computation as prescribed in section 3(f)(2) and 20 CFR 229.

The survivor student annuity is usually paid by direct deposit to a financial institution either into the student's checking or savings account or into a joint bank account with a parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study and home schooling.

To help determine if a child is entitled to student benefits, the RRB requires evidence of full-time school attendance. This evidence is acquired through the RRB's student monitoring program, which utilizes the following forms. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance as well as information on the student's marital status, social security benefits, and employment, which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315A, Statement of School Official, is used to obtain, from a school, verification of a student's full-time attendance when the student fails to return a monitoring Form G–315. Form G–315A.1, School Official's Notice of Cessation of Full-Time School Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. The RRB proposes no changes to Forms G–315, G–315a, or G–315a.1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–315	860	15	215
G–315a	20	3	1
G–315a.1	20	2	1
Total	900	....	217

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian D. Foster,

Clearance Officer.

[FR Doc. 2017–25171 Filed 11–20–17; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82090; File No. SR–FICC–2017–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook

November 15, 2017.

I. Introduction

Fixed Income Clearing Corporation (''FICC'') filed with the U.S. Securities and Exchange Commission (''Commission'') on March 1, 2017 the proposed rule change SR–FICC–2017–002 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2017.[3] The Commission received five comment letters[4] to the Proposed Rule Change. On April 25, 2017, the Commission designated a longer 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.[5] On May 30, 2017, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On September 15, 2017, the Commission designated a longer period on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] The extension gave the Commission until November 15, 2017 to either approve or disapprove the Proposed Rule Change and re-opened the comment period until October 6, 2017 for initial comments and October 12, 2017 for rebuttal comments. The Commission received

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

[2] 17 CFR 240.19b–4. FICC also filed the Proposed Rule Change as advance notice SR–FICC–2017–802 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Exchange Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on March 15, 2017. Securities Exchange Act Release No. 80191 (March 9, 2017), 82 FR 13876 (March 15, 2017) (SR–FICC–2017–802). The Commission extended the deadline for its review period of the Advance Notice from April 30, 2017 to June 29, 2017. Securities Exchange Act Release No. 80520 (April 25, 2017), 82 FR 20404 (May 1, 2017) (SR–FICC–2017–802). The Commission issued a notice of no objection to the Advance Notice on June 29, 2017. Securities Exchange Act Release No. 81054 (June 29, 2017), 82 FR 31356 (July 6, 2017).

[3] Securities Exchange Act Release No. 80234 (March 14, 2017), 82 FR 14401 (March 20, 2017) (SR–FICC–2017–002) (''Notice'').

[4] *See* letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin Capital LLC (''Ronin''), dated April 10, 2017, to Robert W. Errett, Deputy Secretary, Commission (''Ronin Letter I''); letter from Timothy J. Cuddihy, Managing Director, FICC, dated April 25, 2017, to Robert W. Errett, Deputy Secretary, Commission (''FICC Letter I''); letter from Alan B. Levy, Managing Director, Industrial and Commercial Bank of China Financial Services LLC (''ICBC''), Philip Vandermause, Director, Aardvark Securities LLC (''Aardvark''), David Rutter, Chief Executive Officer, LiquidityEdge LLC, Robert Pooler, Chief Financial Officer, Ronin, Jason Manumaleuna, Chief Financial Officer and EVP, Rosenthal Collins Group LLC (''Rosenthal Collins''), and Scott Skyrm, Managing Director, Wedbush Securities Inc. (''Wedbush'') dated May 24, 2017 (''ICBC Letter I''); letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin, dated June 19, 2017, to Robert W. Errett, Deputy Secretary, Commission (''Ronin Letter II''); and letter from Alan B. Levy, Managing Director, ICBC, Philip Vandermause, Director, Aardvark, Robert Pooler, Chief Financial Officer, Ronin, and Scott Skyrm, Managing Director, Wedbush, dated June 27, 2017, to Robert W. Errett, Deputy Secretary, Commission (''ICBC Letter II'') *available at https://www.sec.gov/comments/sr-ficc-2017-002/ficc2017002.htm.* Because the proposal contained in the Proposed Rule Change was also filed in the Advance Notice, *see supra* note 2, the Commission is considering all comments received on the proposal regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice.

[5] *See* Securities Exchange Act Release No. 80524 (April 25, 2017), 82 FR 20685 (May 3, 2017) (SR–FICC–2017–002).

[6] *See* Securities Exchange Act Release No. 80812 (May 30, 2017), 82 FR 25642 (June 2, 2017) (SR–FICC–2017–002).

[7] *See* Securities Exchange Act Release No. 81638 (September 15, 2017), 82 FR 44234 (September 21, 2017) (SR–FICC–2017–002) (''OIP Extension'').

five additional comment letters,[8] for a total of ten comment letters.

II. Description of the Proposed Rule Change

With this Proposed Rule Change, FICC proposes to amend its Government Securities Division (''GSD'') [9] Rulebook (''GSD Rules'') [10] to establish a rules-based, committed liquidity resource (*i.e.,* the Capped Contingency Liquidity Facility® (''CCLF'')). FICC states that the CCLF is designed to comply with Rule 17Ad–22(e)(7) under the Exchange Act,[11] by providing FICC with a committed liquidity resource to meet its cash settlement obligations in the event of a default of the GSD Netting Member [12] or family of affiliated Netting Members (''Affiliated Family'') to which FICC has the largest exposure in extreme but plausible market conditions.[13]

A. Overview of the Proposal

The CCLF would be invoked only if FICC declared a ''CCLF Event.'' FICC would declare a CCLF Event only if FICC ceased to act for a Netting Member in accordance with GSD Rule 22A (referred to as a ''default'') and, subsequent to such default, FICC determined that its other liquidity resources could not generate sufficient cash to satisfy FICC's payment obligations to the non-defaulting Netting Members.[14] Once FICC declares a CCLF Event, each Netting Member could be called upon to enter into repurchase (''repo'') transactions with FICC (''CCLF Transactions'') up to a pre-determined capped dollar amount, as described below.

