section 9 of proposed GSD Rule 3B would provide that GSD Rule 6A (Bilateral Comparison) would govern the comparison of CCIT Transactions that are submitted for Bilateral Comparison, subject to the following:

(i) "Member," when used in GSD Rule 6A, would include a CCIT Member or a Joint Account Submitter acting on behalf of a CCIT Member, as applicable;

(ii) with respect to Section 1 (General) of GSD Rule 6A, the *Schedule of Required and Other Data Submission Items for GCF Repo Transactions* would apply to CCIT Transactions. The *Schedule of Required Match Data* and the *Schedule of Money Tolerances* would not apply to CCIT Transactions. With respect to the *Schedule of Required and Other Data Submission Items for GCF Repo Transactions*, the fields requiring Broker information would not apply; and

(iii) with respect to Section 2 (Submission Method Requirements) of GSD Rule 6A, CCIT Transactions could only be submitted using the Interactive Submission Method or FICC's web interface.

Section 9 of proposed GSD Rule 3B would provide that the following provisions of GSD Rule 6C (Locked-In Comparison) would govern the comparison of CCIT Transactions that are submitted on a Locked-In Trade basis: Section 1 (General), Section 2 (Authorizations of Transmission to and Receipt by the Corporation of Data on Locked-In Trades), the first sentence in Section 4 (Submission Requirements), Section 5 (GCF Repo Transactions), Section 7 (Reporting of Locked-In Trades), Section 8 (Discretion to not Accept Data), Section 9 (Binding Nature of Comparison System Output on Locked-In Trades), Section 12 (Affirmation, Cancellation and Modification Requirements for Data on GCF Repo Transactions) and Section 13 (Timing of Comparison). For purposes of the application of these provisions to CCIT Transactions, CCIT Transactions would be treated as GCF Repo Transactions. "Member," when used in applicable parts of GSD Rule 6C, would include a CCIT Member or, as applicable, a Joint Account Submitter acting on behalf of a CCIT Member.

Section 9 of proposed GSD Rule 3B states that the *Schedule of GCF Timeframes* would apply to CCIT Transactions (whether submitted for Bilateral Comparison or Locked-In

Comparison) and CCIT Members would be subject to any applicable late fees (applied at the Joint Account level if applicable) noted in the *Fee Structure* for failure to meet applicable deadlines. CCIT Members would be subject to all consequences for not meeting the deadlines in the schedules noted in GSD Rule 20 (Special Provisions for GCF Repo Transactions) in the same manner that such consequences apply to Netting Members.

Proposed GSD Rule 3B, Section 10 (Forward Trades)

Section 10 of proposed GSD Rule 3B would apply to CCIT Transactions that are Forward Trades.

Section 10 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 14 (Forward Trades) would apply to CCIT Transactions in the same way such provisions apply to GCF Repo Transactions.

Proposed GSD Rule 3B, Section 11 (Netting System and Settlement of CCIT Transactions)

Section 11 of proposed GSD Rule 3B would govern the netting and settlement of CCIT Transactions.

Section 11 of proposed GSD Rule 3B would provide that GSD Rule 20 (Special Provisions for GCF Repo Transactions) would apply to the netting and settlement obligations of FICC and each party to a CCIT Transaction in the same manner in which such provisions apply to GCF Repo Transactions, subject to the following: (i) When used, "Netting Member" would include a CCIT Member or, as applicable, a Joint Account; (ii) CCIT Members (whether acting individually or through a Joint Account) would always be GCF Net Funds Lenders; (iii) CCIT Members would not be Interbank Pledging Members;²⁵ (iv) CCIT Members would not be initiators of requests for collateral substitutions but would be the recipients of such collateral substitutions;²⁶ and (v) the CCIT Transaction activity of Netting Members would be netted with such Netting Members' GCF Repo Service activity for

²⁵ Interbank processing is not a feature of the CCIT Service because CCIT Members would be required to have accounts at each GCF Clearing Agent Bank at which Netting Members with whom the CCIT Members enter into CCIT Transactions maintain accounts. The net cash requirement for each account would be settled at the applicable bank, thereby eliminating the need for interbank processing.

²⁶ Because CCIT Members would be cash lenders in CCIT Transactions, they would not initiate collateral substitutions, as collateral substitution is a market practice initiated by cash borrowers in repo transactions.

one net obligation per GCF Repo Service Generic CUSIP Number.

Section 11 of proposed GSD Rule 3B would also provide that on each Business Day, CCIT Members submitting CCIT Transactions through a Joint Account would be required to cause their Joint Account Submitter to submit the trade settlement allocation with respect to trades settled by the Joint Account during that Business Day.

In the event that FICC ceases to act for a CCIT Member, FICC would need to obtain the underlying securities collateral to avoid having to take market action to purchase such securities. To address this concern, Section 11 of proposed GSD Rule 3B would provide that each CCIT Member grants to FICC a security interest in the underlying securities as security for the CCIT Member's performance of its obligations under each CCIT Transaction. Section 11 of proposed GSD Rule 3B would further provide that in the event a CCIT Transaction were re-characterized as a loan, the securities delivered to the CCIT Member would be deemed pledged to such Member as security for the performance of FICC's obligations. In such circumstances, FICC would not be considered to have a security interest in the securities but as owning the securities. In addition, Section 11 of proposed GSD Rule 3B would provide that if FICC ceases to act for a CCIT Member, FICC could instruct the relevant GCF Clearing Agent Bank to deliver to FICC the Eligible Securities that the CCIT Member is obligated to return to FICC against payment by FICC of the Contract Value.