1. Declaration of a CCLF Event

Following a default, FICC would first obtain liquidity through its other available non-CCLF liquidity resources.[15] If FICC determined that these sources of liquidity would be insufficient to meet FICC's payment obligations to its non-defaulting Netting Members, FICC would declare a CCLF Event.[16] FICC would notify all Netting Members of FICC's need to make such a declaration and enter into CCLF Transactions, as necessary, by issuing an Important Notice.[17]

2. CCLF Transactions

Upon declaring a CCLF Event, FICC would meet its liquidity need by initiating CCLF Transactions with non-defaulting Netting Members.[18] The CCLF Transaction would replace the original transaction that required FICC to pay cash to the non-defaulting Netting Member and, in turn, required the non-defaulting Netting Member to deliver securities to FICC.[19] The obligations of that original transaction would be deemed satisfied by entering into the CCLF Transaction.[20]

Each CCLF Transaction would be governed by the terms of the September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement (''SIFMA MRA''),[21] which would be incorporated by reference into the GSD Rules as a master repurchase agreement between FICC as seller and each Netting Member as buyer, with certain modifications as outlined in the GSD Rules (''CCLF MRA'').[22]

To initiate CCLF Transactions with non-defaulting Netting Members, FICC would identify the non-defaulting Netting Members that are obligated to deliver securities destined for the defaulting Netting Member (''Direct Affected Members'') and FICC's cash payment obligation to such Direct Affected Members that FICC would need to finance through CCLF to cover the defaulting Netting Member's failure to deliver the cash payment (''Financing Amount'').[23] FICC would notify each Direct Affected Member of the Direct Affected Member's Financing Amount and whether such Direct Affected Member should deliver to FICC or suppress any securities that were destined for the defaulting Netting Member.[24] FICC would then initiate CCLF Transactions with each Direct Affected Member for the Direct Affected Member's purchase of the securities that were destined for the defaulting Netting Member (''Financed Securities'').[25] The aggregate purchase price of the CCLF Transactions with the Direct Affected Member could equal but never exceed the Direct Affected Member's maximum CCLF funding obligation (''Individual Total Amount'').[26]

If any Direct Affected Member's Financing Amount exceeds its Individual Total Amount (''Remaining Financing Amount''), FICC would advise the following categories of Netting Members (collectively, ''Affected Members'') that FICC intends to initiate CCLF Transactions for the Remaining Financing Amount with: (i) All other Direct Affected Members with a Financing Amount less than their Individual Total Amounts; and (ii) each Netting Member that has not otherwise entered into CCLF Transactions with FICC (''Indirect Affected Members'').[27]

FICC states that the order in which FICC would enter into CCLF Transactions for the Remaining Financing Amount would be based upon the Affected Members that have

[8] Letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin, Alan B. Levy, Managing Director, ICBC, Philip Vandermause, Director, Aardvark, and Jason Manumaleuna, Chief Financial Officer and EVP, Rosenthal Collins, dated October 6, 2017, to Eduardo Aleman, Assistant Secretary, Commission (''Ronin Letter III''); letter from Alan B. Levy, Managing Director, ICBC, and Robert Pooler, Chief Financial Officer, Ronin, dated October 6, 2017, to Eduardo Aleman, Assistant Secretary, Commission (''ICBC Letter III''); letter from Timothy J. Cuddihy, Managing Director, FICC, dated October 6, 2017, to Robert W. Errett, Deputy Secretary, Commission (''FICC Letter II''); letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin, and Alan B. Levy, Managing Director, ICBC, dated October 12, 2017, to Eduardo Aleman, Assistant Secretary, Commission (''Ronin Letter IV''); and letter from Theodore Bragg, Vice President—Strategic Planning, Nasdaq, Inc. (''Nasdaq''), to Brent J. Fields, Secretary, Commission (''Nasdaq Letter'') *available at https://www.sec.gov/comments/sr-ficc-2017-002/ficc2017002.htm.*

[9] FICC operates two divisions—GSD and the Mortgage-Backed Securities Division (''MBSD''). GSD provides trade comparison, netting, risk management, settlement and central counterparty services for the U.S. government securities market, while MBSD provides the same services for the U.S. mortgage-backed securities market. Because GSD and MBSD are separate divisions of FICC, each division maintains its own rules, members, margin from their respective members, clearing fund, and liquid resources.

[10] *Available at www.dtcc.com/legal/rules-and-procedures.aspx.*

[11] 17 CFR 240.17Ad–22(e)(7). *See* Section III.C., *infra,* for further discussion of Rule 17Ad–22(e)(7) and other applicable Exchange Act provisions.

[12] As defined in the GSD Rules, the term ''Netting Member'' means a GSD member that is a member of the GSD Comparison System and the Netting System. *GSD Rules, supra note 10.*

[13] *See* Notice, 82 FR at 14402.

[14] FICC's current liquidity resources for GSD consist of (i) cash in GSD's clearing fund; (ii) cash that can be obtained by entering into uncommitted repurchase (''repo'') transactions using securities in the clearing fund; (iii) cash that can be obtained by entering into uncommitted repo transactions using the securities that were destined for delivery to the defaulting Netting Member; and (iv) uncommitted bank loans. *See id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Available at http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/.* The SIFMA MRA would be incorporated by reference into the GSD Rules without referenced annexes, other than Annex VII (Transactions Involving Registered Investment Companies), which would be applicable to any Netting Member that is a registered investment company. Notice, 82 at 14402. FICC represents that, at the time of filing the Proposed Rule Change, there were no registered investment companies that are also GSD Netting Members. *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] FICC states that it would have the authority to initiate CCLF Transactions with respect to any securities that are in the Direct Affected Member's portfolio that are bound for delivery to the defaulting Netting Member. *Id.*

[26] *Id.* The sizing of each Direct Affected Member's Individual Total Amount is described below in Section II.B.

[27] *See* Notice, 82 FR at 14402–03.

the most funding available within their Individual Total Amounts.[28] No Affected Member would be obligated to enter into CCLF Transactions greater than its Individual Total Amount.[29]

After receiving approval from FICC's Board of Directors to do so, FICC would engage its investment adviser during a CCLF Event to minimize liquidation losses on the Financed Securities through hedging, strategic dispositions, or other investment transactions as determined by FICC under relevant market conditions.[30] Once FICC liquidates the underlying securities by selling them to a new buyer (''Liquidating Trade''), FICC would instruct the Affected Member, including the initial Direct Affected Members, to close the CCLF Transaction by delivering the Financed Securities to FICC in order to complete settlement of the Liquidating Trade.[31] FICC would attempt to unwind the CCLF Transactions in the order it entered into the Liquidating Trades. Each CCLF Transaction would remain open until the earlier of (i) such time that FICC liquidates the Affected Member's, including the initial Direct Affected Member's, Financed Securities; (ii) such time that FICC obtains liquidity through its available liquid resources; or (iii) 30 or 60 calendar days after entry into the CCLF Transaction for U.S. government bonds and mortgage-backed securities, respectively.[32]

B. CCLF Sizing and Allocation

According to FICC, its overall liquidity need during a CCLF Event would be determined by the cash settlement obligations presented by the default of a Netting Member and its Affiliated Family, as described below.[33] An additional amount (''Liquidity Buffer'') would be added to account for both changes in Netting Members' cash settlement obligations that may not be observed during the six-month look-back period during which CCLF would be sized, and the possibility that the defaulting Netting Member is the largest CCLF contributor.[34]

The proposal would allocate FICC's observed liquidity need during a CCLF Event among all Netting Members based on their historical settlement activity, but states that Netting Members that present the highest cash settlement obligations would be required to maintain higher CCLF funding obligations.[35]

The steps that FICC would take to size its overall liquidity need during a CCLF event and then size and allocate each Netting Member's CCLF contribution requirement are described below.

Step 1: CCLF Sizing

(A) Historical Cover 1 Liquidity Requirement

FICC's historical liquidity need for the six-month look-back period would be equal to the largest liquidity need generated by an Affiliated Family during the preceding six-month period.[36] The amount would be determined by calculating the largest sum of an Affiliated Family's obligation to receive GSD eligible securities plus the net dollar amount of its Funds-Only Settlement Amount (collectively, the ''Historical Cover 1 Liquidity Requirement'').[37] FICC believes that it is appropriate to calculate the Historical Cover 1 Liquidity Requirement in this manner because the default of such an Affiliated Family would generate the largest liquidity need for FICC.[38]

(B) Liquidity Buffer

According to FICC, it is cognizant that the Historical Cover 1 Liquidity Requirement would not account for changes in a Netting Member's current trading behavior, which could result in a liquidity need greater than the Historical Cover 1 Liquidity Requirement.[39] To account for this potential shortfall, FICC proposes to add a Liquidity Buffer as an additional amount to the Historical Cover 1 Liquidity Requirement, which would help to better anticipate GSD's total liquidity need during a CCLF Event.[40]

FICC states that the Liquidity Buffer would initially be 20 percent of the Historical Cover 1 Liquidity Requirement (and between 20 to 30 percent thereafter), subject to a minimum amount of $15 billion.[41] FICC believes that 20 to 30 percent of the Historical Cover 1 Liquidity Requirement is appropriate based on its analysis and statistical measurement of the variance of its daily liquidity need throughout 2015 and 2016.[42] FICC also believes that the $15 billion minimum dollar amount is necessary to cover changes in a Netting Member's trading activity that could exceed the amount that is implied by such statistical measurement.[43]

FICC would have the discretion to adjust the Liquidity Buffer, within the range of 20 to 30 percent of the Historical Cover 1 Liquidity Requirement, based on its analysis of the stability of the Historical Cover 1 Liquidity Requirement over various time horizons.[44] According to FICC, this would help ensure that its liquidity resources are sufficient under a wide range of potential market scenarios that may lead to a change in a Netting Member's trading behavior.[45] FICC also states that it would analyze the trading behavior of Netting Members that present larger liquidity needs than the majority of the Netting Members, as described below.[46]

(C) Aggregate Total Amount

FICC's anticipated total liquidity need during a CCLF Event (*i.e.,* the sum of the Historical Cover 1 Liquidity Requirement plus the Liquidity Buffer) would be referred to as the ''Aggregate Total Amount.'' [47] The Aggregate Total Amount initially would be set to the Historical Cover 1 Liquidity Requirement plus the greater of 20 percent of the Historical Cover 1 Liquidity Requirement or $15 billion.[48]

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[28] *See id.* at 14403.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] According to FICC, the Funds-Only Settlement Amount reflects the amount that FICC collects and passes to the contra-side once FICC marks the securities in a Netting Member's portfolio to the current market value. *Id.* FICC states that this amount is the difference between the contract value and the current market value of a Netting Member's GSD portfolio. *Id.* FICC states that it would consider this amount when calculating the Historical Cover 1 Liquidity Requirement because in the event that an Affiliated Family defaults, the Funds-Only Settlement Amount would also reflect the cash obligation to non-defaulting Netting Members. *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See id.* at 14404. For example, if the Historical Cover 1 Liquidity Requirement was $100 billion, the Liquidity Buffer initially would be $20 billion ($100 billion x 0.20), for a total of $120 billion in potential liquidity resources.

[42] According to FICC, it uses a statistical measurement called the ''coefficient of variation,'' which is calculated as the standard deviation divided by the mean, to quantify the variance of Affiliated Families' daily liquidity needs. *See id.* at 14403. FICC states that this is a typical approach used to compare variability across different data sets. *Id.* FICC states that it will use the coefficient of variation to set the Liquidity Buffer by quantifying the variance of each Affiliated Family's daily liquidity need. *Id.* FICC believes that a Liquidity Buffer of 20 to 30 percent, subject to a minimum of $15 billion, would be an appropriate Liquidity Buffer because FICC found that, throughout 2015 and 2016, the coefficient of variation ranged from an average of 15 to 19 percent for Affiliated Families with liquidity needs above $50 billion, and an average of 18 to 21 percent for Affiliated Families with liquidity needs above $35 billion. *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *See* Notice, 82 FR at 14403–04.

[48] *See id.* at 14404.

Step 2: Allocation of the Aggregate Total Amount Among Netting Members

(A) Allocation of the Aggregate Regular Amount Among Netting Members

The Aggregate Total Amount would be allocated among Netting Members in order to arrive at each Netting Member's Individual Total Amount. FICC would take a tiered approach in its allocation of the Aggregate Total Amount. First, FICC would determine the portion of the Aggregate Total Amount that should be allocated among all Netting Members (''Aggregate Regular Amount''), which FICC states initially would be set at $15 billion.[49] FICC believes that this amount is appropriate because the average Netting Member's liquidity need from 2015 to 2016 was approximately $7 billion, with a majority of Netting Members having liquidity needs less than $15 billion.[50] Based on that analysis, FICC believes that the $15 billion Aggregate Regular Amount should capture the liquidity needs of a majority of the Netting Members.[51]

Under the proposal, the Aggregate Regular Amount would be allocated among all Netting Members, but Netting Members with larger Receive Obligations [52] would be required to contribute a larger amount.[53] FICC believes that this approach is appropriate because a defaulting Netting Member's Receive Obligations are the primary cash settlement obligations that FICC would have to satisfy as a result of the default of an Affiliated Family.[54] However, FICC also believes that, because FICC guarantees both sides of a GSD Transaction and all Netting Members benefit from FICC's risk mitigation practices, some portion of the Aggregate Regular Amount should be allocated based on Netting Members' aggregate Deliver Obligations [55] as well.[56] As a result, FICC proposes to allocate the Aggregate Regular Amount based on a scaling factor. Given that the Aggregate Regular Amount would be initially sized at $15 billion and would cover approximately 80 percent of Netting Members' observed liquidity needs, FICC proposes to set the scaling factor in the range of 65 to 85 percent to the value of Netting Members' Receive Obligations, and in the range of 15 to 35 percent to the value of Netting Members' Deliver Obligations.[57]

FICC states that it would initially assign a 20 percent weighting percentage to a Netting Member's aggregate peak Deliver Obligations (''Deliver Scaling Factor'') and the remaining percentage difference, 80 percent in this case, to a Netting Member's aggregate peak Receive Obligations (''Receive Scaling Factor'').[58] FICC would have the discretion to adjust these scaling factors based on a quarterly analysis that would, in part, assess Netting Members' observed liquidity needs that are at or below $15 billion.[59] FICC believes that this assessment would help ensure that the Aggregate Regular Amount would be appropriately allocated across all Netting Members.[60]

Second, as discussed in more detail below, after allocating the Aggregate Regular Amount, FICC would allocate the remainder of the Aggregate Total Amount (''Aggregate Supplemental Amount'') among Netting Members that incurred liquidity needs above the Aggregate Regular Amount within the six-month look-back period.[61] For example, a Netting Member with a $7 billion peak daily liquidity need would only contribute to the Aggregate Regular Amount, based on the calculation described below. Meanwhile a Netting Member with a $45 billion peak daily liquidity would contribute towards both the Aggregate Regular Amount *and* the Aggregate Supplemental Amount, as described below.