Proposed GSD Rule 3B, Section 12 (Compared Trades)

Section 12 of proposed GSD Rule 3B would establish FICC's guaranty of settlement of CCIT Transactions.

Section 12 of proposed GSD Rule 3B would provide that GSD Rule 11B (Guaranty of Settlement) would apply to CCIT Transactions that are Compared Trades.

Proposed GSD Rule 3B, Section 13 (Funds-Only Settlement)

Section 13 of proposed GSD Rule 3B would establish the funds-only settlement obligations that would apply to CCIT Members and to Netting Members that are parties to CCIT Transactions.

FICC proposes that CCIT Members would have Funds-Only Settlement Amount obligations as set forth in GSD Rule 13 (Funds-Only Settlement), and that GSD Rule 13 would apply in its entirety to CCIT Members in the same manner as it applies to Netting

Members, except that only the following components of Section 1 (General) of GSD Rule 13 would apply to CCIT Members: (i) The Invoice Amount,²⁷ and (ii) the Miscellaneous Adjustment Amount.²⁸ FICC proposes to not collect/pay the remaining funds-only settlement components included in Section 1 of GSD Rule 13 from/to CCIT Members in order to align with current market practice for institutional cash lenders in the tri-party repo market. Such modified approach to the funds-only settlement process would be appropriate for FICC to take with respect to CCIT Members in light of the fact that no market action would be required by FICC in the event of a CCIT Member's default due to the perfected security interest FICC would have in such CCIT Member's underlying repo securities.

For Netting Members that are parties to CCIT Transactions, FICC proposes that the Invoice Amount, the Miscellaneous Adjustment Amount, and the Transaction Adjustment Payment components of Section 1 of GSD Rule 13 would apply (inclusive of their CCIT Transactions) in the same manner that such components are currently applied to their GSD funds-only settlement obligations.

However, the GCF Interest Rate Mark and Interest Rate Mark components of Section 1 of GSD Rule 13 would apply in a different manner with respect to Netting Members' CCIT Transactions than such components are currently applied to their GSD funds-only settlement obligations. Specifically, if the GCF Interest Rate Mark funds-only settlement component (for a CCIT Transaction for which the Start Leg has settled) or the Interest Rate Mark funds-only settlement component (for a CCIT Transaction that is a Forward Trade, during such CCIT Transaction's Forward-Starting Period) result in a debit to the Netting Member, such debit amount would be collected and held by FICC overnight and then returned to the Netting Member the following day in a credit for the same amount, plus a use of funds amount (Interest Rate Market Adjustment Payment). FICC proposes to

collect and hold debit amounts reflecting Netting Members' GCF Interest Rate Mark or Interest Rate Mark, as applicable, overnight to mitigate the interest rate risk that FICC faces from a Netting Member's default with respect to its CCIT Transactions. However, if the GCF Interest Rate Mark or the Interest Rate Mark component, as applicable, results in a credit to a Netting Member, the Netting Member would not be paid the credit because the related debit would not be collected from the CCIT Member for the reasons described above.

In addition, FICC proposes to apply a new funds-only settlement component to CCIT Transactions, which would be referred to as "CCIT Daily Repo Interest." CCIT Daily Repo Interest would reflect the daily interest earned on a CCIT Transaction and would be collected by FICC on each Business Day during the course of a CCIT Transaction from the cash borrowing Netting Member party to a CCIT Transaction (other than on the Actual Settlement Date of the CCIT Transactions on which it would be treated as a Transaction Adjustment Payment) and paid through by FICC on the same day to the cash lending CCIT Member as part of the funds-only settlement process, unless the parties enter into a negative rate CCIT Transaction, in which case the debits and credits would be reversed. It should be noted that a Netting Member would not receive any use of funds amount credit from FICC on any CCIT Daily Repo Interest collected from such Netting Member during the course of a CCIT Transaction because the related debit would not be collected from the CCIT Member in order to align with current market practice for institutional cash lenders in the tri-party repo market.

Proposed GSD Rule 3B, Section 14 (Liquidity Requirements of CCIT Members)

Section 14 of proposed GSD Rule 3B would establish a rules-based committed liquidity facility for CCIT Members.

The September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement (without the referenced annexes) (the "SIFMA MRA") would be incorporated by reference into the GSD Rules as a master repurchase agreement between FICC as seller and each CCIT Member as buyer (the "CCIT MRA").