FICC believes that this tiered approach reflects a reasonable, fair, and transparent balance between FICC's need for sufficient liquidity resources and the burdens of the funding obligations on each Netting Member's management of its own liquidity.[62]

(B) FICC's Allocation of the Aggregate Supplemental Amount Among Netting Members

The remainder of the Aggregate Total Amount (*i.e.,* the Aggregate Supplemental Amount) would be allocated among Netting Members that present liquidity needs greater than $15 billion across liquidity tiers in $5 billion increments (''Liquidity Tiers'').[63] As described in greater detail in the Notice, the specific allocation of the Aggregate Supplemental Amount to each Liquidity Tier would be based on the frequency that Netting Members generated liquidity needs within each Liquidity Tier, relative to the other Liquidity Tiers.[64] More specifically, once the Aggregate Supplemental Amount is divided among the Liquidity Tiers, the amount within each Liquidity Tier would be allocated among the applicable Netting Members, based on the relative frequency that a Netting Member generated liquidity needs within each Liquidity Tier.[65] FICC explains that this allocation would result in a larger proportion of the Aggregate Supplemental Amount being borne by those Netting Members that present the highest liquidity needs.[66]

The sum of a Netting Member's allocation across all Liquidity Tiers would be such Netting Member's Individual Supplemental Amount.[67] FICC would add each Netting Member's Individual Supplemental Amount (if any) to its Individual Regular Amount to arrive at such Netting Member's Individual Total Amount.[68]

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[49] *Id.*

[50] According to FICC, from 2015 to 2016, 59 percent of all Netting Members presented average liquidity needs between $0 and $5 billion, 78 percent of all Netting Members presented average liquidity needs between $0 and $10 billion, and 85 percent of all Netting Members presented average liquidity needs between $0 and $15 billion. *Id.*

[51] *Id.*

[52] ''Receive Obligation'' means a Netting Member's obligation to receive eligible netting securities from FICC at the appropriate settlement value, either in satisfaction of all or a part of a Net Long Position (*i.e.,* an obligation under the GSD Rules to receive securities from FICC), or to implement a collateral substitution in connection with a Repo Transaction with a right of substitution. GSD Rules, *supra* note 10.

[53] *See* Notice, 82 FR at 14404.

[54] *Id.*

[55] ''Deliver Obligation'' means a Netting Member's obligation to deliver eligible netting securities to FICC at the appropriate settlement value either in satisfaction of all or a part of a Net Short Position (*i.e.,* an obligation under the GSD Rules to deliver securities to FICC) or to implement a collateral substitution in connection with a Repo Transaction with a right of substitution. GSD Rules, *supra* note 10.

[56] *See* Notice, 82 FR at 14404.

[57] *Id.*

[58] For example, assume that a Netting Member's peak Receive and Deliver Obligations represent 5 and 3 percent, respectively, of the sum of all Netting Members' peak Receive and peak Deliver Obligations. The Netting Member's portion of the Aggregate Regular Amount (''Individual Regular Amount'') would be $600 million ($15 billion * 0.80 Receive Scaling Factor * 0.05 Peak Receive Obligation Percentage), plus $90 million ($15 billion * 0.20 Deliver Scaling Factor * 0.03 Peak Deliver Obligation Percentage), for a total of $690 million.

[59] *See* Notice, 82 FR at 14404.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] FICC believes that this increment would appropriately distinguish Netting Members that present the highest liquidity needs on a frequent basis and allocate more of the Individual Supplemental Amount to Netting Members in the top Liquidity Tiers. *Id.*

[64] *See* Notice, 82 FR at 14404–05.

[65] For example, if the Aggregate Supplemental Amount is $50 billion and Tier 1 has a relative frequency weighting of 33 percent, all Netting Members that have generated liquidity needs that fall within Tier 1 would collectively fund $16.5 billion ($50 billion * 0.33) of the Supplemental Amount. Each Netting Member in that tier would be responsible for contributing toward the $16.5 billion, based on the relative frequency that the member generated liquidity needs within that tier.

[66] *See* Notice, 82 FR at 14404–05.

[67] *See id.* at 14405.

[68] *Id.*

C. FICC's Ongoing Assessment of the Sufficiency of CCLF

As described above, the Aggregate Total Amount and each Netting Member's Individual Total Amount (*i.e.,* each Netting Member's allocation of the Aggregate Total Amount) would initially be calculated using a six-month look-back period that FICC would reset every six months (''reset period'').[69] FICC states that, on a quarterly basis, FICC would assess the following parameters used to calculate the Aggregate Total Amount, and could consider changes to such parameters if necessary and appropriate:

- The largest peak daily liquidity need of an Affiliated Family;
- the Liquidity Buffer;
- the Aggregate Regular Amount;
- the Aggregate Supplemental Amount;
- the Deliver Scaling Factor and the Receive Scaling Factor used to allocate the Aggregate Regular Amount;
- the increments for the Liquidity Tiers; and
- the length of the look-back period and the reset period for the Aggregate Total Amount.[70]

FICC represents that, in the event that any changes to the above-referenced parameters result in an increase in a Netting Member's Individual Total Amount, such increase would be effective as of the next bi-annual reset.[71]

Additionally, on a daily basis, FICC would examine the Aggregate Total Amount to ensure that it is sufficient to satisfy FICC's liquidity needs.[72] If FICC determines that the Aggregate Total Amount is insufficient to satisfy its liquidity needs, FICC would have the discretion to change the length of the six-month look-back period, the reset period, or otherwise increase the Aggregate Total Amount.[73]

Any increase in the Aggregate Total Amount resulting from FICC's quarterly assessments or FICC's daily monitoring would be subject to approval from FICC management.[74] Increases to a Netting Member's Individual Total Amount as a result of its daily monitoring would not be effective until ten business days after FICC issues an Important Notice regarding the increase.[75] Reductions to the Aggregate Total Amount would be reflected at the conclusion of the reset period.[76]

D. Implementation of the Proposed Changes and Required Attestation From Each Netting Member

The CCLF proposal would become operative 12 months after the later date of the Commission's approval of the Proposed Rule Change and the Commission's notice of no objection to the related Advance Notice.[77] FICC represents that, during this 12-month period, it would periodically provide each Netting Member with estimated Individual Total Amounts.[78] FICC states that the delayed implementation and the estimated Individual Total Amounts are designed to give Netting Members the opportunity to assess the impact that the CCLF proposal would have on their business profile.[79]

FICC states that, as of the implementation date and annually thereafter, FICC would require that each Netting Member attest that it incorporated its Individual Total Amount into its liquidity plans.[80] This required attestation, which would be from an authorized officer of the Netting Member or otherwise in form and substance satisfactory to FICC, would certify that (i) such officer has read and understands the GSD Rules, including the CCLF rules; (ii) the Netting Member's Individual Total Amount has been incorporated into the Netting Member's liquidity planning;[81] (iii) the Netting Member acknowledges and agrees that its Individual Total Amount may be changed at the conclusion of any reset period or otherwise upon ten business days' notice; (iv) the Netting Member will incorporate any changes to its Individual Total Amount into its liquidity planning; and (v) the Netting Member will continually reassess its liquidity plans and related operational plans, including in the event of any changes to such Netting Member's Individual Total Amount, to ensure such Netting Member's ability to meet its Individual Total Amount.[82] FICC states that it may require any Netting Member to provide FICC with a new certification in the foregoing form at any time, including upon a change to a Netting Member's Individual Total Amount or in the event that a Netting Member undergoes a change in its corporate structure.[83]

On a quarterly basis, FICC would conduct due diligence to assess each Netting Member's ability to meet its Individual Total Amount.[84] This due diligence would include a review of all information that the Netting Member has provided FICC in connection with its ongoing reporting obligations pursuant to the GSD Rules and a review of other publicly available information.[85] FICC also would test its operational procedures for invoking a CCLF Event and Netting Members would be required to participate in such tests.[86] If a Netting Member failed to participate in such testing when required by FICC, FICC would be permitted to take disciplinary measures as set forth in GSD Rule 3, Section 7.[87]

E. Liquidity Funding Reports Provided to Netting Members

On each business day, FICC would make a liquidity funding report available to each Netting Member that would include (i) the Netting Member's Individual Total Amount, Individual Regular Amount, and, if applicable, its Individual Supplemental Amount; (ii) FICC's Aggregate Total Amount, Aggregate Regular Amount, and Aggregate Supplemental Amount; and (iii) FICC's regulatory liquidity requirements as of the prior business day.[88] The liquidity funding report would be provided for informational purposes only.[89]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act[90] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change and all comments received, the Commission finds that the Proposed Rule Change is consistent with the Exchange Act and the rules and regulations thereunder applicable to FICC.[91] In particular, as discussed

[69] *See id.* at 14406.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] According to FICC, the attestation would not refer to the actual dollar amount that has been allocated as the Individual Total Amount. *Id.* FICC explains that each Netting Member's Individual Total Amount would be made available to such Member via GSD's access controlled portal Web site. *Id.*

[82] *Id.*

[83] *Id.* at 14406–07.

[84] *Id.* at 14407.

[85] *Id.*

[86] *Id.*

[87] *Id.;* GSD Rules, *supra* note 10.

[88] Notice, 82 FR at 14407.

[89] *Id.*

[90] 15 U.S.C. 78s(b)(2)(C).

[91] In approving this Proposed Rule Change, the Commission has considered the proposed rule's

Continued

below, the Commission finds that the Proposed Rule Change is consistent with: (1) Section 17A(b)(3)(F) of the Exchange Act,[92] which requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and, in general, protect investors and the public interest; (2) Section 17A(b)(3)(I) of the Exchange Act, which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act; [93] and (3) Rule 17Ad–22(e)(7) under the Exchange Act, which requires a covered clearing agency [94] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[95]

The Commission received ten comment letters in response to the proposal. Eight comment letters—Ronin Letters I, II, III, and IV; ICBC Letters I, II, and III; and the Nasdaq Letter—objected to the Proposed Rule Change.[96] The first comment letter from FICC responded to objections raised by Ronin.[97] The second comment letter from FICC responded to both objections raised by Ronin and ICBC in prior comment letters and to questions posed by the Commission in the OIP Extension.[98] Ronin Letter IV responds to FICC Letter II.[99]

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

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and, in general, protect investors and the public interest.[100]

As described above, the CCLF is designed to provide FICC with sufficient qualifying liquid resources to cover the default of the family of affiliated GSD Netting Members that would generate the largest liquidity need for FICC. Specifically, the CCLF would be sized to meet GSD's peak liquidity need during the prior six months, plus an additional Liquidity Buffer. FICC would monitor and assess on a daily basis the sufficiency of the Aggregate Total Amount and have the ability to increase this amount if FICC determines that it is insufficient to satisfy FICC's liquidity needs. By providing FICC with this additional liquid resource, which is designed to cover GSD's peak liquidity need, the proposal would help mitigate the risk that FICC would be unable to promptly meet its settlement obligations—specifically, its obligations to provide cash to non-defaulting Netting Members in reverse repo transactions where FICC is the central counterparty.

In addition, given FICC's importance to the financial system as a designated systemically important financial market utility,[101] by providing it with an additional liquidity resource to help meet its liquidity obligations in the midst of a CCLF Event, the Proposed Rule Change is designed to help FICC mitigate losses that a CCLF Event could cause not only to FICC and its non-defaulting Netting Members, but also to the financial markets more broadly. As such, the Proposed Rule Change could help promote the safeguarding of securities and funds in FICC's custody and control, and thereby protect investors and the public interest.[102]

For these reasons, the Commission believes that the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds that are in the custody or control of FICC, and protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act.

B. Section 17A(b)(3)(I) of the Exchange Act

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.[103] This provision does not require the Commission to find that a proposed rule change represents the least anticompetitive means of achieving the goal. Rather, it requires the Commission to balance the competitive considerations against other relevant policy goals of the Exchange Act.[104]

Both Ronin and ICBC argue that the CCLF obligations in the Proposed Rule Change would result in negative competitive burdens on FICC's smaller Netting Members.[105] Specifically, Ronin and ICBC argue that the cost of complying with the CCLF could impose a disproportionately negative economic impact on smaller Netting Members, which could potentially force smaller Netting Members to either reduce their centrally cleared U.S. Treasury trading activity, clear through larger Netting Members, or leave GSD altogether (as well as create a barrier to entry for prospective new Netting Members).[106] Ronin further suggests that meeting obligations imposed by the CCLF will be more costly for some Netting Members than for others, based on their access to credit.[107] For example, Ronin states that it would have to pay for access to a committed line of credit each year to have sufficient resources to attest that it

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impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the Proposed Rule Change, including competitive effects, below.