The CCIT MRA could be invoked by FICC in the event that FICC ceases to act for a Netting Member that engaged in CCIT Transactions (the "Defaulting Member"), and would require CCIT

Members that have open trades with the Defaulting Member to enter into repo transactions subject to the CCIT MRA (each, a "CCIT MRA Transaction"). Only CCIT Members that have outstanding CCIT Transactions with the Defaulting Member would be required to enter into CCIT MRA Transactions, and the aggregate total purchase price of a CCIT Member's CCIT MRA Transactions would be limited to no more than the aggregate total principal dollar amount of such CCIT Member's outstanding CCIT Transactions with the Defaulting Member. The securities posted to the CCIT Members under CCIT MRA Transactions would have a market value of 102 percent of the aggregate purchase price, and the pricing rate in respect of each CCIT MRA Transaction would be the rate published on FICC's Web site at the time that FICC initiates such CCIT MRA Transaction, corresponding to: (A) U.S. Treasury 30-year maturity (CUSIP: 371487AE9) if the underlying securities are U.S. Treasury securities; (B) Non-Mortgage Backed U.S. Agency Securities (CUSIP: 371487AH2) if the underlying securities are non-mortgage-backed U.S. agency securities; or (C) Fannie Mae and Freddie Mac Fixed Rate MBS (CUSIP: 371487AL3) if the underlying securities are mortgage-backed securities, or, if the relevant foregoing rate is unavailable, a rate that FICC reasonably determines approximates the average daily interest rate paid by a seller of the underlying securities under a cleared repo transaction.

CCIT MRA Transactions would be terminable only by demand of FICC, except in the following circumstances: (i) A Corporation Default occurs during the term of a CCIT MRA Transaction; or (ii) if FICC is not able to settle a CCIT MRA Transaction by (x) the 30th calendar day following the entry into such CCIT MRA Transaction where the underlying securities are non-mortgage-backed U.S. agency securities or U.S. Treasury securities, or (y) the 60th calendar day following the entry into such CCIT MRA Transaction where the underlying securities are mortgage-backed securities (any such day, a "CCIT MRA Termination Date"). In either of the aforementioned circumstances, the affected CCIT Member would have the right to terminate the CCIT MRA Transaction and sell the underlying securities.

Section 14 of proposed GSD Rule 3B would also make clear that all delivery obligations with respect to an original CCIT Transaction would be deemed satisfied by operation of Section 14, and settlement of any original CCIT Transaction between FICC and any CCIT

²⁷ Pursuant to the GSD Rules, the term "Invoice Amount" means "all fee amounts due and owing from a Netting Member to the Corporation on a particular Business Day." GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members.

²⁸ Pursuant to the GSD Rules, the "Miscellaneous Adjustment Amount" means "the net total of all miscellaneous funds-only amounts that, on a particular Business Day, are required to be paid by a Netting Member to the Corporation and/or are entitled to be collected by a Member from the Corporation." GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members.

Member would be final, notwithstanding that the relevant Eligible Securities are not required to be delivered to FICC in connection with such original CCIT Transaction by the CCIT Member that was a buyer in the original CCIT Transaction (such delivery being netted against delivery to the buyer under the CCIT MRA).

In addition to the above, Section 14 of proposed GSD Rule 3B also provides for uncommitted liquidity repurchase transactions between each CCIT Member as Buyer and FICC as Seller under the SIFMA MRA that would also be incorporated by reference in the GSD Rules.

Proposed GSD Rule 3B, Section 15 (Restrictions on Access to Services by a CCIT Member, Insolvency of a CCIT Member and Wind-Down of a CCIT Member)

Section 15 of proposed GSD Rule 3B would govern (i) the rights of FICC to restrict a CCIT Member's access to its services, (ii) FICC's rights in the event of an insolvency of a CCIT Member, and (iii) the winding down of a CCIT Member's CCIT activity.

Section 15 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 21 (Restrictions on Access to Services), GSD Rule 21A (Wind-Down of a Netting Member) and GSD Rule 22 (Insolvency of a Member) would apply to CCIT Members in the same manner as such provisions apply to Netting Members.

Proposed GSD Rule 3B, Section 16 (Procedures for When the Corporation Ceases To Act for a CCIT Member)

Section 16 of proposed GSD Rule 3B would establish FICC's procedures for when it ceases to act for a CCIT Member.

Section 16 of proposed GSD Rule 3B would provide that GSD Rule 22A (Procedures for When the Corporation Ceases to Act) would apply when FICC ceases to act for a CCIT Member in the same manner as such rule applies to Netting Members, except that with respect to Section 2(b) of GSD Rule 22A, the CCIT Member for whom FICC has ceased to act would be required to return each Eligible Security that the CCIT Member is obligated to return to FICC against payment by FICC of the Contract Value.

Proposed GSD Rule 3B, Section 17 (Other Applicable Rules, Schedules, Interpretations and Statements)

Section 17 of proposed GSD Rule 3B would establish certain other GSD Rules as being applicable to CCIT Members in

the same manner that such rules apply to Netting Members.

Section 17 of proposed GSD Rule 3B would provide that GSD Rule 1 (Definitions), GSD Rule 22B (Corporation Default), proposed GSD Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991), GSD Rule 23 (Fine Payments), GSD Rule 25 (Bills Rendered), GSD Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), GSD Rule 28 (Forms), GSD Rule 29 (Release of Clearing Data), GSD Rule 31 (Distribution Facilities), GSD Rule 32 (Signatures), GSD Rule 33 (Procedures), GSD Rule 34 (Insurance), GSD Rule 35 (Financial Reports), GSD Rule 36 (Rule Changes), GSD Rule 37 (Hearing Procedures), GSD Rule 38 (Governing Law and Captions), GSD Rule 39 (Limitations of Liability), GSD Rule 40 (General Provisions), GSD Rule 41 (Cross-Guaranty Agreements), GSD Rule 42 (Suspension of Rules), GSD Rule 44 (Action by the Corporation), GSD Rule 45 (Notices), GSD Rule 46 (Interpretation of Terms), GSD Rule 47 (Interpretation of Rules) and GSD Rule 48 (Disciplinary Proceedings) would apply to CCIT Members in the same manner that such rules apply to Netting Members.

Section 17 of proposed GSD Rule 3B would provide that CCIT Members would be Voluntary Purchaser Participants within the meaning of the Shareholders Agreement of DTCC, dated as of November 4, 1999, as heretofore or hereafter amended and restated.²⁹ In addition, Section 17 of proposed GSD Rule 3B would provide that all schedules cited in or pertaining to the GSD Rules which are cited in proposed GSD Rule 3B would apply to CCIT Members and that the Statements of Policy or Interpretation contained in the GSD Rules as applicable to the CCIT Service would also be applicable to CCIT Members.

E. Proposed Changes to GSD Rule 4 (Clearing Fund and Loss Allocation)

The proposed changes to GSD Rule 4 (Clearing Fund and Loss Allocation) would provide that CCIT Members would be treated as Tier Two Members for purposes of default loss allocation.

Unlike Tier One Netting Members, which are subject to default loss mutualization, a Tier Two Member is only subject to loss allocation as a result of the default of a Netting Member with whom it had open FICC-cleared transactions at the time of such Netting Member's default. FICC assesses Tier Two Members ratably based upon their

open trading activity with the Defaulting Member that resulted in a loss. Tier Two Members whose trades with the Defaulting Member result in a bilateral liquidation profit are not allocated any portion of a Remaining Loss.

In light of the fact that a CCIT Member would only provide liquidity as a cash lender in the proposed CCIT Service and would not present market risk to FICC due to the perfected security interest FICC would have in such CCIT Member's underlying repo securities, FICC believes it is appropriate to treat CCIT Members as Tier Two Members and subject them to default loss allocation obligations with respect to the default of a Netting Member with whom they had open CCIT Transactions at the time of such Netting Member's default, but not loss mutualization obligations as is required for Tier One Netting Members as described above. Specifically, the proposed changes to GSD Rule 4 would provide that loss would be assessed against CCIT Members as Tier Two Members ratably based upon a percentage of loss attributable to each CCIT Member's specific Generic CUSIP Number that it had open with the Defaulting Member.

Conforming changes would also be made to GSD Rule 4 to refer to the defined term "Tier Two Member" (previously referred to in the GSD Rules as a "Tier Two Netting Member"), which defined term would be revised by this filing to include a CCIT Member.

F. Proposed Changes to GSD Rule 5 (Comparison System)

Conforming changes would be made to GSD Rule 5 (Comparison System) to reference obligations between a Netting Member and a CCIT Member (or Joint Account, as applicable) with respect to novation.

G. Proposed Changes to GSD Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991)

Conforming changes would be made to GSD Rule 22C, formerly GSD Rule 22B Section (c), in order to establish that any actions taken under Section 11(e) of proposed GSD Rule 3B constitute remedies under a "security agreement or arrangement or other credit enhancement."³⁰

H. Proposed Changes to GSD Rule 24 (Charges for Services Rendered)

Conforming changes would be made to GSD Rule 24 (Charges for Services

³⁰Certain other proposed changes to GSD Rule 22B unrelated to the establishment of the proposed CCIT Service are described below in Item II(A)1(iv).

²⁹GSD Rule 49, DTCC Shareholders Agreement.

Rendered) to provide that CCIT Members would be responsible for all fees pertaining to their CCIT Member activity as set forth in the *Fee Structure*. Such fees would be applied at the Joint Account level where applicable.

I. Proposed Changes to GSD Rule 30 (Lists to be Maintained)

Conforming changes would be made to GSD Rule 30 (Lists to be Maintained) to reflect that FICC would maintain lists of all CCIT Members (and their Joint Account Submitters, as applicable) and that such lists would be made available to Members upon request.

J. Proposed Changes to GSD Rule 49 (DTCC Shareholders Agreement)

The proposed changes to Section 3 of GSD Rule 49 (DTCC Shareholders Agreement) would provide that all Tier Two Members, including CCIT Members and Netting Members whose membership type has been designated as a "Tier Two Member" type by FICC pursuant to GSD Rule 2A (Initial Membership Requirements), are Voluntary Purchaser Participants.

(iii) Impact of the Proposed CCIT Service on Various Persons

The proposed CCIT Service would be voluntary. Institutional cash lenders that wish to become CCIT Members and Netting Members that wish to participate in the proposed CCIT Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed CCIT Service as described below.

The proposed CCIT Service would affect institutional cash lenders that choose to become CCIT Members because it would impose various requirements on them. These requirements include, but are not limited to, the following sections of proposed GSD Rule 3B: (1) Eligibility and initial application requirements as specified in Sections 1, 2, 3 and 4; (2) on-going membership requirements as specified in Section 5; (3) loss allocation requirements as specified in Section 7; (4) trade submission requirements as specified in Section 9; (5) netting and settlement requirements as specified in Section 11; (6) funds-only settlement requirements as specified in Section 13; and (7) liquidity requirements in the event of a default of a Netting Member with whom such CCIT Member has traded as specified in Section 14.