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] 15 U.S.C. 78q–1(b)(3)(I).

[94] FICC is a "covered clearing agency" as defined in 17 CFR 240.17Ad–22(a)(5) and (a)(6) because FICC was designated systemically important by the Financial Stability Oversight Council on July 18, 2012, pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[95] 17 CFR 240.17Ad–22(e)(7).

[96] *See* Ronin Letter I, Ronin Letter II, Ronin Letter III, Ronin Letter IV, ICBC Letter I, ICBC Letter II, ICBC Letter III, and Nasdaq Letter.

[97] *See* FICC Letter I. Ronin Letter II and ICBC Letters I and II (both with Ronin as a co-signatory) raised the same substantive issues as Ronin Letter I. Accordingly, the Commission considers FICC Letter I to be responsive to Ronin Letters I and II and ICBC Letters I and II.

[98] *See* FICC Letter II.

[99] *See* Ronin Letter IV.

[100] 15 U.S.C. 78q–1(b)(3)(F).

[101] *See supra* note 94.

[102] While both Ronin and ICBC raise concerns that the CCLF might increase concentration and systemic risks, the commenters generally express those concerns as outcomes that would arise as the result of negative competitive burdens that the CCLF would impose on smaller Netting Members. For example, Ronin and ICBC argue that the proposal would likely increase market concentration because smaller Netting Members would exit FICC to avoid the burden of CCLF costs. *See* Ronin Letter II at 5; ICBC Letter I at 2. Accordingly, the Commission addresses such comments below in the Commission's analysis of the proposal's consistency with Section 17A(b)(3)(I) of the Exchange Act. 15 U.S.C. 78q–1(b)(3)(I).

[103] 15 U.S.C. 78q–1(b)(3)(I).

[104] *See* Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

[105] *See* Ronin Letter I, Ronin Letter II, Ronin Letter III, Ronin Letter IV, ICBC Letter I, ICBC Letter II, and ICBC Letter III.

[106] ICBC Letter I at 2; ICBC Letter III at 2–3; Ronin Letter I at 2, 5–7; Ronin Letter II at 3–4; Ronin Letter IV at 7.

[107] Ronin Letter I at 2; Ronin Letter II at 1–5; Ronin Letter III at 2–4, 6–7; Ronin Letter IV at 6–8.

can meet its CCLF contribution requirement.[108] Ronin asserts that obtaining such a line of credit is not only ''economically disadvantageous'' but also ''creates a dependency on an external entity which could prove to be an existential threat'' (*i.e.,* the inability of non-bank Netting Members to secure a committed line of credit at a reasonable rate could cause such members to exit FICC).[109] In contrast, Ronin suggests that larger Netting Members with access to the Federal Reserve Discount Window (and resulting ability to easily borrow funds using U.S. government debt as collateral) would not necessarily have to pay for such credit lines and could merely ''footnote the liability at no cost'' or inform FICC that they are ''good for [the CCLF contribution requirement].'' [110] Ronin argues that FICC has ''failed to recognize this differential impact as a threat to GSD member diversity.'' [111]

Finally, ICBC and Nasdaq suggest that the Commission defer its decision on the Proposed Rule Change in order for detailed studies to be conducted on the CCLF [112] and the U.S. Treasury market more broadly.[113] Nasdaq states that further studies should be conducted regarding CCLF costs and fees on FICC members as well as the resulting incentives and conduct of non-FICC members.[114] ICBC states that studies should be conducted regarding the costs and benefits of CCLF, but should consider the effects of the CCLF on U.S. markets as a whole, rather than be confined to the narrow question of whether the proposal would provide FICC with more liquidity.[115] ICBC also provides a non-exhaustive list of questions regarding the broad potential effects of the CCLF that such a study should consider.[116]

In response to comments regarding the potential economic impacts on smaller, non-bank Netting Members, FICC acknowledges that the proposal would place a committed funding requirement on Netting Members that could increase the cost of participating in GSD.[117] FICC, however, states that the CCLF was designed to minimize the burden on smaller Netting Members and achieve a fair and appropriate allocation of liquidity burdens.[118] Specifically, FICC states that it structured the CCLF so that: (1) Each Netting Member's CCLF requirement would be a function of the peak liquidity risk that each Netting Member's activity presents to GSD; (2) the allocation of the CCLF requirement to each Netting Member would be a ''fraction'' of the Netting Member's peak liquidity exposure that it presents to GSD; [119] and (3) the proposal would fairly allocate higher CCLF requirements to Netting Members that generate higher liquidity needs.[120] FICC further states that because CCLF contributions would be a function of the peak liquidity exposure that each Netting Member presents to FICC, each Netting Member would be able to reduce its CCLF contribution by altering its trading activity.[121] Additionally, contrary to Ronin's assertion, FICC states that larger Netting Members will be required to hold capital for their CCLF obligations, and not simply declare that they ''are good for it.'' [122]

As a general matter, the Commission acknowledges that a proposal to enhance FICC's access to liquidity resources, such as this proposal, would entail costs that would be borne by Netting Members and market participants more generally. The proposal is designed to meet the liquidity requirements of Rule 17Ad–22(e)(7) under the Exchange Act.[123] And in adopting amendments to that rule, the Commission acknowledged that there would be costs associated with compliance, either directly from members or through third–party arrangements, and that such costs may be passed on to other market participants, eventually increasing transaction costs.[124]

The Commission believes that the Proposed Rule Change was designed to recognize and account for the different liquidity needs presented by the different Netting Members, while achieving an equitable and appropriate allocation of FICC's liquidity need among all Netting Members. In order to provide qualifying liquid resources to enable FICC to settle the cash obligations of an Affiliated Family that would generate the largest aggregate payment obligation for FICC in the event of a default, as required by Rule 17Ad–22(e)(7) under the Exchange Act,[125] FICC would require each Netting Member to contribute to the CCLF in proportion to the liquidity needs that such Netting Member presented to FICC over a six-month look-back period. More specifically, each Netting Member would be required to attest that they have incorporated into their liquidity planning their respective Individual Regular Amount, based on the liquidity need that they individually presented to FICC, up to $15 billion, during the six-month look-back period. In addition, any Netting Member that presented a liquidity need greater than $15 billion during the six-month look-back period also would be required to attest that they have incorporated into their liquidity planning an Individual Supplemental Amount, in proportion to the individual liquidity need that the Netting Member presented above $15 billion.

The Commission understands that the allocation and impact of the costs of complying with the CCLF would depend in part on each Netting Member's specific business activity and that some firms can fulfill CCLF obligations at lower cost than others. As a result, establishing a liquidity facility

[108] Ronin Letter I at 5; Ronin Letter II at 3; Ronin Letter III at 2.