Specific details on the requirements and the manner in which the proposed

CCIT Service would affect institutional cash lenders that choose to become CCIT Members can be found above in *Section (ii)—Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service*.

The proposed CCIT Service would affect Netting Members that choose to participate in the service because it would impose various requirements on them. These requirements include, but are not limited to, the funds-only settlement requirements as specified in Section 13 of proposed GSD Rule 3B.

Specific details on these requirements and the manner in which the proposed CCIT Service would affect Netting Members that choose to participate in the proposed CCIT Service are described above in *Section (ii)—Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service*.

(iv) Other Proposed Rule Changes

This filing contains proposed rule changes that are in addition to the ones related to the establishment of the proposed CCIT Service. The proposed rule changes that are not related to the proposed CCIT Service would provide specificity, clarity and additional transparency to the GSD Rules as described below.

A. Proposed Changes to GSD Rule 2A (Initial Membership Requirements)

Section 3 of GSD Rule 2A governs the admission criteria and membership qualifications and standards for Comparison-Only Members.

FICC is proposing to amend Section 3(a) of GSD Rule 2A because FICC interprets this Section as applying specifically to the operational capability requirement for applicants to become Comparison-Only Members, but the existing rule text is more broadly written. In order to align the rule text with FICC's interpretation of the requirement of this Section, FICC is proposing to amend the rule text to provide that it applies only with respect to the operational capability requirement for applicants that wish to become Comparison-Only Members.³¹

B. Proposed Changes to GSD Rule 3 (Ongoing Membership Requirements)

GSD Rule 3 governs ongoing standards for Members.³²

³¹ The operational capability requirement is also applicable to applicants to become Netting Members, pursuant to GSD Rule 2A, Section 4. GSD Rule 2A, Initial Membership Requirements.

³² Pursuant to the GSD Rules, the term "Member" means a "Comparison-Only Member" or a "Netting Member." The term "Member" also includes a Sponsoring Member in its capacity as a Sponsoring

Member's ongoing obligation to inform FICC, both orally and in writing, if it is no longer in compliance with any of the relevant qualifications. This includes, but is not limited to, a Member's ongoing obligation to notify FICC within two business days of learning of an investigation or proceeding to which it is or is becoming the subject of that would cause the Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in GSD Rules 2, 2A and 3. FICC is proposing to change the rule text in order clarify that this obligation to notify FICC arises at the point in time that such Member learns that an investigation or proceeding would cause it to fall out of compliance (and not before such time). FICC believes that the proposed change provides Members with clarity on the point in time at which a Member is required to notify FICC. Certain other conforming and typographical changes would also be made to this Section.

Section 10 of GSD Rule 3 provides that a Member's books and records, insofar as they relate to such Member's transactions processed through FICC, would be required to be open to the inspection of the duly authorized representatives of FICC in accordance with the provisions of this Section. In light of the fact that Registered Investment Companies are permitted to be Netting Members under GSD Rule 3, and Registered Investment Company trading activity is typically controlled by a separate investment adviser, FICC proposes to amend Section 10 to require that, in addition to having access to the books and records of the Registered Investment Company Netting Member itself (as is required under current GSD Rule 3), that FICC also have access to the books and records of the Controlling Management of a Registered Investment Company Netting Member in accordance with the provisions of this Section.

Section 13 of GSD Rule 3 governs Comparison-Only Members' and Netting Members', as applicable, election to terminate their GSD membership. Currently, this rule states that a Comparison-Only Member's or Netting Member's, as applicable, request to terminate its GSD membership will not be effective until accepted by FICC. Because the existing rule is open-ended with respect to FICC's duty to accept such Member's request to terminate its

Member and a Sponsored Member, each to the extent specified in GSD Rule 3A. GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members to the extent specified in proposed GSD Rule 3B.

membership and such open-endedness could create uncertainty for a Member that wishes to terminate its GSD membership as to when such termination will be effective, FICC is proposing to amend this section to provide that a Member's written notice of its termination would not be effective until accepted by FICC, which acceptance could be no later than 10 Business Days after the receipt of the written notice from such Member.

C. Proposed Changes to GSD Rule 4 (Clearing Fund and Loss Allocation)

Section 5 of GSD Rule 4 governs FICC's use of Clearing Fund deposits. FICC proposes to correct an out-of-date cross-reference and make a typographical correction to this section.

D. Proposed Changes to GSD Rule 20 (Special Provisions For GCF Repo Transactions) and the Schedule of GCF Timeframes

Section 3 of GSD Rule 20 governs FICC's collateral allocation requirements for each Netting Member in a GCF Net Funds Borrower Position or GCF Net Funds Lender Position.

FICC proposes to amend Section 3 of GSD Rule 20 to require that all GCF Repo Transactions be fully collateralized at the time established by FICC in the *Schedule of GCF Timeframes*,³³ and to amend the *Schedule of GCF Timeframes* to establish 9:00 New York Time as the deadline for satisfaction of such requirement. FICC also proposes to amend Section 3 of GSD Rule 20 to prohibit a Member that receives collateral in the GCF Repo process (*i.e.*, a Member with a Collateral Allocation Entitlement) from withdrawing the securities or cash collateral that such Member receives.