[109] Ronin Letter II at 3.

[110] Ronin Letter I at 5; Ronin Letter III at 2; Ronin Letter IV at 1, 6–7.

[111] Ronin Letter II at 3.

[112] *See* ICBC Letter I at 6; ICBC Letter II at 4; ICBC Letter III at 3–4.

[113] Nasdaq Letter at 3.

[114] *Id.*

[115] *See* ICBC Letter I at 6; ICBC Letter III at 3–4.

[116] *Id.*

[117] FICC Letter IV at 6.

[118] FICC Letter I at 3–4.

[119] *Id.* at 3. FICC notes that, on average, a Netting Member's CCLF requirement would be less than 2.5 percent of their respective peak liquidity need, with the smallest Netting Members having a CCLF contribution requirement of approximately 1.5 percent of their peak liquidity need. *Id.* at 4–5.

[120] *Id.* at 3–4. FICC notes that the Aggregate Regular Amount (proposed to be sized at $15 billion) would be applied to all Netting Members on a pro-rata basis, while the Aggregate Supplemental Amount, which would make up approximately 80 percent of the Aggregate Total Amount, would only apply to the Netting Members generating the largest liquidity needs (*i.e.,* in excess of $15 billion). *Id.* at 4. FICC also notes that by allocating higher CCLF obligations to those Netting Members generating the largest liquidity needs, the CCLF will incentivize such Netting Members to manage their liquidity needs and thereby limit FICC's Historical Cover 1 Liquidity Requirement. *Id.* at 5.

[121] *Id.* at 3, 7.

[122] *Id.* at 5.

[123] Rule 17Ad–22(e)(7)(i) requires a covered clearing agency, such as FICC, to maintaining sufficient liquid resources at the minimum, in all relevant currencies, to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions (*i.e.,* ''Cover 1 Requirement''). 17 CFR 240.17Ad–22(e)(7)(i). Meanwhile, Rule 17Ad–22(e)(7)(ii) requires a covered clearing agency, such as FICC, to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad–22(e)(7)(i), including the Cover 1 Requirement, in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members. 17 CFR 240.17Ad–22(e)(7)(ii).

[124] *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70870 (October 13, 2016) (''CCA Standards Adopting Release'').

[125] 17 CFR 240.17Ad–22(e)(7).

for FICC could impose a competitive burden on certain groups of Netting Members that stand to incur higher relative costs because of the design of the facility or the Netting Members' business choices. However, as discussed below, the Commission believes that any competitive burden imposed by the CCLF would be necessary or appropriate to further the purposes of the Exchange Act.[126]

ICBC suggests that the CCLF is not necessary to mitigate FICC's liquidity risk because FICC's current ''time proven'' risk models are sufficient to address such risk.[127] Similarly, Ronin claims that smaller members have presented ''no liquidity risk to FICC'' [128] because, for the period of March 31, 2016 to March 31, 2017, the peak liquidity need of 53 of the 103 GSD Netting Members did not exceed the amount of cash in the GSD clearing fund.[129]

Moreover, both Ronin and ICBC suggest that the burdens on competition imposed by the proposal are unnecessary due to characteristics of the government securities market and the risk profile of U.S. government securities. They suggest that the scenario the CCLF is intended to address (*i.e.,* an inability to access liquidity via the U.S. government securities repo market) is implausible [130] and that repo transactions in U.S. government securities should be exempted from FICC's liquidity requirements because they are a ''flight to quality asset.'' [131] Additionally, Ronin argues that FICC only proposed the CCLF to harmonize the GSD Rulebook with the MBSD Rulebook, despite the different risk profiles of the underlying products, and states that it does not believe that treasuries and mortgage-backed securities should share the same liquidity plan.[132] Ronin suggests that FICC's liquidity plan should instead follow the model of NSCC's Supplemental Liquidity Deposits (''SLD'') liquidity plan.[133] Finally, Ronin suggests that if FICC were truly interested in mitigating liquidity risk, instead of the CCLF, FICC would place a hard cap on the maximum liquidity exposure allowable for each Netting Member.[134]

In response to Ronin's assertion that smaller Netting Members do not present liquidity risk to FICC, FICC argues that all Netting Members present liquidity risk, which justifies a mutualized liquidity program like the CCLF.[135] FICC further argues that although the peak liquidity need of 53 of the 103 GSD Netting Members did not exceed the amount of cash in the GSD clearing fund, there were approximately 50 Netting Members whose peak liquidity needs did exceed the amount of cash in the clearing fund, and a failure of one such Netting Member could require FICC to access additional liquidity tools.[136] Because all Netting Members present liquidity risk, FICC argues that a mutualized liquidity pool, funded by each Netting Member in an amount relative to the liquidity risk each Netting Member presents to FICC, is warranted.[137]

FICC disagrees with the comments from Ronin and ICBC suggesting that the market conditions that would trigger a CCLF Event are not plausible.[138] Whereas Ronin and ICBC note that the government securities markets functioned well during the 2008 crisis and its aftermath, FICC responds by highlighting several extraordinary actions taken by the Board of Governors of the Federal Reserve System (''Federal Reserve'') to support the government securities markets at that time, such as: (1) Establishing the Term Auction Facility, Primary Dealer Credit Facility, Term Securities Lending Facility, and bilateral currency swap agreements with several foreign central banks; (2) providing liquidity directly to borrowers and investors in key credit markets; (3) expanding its open market operations, lowering longer-term interest rates; and (4) purchasing longer-term securities.[139] FICC argues that many of the above-referenced actions may not be available to the Federal Reserve in a future crisis; therefore, FICC cannot assume that such actions would be available, sufficient, and/or timely in ensuring that FICC would be able to meet its liquidity requirements.[140]

In response to Ronin's initial argument that FICC should follow the model of NSCC's SLD liquidity plan instead of the CCLF, FICC explains that the CCLF is the preferred liquidity plan for FICC's purposes by highlighting an important distinction between the two liquidity plans.[141] SLD requires mandated cash deposits from members during the normal course of business to meet NSCC's liquidity needs for both historical and future liquidity exposure, whereas the CCLF would allow FICC to access Netting Member financing on a contingent basis only.[142] Thus, the CCLF would obviate the need for Netting Members to pre-fund their CCLF requirements (*i.e.,* Netting Members would only need to attest that their liquidity plans enable them to meet CCLF obligations during a CCLF Event), reducing the impact on Netting Members' balance sheets relative to the alternative of a pre-funded liquidity requirement.[143] Ronin counter-argues that non-bank Netting Members would indeed be required to ''pre-fund'' their CCLF obligations by obtaining a committed line of credit or utilizing one of the other methods FICC recommended.[144]

The Commission believes that ICBC's assertion that the CCLF is unnecessary because U.S. Treasuries are a ''flight to quality asset'' [145] ignores the fact that FICC is required to comply with Rule 17Ad–22(e)(7) under the Exchange Act.[146] That rule requires FICC to have policies and procedures for maintaining sufficient qualifying liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family with the largest aggregate payment obligation in extreme but plausible market conditions.[147] Furthermore, the clearance and settlement of repo transactions in U.S. Treasuries are not exempted from FICC's obligations under the Exchange Act, or Rule 17Ad–22(e)(7) specifically, to manage its liquidity risk.[148] Thus,

[126] 15 U.S.C. 78q–1(b)(3)(I).