E. Proposed Changes to GSD Rule 22B (Corporation Default)

GSD Rule 22B describes specific events that would cause a Corporation Default³⁴ and the effect of this default on Transactions that have been submitted to FICC.

FICC proposes to amend GSD Rule 22B to specify the steps that Members would need to take in the event of a Corporation Default. The proposed rule changes to subsection (a) of GSD Rule 22B would state that upon the immediate termination of the open Transactions between Members that have been novated to FICC, such

Members would be required to promptly take market action to close out such positions. Each Member would then report the results of the market action to the Board. FICC believes that the proposed change would be helpful to Members and would promote clarity and transparency with respect to the process surrounding a Corporation Default.

F. Proposed Changes to GSD Rule 35 (Financial Reports)

FICC proposes to amend GSD Rule 35 (Financial Reports) to add a provision to reflect FICC's current practice of having its independent public accountants conduct an annual study and evaluation of FICC's system of internal accounting controls with respect to the safeguarding of participants' assets, prompt and accurate clearance and settlement of securities transactions, and the reliability of related records. Such study and evaluation is conducted in accordance with the standards established by the American Institute of Certified Public Accountants and is made available to all Members within a reasonable time upon receipt from FICC's independent accountants.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to (i) "promote the prompt and accurate clearance and settlement of securities transactions"³⁵ and (ii) "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest."³⁶ By expanding the availability of GSD's infrastructure to institutional cash lenders, FICC believes that the proposed rule change would help to safeguard the tri-party repo market, as the proposed rule change to establish the proposed CCIT Service would (i) decrease settlement and operational risk (by making a greater number of transactions eligible to be netted and subject to guaranteed settlement, novation, and independent risk management through FICC), (ii) lower the risk of liquidity drain in the tri-party repo market (through FICC's guaranty of completion of settlement for a greater number of eligible tri-party repo transactions), and (iii) protect against fire sale risk (through FICC's ability to centralize and control the liquidation of a greater portion of a failed counterparty's portfolio). By decreasing settlement and operational

risk, FICC believes the proposed rule change would "promote the prompt and accurate clearance and settlement of securities transactions" and "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions" consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above. By lowering the risk of liquidity drain in the tri-party repo market and protecting against fire sale risk, FICC believes the proposed rule change would "protect investors and the public interest," consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules 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."³⁷ By providing for sufficient liquidity resources for FICC to settle the obligations of a CCIT Member's defaulted Netting Member pre-novation counterparty in the form of the CCIT MRA and by protecting FICC from market risk in the event of a CCIT Member's default in the form of the perfected security interest in FICC's favor in each CCIT Member's underlying repo securities, the proposed CCIT Service would provide for prudent risk management of CCIT Transactions and CCIT Members by FICC and would contribute to FICC's financial stability. Therefore, FICC believes the proposed rule change would "assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible," consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Section 17A(b)(3)(G) of the Act requires that the GSD Rules "provide that . . . [the clearing agency's] participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction."³⁸ Section 17A(b)(3)(H) of the Act requires, in part, that the GSD Rules "provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services

³³ The *Schedule of GCF Timeframes* is an appendix to the GSD Rules.

³⁴ Subsection (b) of GSD Rule 22B describes the events that would cause FICC to be in default to its Members. GSD Rule 22B, Corporation Default.

³⁵ 15 U.S.C. 78q-1(b)(3)(F).

³⁶ *Id.*

³⁷ *Id.*

³⁸ 15 U.S.C. 78q-1(b)(3)(G).

offered by the clearing agency.”³⁹ By subjecting CCIT Members, and applicants that wish to become CCIT Members, to comparable admission requirements⁴⁰ and the same disciplinary requirements (and related due process procedures) as those applicable to Netting Members, and applicants that wish to become Netting Members, the proposed CCIT Service would establish an appropriate framework for the admission and disciplining of CCIT Members. Such framework for the admission and disciplining of CCIT Members would be appropriate in light of the fact that CCIT Members would enjoy rights and privileges vis-à-vis FICC that are similar to those rights and privileges enjoyed by Netting Members. Therefore, FICC believes the proposed rule change would “provide that . . . its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other

³⁹ 15 U.S.C. 78q-1(b)(3)(H).

⁴⁰ There would be certain differences between the admission requirements applicable to CCIT Members under proposed GSD Rule 3B and those applicable to Netting Members under GSD Rule 2A. For example, under proposed GSD Rule 3B, FICC proposes to require that CCIT Member applicants provide certain opinions of counsel in connection with their applications to become CCIT Members (as described above) to which Netting Member applicants are not subject. In addition, CCIT Member applicants would not be subject to the same requirements regarding business history as Netting Member applicants are subject to.

FICC believes that these differences in the admission requirements between CCIT Member applicants and Netting Member applicants are appropriate and consistent with the requirements of the Act (in particular Section 17A(b)(3)(H), cited above), in light of the differences between the proposed CCIT Service and services available to Netting Members.

With respect to the opinion of counsel requirements for CCIT Member applicants, because FICC is anticipating that many of the firms that would apply to become CCIT Members would be of legal entity types that are not otherwise eligible to become Netting Members, FICC believes the opinion of counsel requirements are necessary in order to establish an appropriate framework for the admission of CCIT Members because they ensure that FICC is able to obtain the same level of legal comfort with respect to its rights vis-à-vis CCIT Members as it has with respect to its Netting Members. With respect to the business history requirements, FICC believes that it is not necessary to establish the same requirements for CCIT Members as it has for Netting Members because CCIT Members do not present FICC with the credit and market risk exposure that Netting Members do in light of the fact that CCIT Members (i) would only be allowed to lend cash into GSD and (ii) would be required to grant FICC an enforceable and perfected security interest in the securities collateral posted to them under CCIT Transactions, which FICC would be able to foreclose upon in the event of a CCIT Member's default in order to complete settlement without having to take market action.

fitting sanction,” and also “provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency,” consistent with the requirements of the Act, in particular Sections 17A(b)(3)(G) and 17A(b)(3)(H), cited above.

The proposal is also consistent with Rules 17Ad-22(d)(2) and (d)(9), promulgated under the Act. Rule 17Ad-22(d)(2) requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to “require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.”⁴¹ Rule 17Ad-22(d)(9) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to “provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.”⁴² In connection with the establishment of the proposed CCIT Service, FICC would make certain modifications to the GSD Rules (as described above) in order to create the requirements that would be applicable to CCIT Members, including initial and on-going financial responsibility and operational capacity requirements, as well as the requirements that would be applicable to Netting Members with respect to their participation in the proposed CCIT Service. If approved, the requirements applicable to the proposed CCIT Service would become part of the GSD Rules, which are publicly available on The Depository Trust & Clearing Corporation's Web site (www.dtcc.com), and market participants would be able to review them in connection with their evaluation of potential participation in the proposed CCIT Service. Therefore, FICC believes the proposed rule change would “require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency” and “provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services,” consistent with the requirements of Rules 17Ad-22(d)(2) and (d)(9), cited above.

As stated above, Section 17A(b)(3)(F) of the Act requires, in part, that the GSD

Rules be designed to (i) “promote the prompt and accurate clearance and settlement of securities transactions”⁴³ and (ii) “remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.”⁴⁴ By providing specificity, clarity and additional transparency to the GSD Rules, the proposed rule changes to Section 3(a) of GSD Rule 2A (Initial Membership Requirements), Sections 7, 10 and 13 of GSD Rule 3 (Ongoing Membership Requirements), Section 5 of GSD Rule 4 (Clearing Fund and Loss Allocation), Section 3 of GSD Rule 20 (Special Provisions for GCF Repo Transactions) and the *Schedule of GCF Timeframes*, Subsection (a) of GSD Rule 22B (Corporation Default), and GSD Rule 35 (Financial Reports) that are unrelated to the proposed CCIT Service, would provide Members with a better understanding of the GSD Rules, making errors in the performance of their responsibilities to FICC less likely to occur and thereby ensuring that FICC's clearing and settlement system works efficiently. Therefore, FICC believes the proposed rule change would “promote the prompt and accurate clearance and settlement of securities transactions” by FICC and also “remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions,” consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

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

FICC believes that the proposed rule change to establish the proposed CCIT Service would promote competition by increasing the types of entities that may participate in FICC and therefore permit more market participants to utilize FICC's services.

At the same time, the proposed rule change may impose a burden on competition by limiting participation in the proposed CCIT Service to institutional cash lenders and Netting Members that are eligible to participate in the service. However, FICC believes any burden on competition that may result from the proposed rule change would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of

⁴¹ 17 CFR 240.17Ad-22(d)(2).

⁴² 17 CFR 240.17Ad-22(d)(9).

⁴³ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁴ *Id.*

the Act,⁴⁵ for the reasons described below.

First, although the proposal would limit the legal entities that would be eligible to participate in the proposed CCIT Service as CCIT Members to non-RICs, and this limitation may impact RICs by excluding them from being able to novate their tri-party repo lending activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act in light of the fact that the legal ability of RICs to participate in the proposed CCIT Service is uncertain in light of the regulatory requirements applicable to them under the Investment Company Act of 1940 (including, for example, liquid asset requirements and counterparty diversification requirements), and therefore it is necessary and appropriate in furtherance of the purposes of the Act to exclude them, at this time, from the proposed CCIT Service until such legal uncertainty can be resolved. Moreover, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above, the proposed CCIT Service would be voluntary and would not restrict the ability of RICs to enter into tri-party repo transactions with Netting Members in GCF Repo eligible asset classes outside of GSD.

Second, although the proposal would limit participation in the proposed CCIT Service as CCIT Members to legal entities that are able to satisfy the eligibility requirements specified in proposed GSD Rule 3B, and this limitation may impact institutional cash lenders that are unable to satisfy such eligibility requirements by excluding them from being able to novate their tri-party repo lending activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act in light of the fact that such eligibility requirements are designed to allow FICC to prudently manage the risks associated with CCIT Members' participation in the proposed CCIT Service. For example, the proposed minimum Net Asset

requirements of \$100 million or more and credit monitoring requirements for CCIT Members included in the proposed GSD Rule 3B are designed to allow FICC to manage the credit risk associated with CCIT Members' participation in the proposed CCIT Service. The requirement that CCIT Members grant FICC an enforceable and perfected security interest in the securities collateral posted to them under CCIT Transactions is designed to allow FICC to manage the market risk associated with CCIT Members' participation in the proposed CCIT Service. Moreover, the requirement that CCIT Members provide FICC with a committed liquidity facility in the event FICC ceases to act for a Netting Member with whom they have open CCIT Transactions is designed to allow FICC to manage the liquidity risk associated with CCIT Members' participation in the proposed CCIT Service. Furthermore, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above and in the preceding paragraph, the proposed CCIT Service would be voluntary and would not restrict the ability of institutional cash lenders to enter into tri-party repo transactions with Netting Members in GCF Repo eligible asset classes outside of GSD.

Third, although the proposal would limit participation in the proposed CCIT Service to Netting Members that are participants in the GCF Repo Service, and this limitation may impact Netting Members that do not participate in the GCF Repo Service by excluding them from being able to novate their institutional tri-party repo borrowing activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition is necessary and appropriate in furtherance of the purposes of the Act in light of the fact that all Netting Members that fulfill the application requirements, including but not limited to completing the necessary documentation, are eligible to become GCF Repo participants and would therefore be eligible to participate in the proposed CCIT Service. Moreover, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above and in the preceding paragraphs, participation in the proposed CCIT Service would be

voluntary and would not restrict the ability of Netting Members to enter into tri-party repo borrowing transactions with institutional counterparties in GCF Repo eligible asset classes outside of GSD.

FICC believes that the proposed changes to Section 3(a) of GSD Rule 2A (Initial Membership Requirements), Sections 7, 10 and 13 of GSD Rule 3 (Ongoing Membership Requirements), Section 5 of GSD Rule 4 (Clearing Fund and Loss Allocation), Section 3 of GSD Rule 20 (Special Provisions for GCF Repo Transactions) and the *Schedule of GCF Timeframes*, Subsection (a) of GSD Rule 22B (Corporation Default), and GSD Rule 35 (Financial Reports) that are unrelated to the proposed CCIT Service would not have an impact, nor impose any burden, on competition because each of such proposed changes are designed to provide specificity, clarity, and additional transparency within the GSD Rules.

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

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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 Act. Comments may be submitted by any of the following methods:

⁴⁵ 15 U.S.C. 78q-1(b)(3)(I).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2017-005 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-2017-005. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2017-005 and should be submitted on or before April 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-06241 Filed 3-29-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80310; File No. SR-NYSEArca-2016-89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Partial Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, To Amend the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

March 24, 2017.

I. Introduction

On August 16, 2016, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees, applicable to Users³ in the Exchange's data center in Mahwah, NJ ("Data Center"). The Exchange proposed to: (1) Provide additional information regarding access to the trading and execution systems of the Exchange and its affiliated SROs, and establish fees for connectivity to certain NYSE, NYSE Arca, and NYSE MKT market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers ("Third Party Data Feeds"); access to the trading and execution services of Third Party markets and other content service providers ("Third Party Systems"); connectivity to Depository Trust & Clearing Corporation ("DTCC") services; connectivity to third party testing and certification feeds; and the use of virtual control circuits ("VCCs").

The Commission published the proposed rule change for comment in the **Federal Register** on August 26,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT"). See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

2016.⁴ The Commission received no comments in response to the proposed rule change.⁵ On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.⁶

On November 2, 2016, the Exchange filed partial Amendment No. 1 to the proposed rule change.⁷ On November 29, 2016, the Commission instituted proceedings ("Order Instituting Proceedings" or "OIP") to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The proposed rule change, as modified by Amendment No. 1, is referred to as the "Prior Proposal."

On December 9, 2016, the Exchange filed Amendment No. 2 to the proposed rule change and on December 13, 2016 also filed Amendment No. 3 to the proposed rule change.⁹ Amendment Nos. 2 and 3, which together superseded and replaced the Prior Proposal in its entirety, were published for comment in

⁴ See Securities Exchange Act Release No. 34-78628 (August 22, 2016), 81 FR 59004 ("Notice").

⁵ The Commission notes that it received one comment letter on a related filing by NYSE (NYSE-2016-45, the "NYSE Companion Filing"), which is equally relevant to this filing. See letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 ("IEX I Letter").

Responding to the IEX I Letter, see letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated September 23, 2016 ("Response Letter I"), available at <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-3.pdf>. In note 3 of Response Letter I, the NYSE states that its response is also applicable to the Exchange's filing, Securities Exchange Act Release No. 78628 (August 22, 2016), 81 FR 59004 (August 26, 2016) (SR-NYSEArca-2016-89). Accordingly, Response Letter I is referred to as the Exchange's response.

⁶ See Securities Exchange Act Release No. 34-78967 (September 28, 2016), 81 FR 68480.

⁷ In partial Amendment No. 1 the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the Data Center. Amendment No. 1 is available on the Commission's Web site at <https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689-1.pdf>.

⁸ See Securities Exchange Act Release 34-79379 (November 22, 2016), 81 FR 86036.

⁹ The Commission notes that the Exhibit 5 filed with Amendment No. 2 contained erroneous rule text and therefore was corrected in Amendment No. 3. Amendment Nos. 2 and 3 are available at <https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689.shtml>.

⁴⁶ 17 CFR 200.30-3(a)(12).