[127] ICBC Letter I at 3.

[128] Ronin Letter II at 2–3; Ronin Letter IV at 1, 7.

[129] Ronin Letter II at 3.

[130] Ronin Letter II at 4–5; Ronin Letter III at 4–6; Ronin Letter IV at 5–6; ICBC Letter I at 3; ICBC Letter II at 4; ICBC Letter III at 3.

[131] ICBC Letter II at 2.

[132] Ronin Letter III at 2.

[133] Ronin Letter I at 7; Ronin Letter II at 4; Ronin Letter IV at 6–7; *see* Notice of No Objection to Advance Notice Filing, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs, Securities Exchange Act Release No. 34–71000 (Dec. 5, 2013), 78 FR 75400 (Dec. 11, 2013) (SR–NSCC–2013–802); Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs, Securities Exchange Act Release No. 34–70999 (Dec. 5, 2013), 78 FR 75413 (Dec. 11, 2013) (SR–NSCC–2013–02) (collectively, ''SLD Rule'').

[134] Ronin Letter II at 4.

[135] FICC Letter I at 6.

[136] *Id.*

[137] *Id.*

[138] *See* FICC Letter II at 5–6; Ronin Letter II at 2, 4–5; ICBC Letter I at 1–3; ICBC Letter II at 1, 4; ICBC Letter III at 3–4; Ronin Letter IV at 5–6.

[139] FICC Letter II at 3.

[140] *Id.* at 5–6.

[141] FICC Letter I at 5.

[142] *Id.*

[143] *Id.*

[144] Ronin Letter IV at 7.

[145] ICBC Letter II at 2.

[146] 17 CFR 240.17Ad–22(e)(7).

[147] *Id.*

[148] In adopting Rule 17Ad–22(e)(7) under the Exchange Act, the Commission noted the potential risks associated with U.S. Treasury securities, stating that, ''given the quantity of [U.S. Treasury

FICC has an obligation to ensure that it has policies and procedures for maintaining sufficient qualifying liquid resources pursuant to Rule 17Ad–22(e)(7) at all times.[149] The CCLF would help FICC meet that obligation, as it is designed to provide FICC with sufficient qualifying liquid resources to meet its settlement obligations in the event of the default of the Netting Member that presents FICC with its largest liquidity need. In addition, the Commission finds that the scenario the CCLF is intended to address (*i.e.,* an inability to access liquidity via the U.S. government securities repo market) is plausible because plausible scenarios are not necessarily limited to only those events that have actually happened in the past, but could also include events that could potentially occur in the future, as also discussed in Section III.C., below, despite ICBC's and Ronin's assertions to the contrary.[150]

Moreover, the ''time proven'' FICC risk models highlighted by ICBC [151] are risk models that relate to credit and market risk, whereas the CCLF is designed to address liquidity risk—a separate category of risk. Similarly, in response to Ronin's claim that smaller Netting Members pose no liquidity risk to FICC [152] because the cash component to the GSD clearing fund has been sufficient to cover the peak liquidity need of 53 of 103 GSD Netting Members over the given period,[153] the Commission notes that the GSD clearing fund is calculated and collected to address credit and market risk (*i.e.,* the risk that a Netting Member defaults on its financial obligations to FICC and the risk of losses to FICC in its liquidation of the defaulted Netting Member's trading portfolio arising from movements in market prices), not liquidity risk (*i.e.,* the risk that a Netting Member's default would prevent FICC from meeting its cash settlement obligations when due). Although the clearing fund could be used to help address FICC's liquidity needs, it is not designed to do so. Nor is it designed to address both FICC's liquidity needs and its exposure to credit and market risk simultaneously.[154] In the event of a Netting Member default, which itself could deplete the relevant portion of the clearing fund, FICC's resultant liquidity needs could alone exceed the amount available in the GSD clearing fund. In addition, the composition of the clearing fund, including the cash component, varies over time in a manner not related to FICC's liquidity risk exposures.

Furthermore, the cash in FICC's clearing fund may not always be sufficient to cover the peak liquidity needs of smaller members, as suggested by Ronin.[155] As a central counterparty, FICC is predicated on mutualizing the risks presented by its membership. Because all Netting Members present liquidity risk to FICC, FICC has designed the proposal so that all Netting Members must contribute to the mutualized liquidity resource that is the CCLF. Only requiring larger Netting Members to contribute to the CCLF would allow, therefore, certain firms to derive the benefits of clearing without incurring the costs associated with mitigating the liquidity risk they present.[156] The Commission believes FICC appropriately sought to mitigate the relative burdens on Netting Members that present relatively less liquidity risk to FICC by only requiring them to contribute their allotted share of the Aggregate Regular Amount, which is allocated to all firms. Only firms presenting FICC with a liquidity risk greater than $15 billion would be required to contribute to the Aggregate Supplemental Amount.

Ronin argues that FICC should not model this GSD CCLF proposal after the similar MBSD rule because Ronin does not believe that treasuries and mortgage-backed securities should share the same liquidity plan.[157] However, the two liquidity plans are not identical. Because the community of members that participates in MBSD is different from the community that participates in GSD, the two liquidity plans vary from each other in terms of how the particular risks and business models presented by those respective communities are treated.[158] And, given that both MBSD and GSD clear mortgage-backed securities transactions, any similarities shared by the two plans are not unreasonable. Ultimately, the Commission does not believe that the similarity of certain aspects of the Proposed Rule Change to aspects of another existing liquidity plan in a separate service line of FICC, in and of itself, renders this proposal inconsistent with the Exchange Act.

Ronin suggests that the imposition of a hard cap on the maximum liquidity exposure allowable for each Netting Member ''would directly mitigate FICC's liquidity risk and preclude any need for a liquidity plan.'' [159] However, under Section 19(b)(2)(C), if a proposed rule is otherwise consistent with the requirements of the Exchange Act and the rule and regulations thereunder, the Commission must approve it unless the existence of alternatives identified by commenters renders it inconsistent with the Act.[160] Neither Ronin nor any other commenter has explained how a hard cap could be implemented by FICC in a way that would render the current proposal inconsistent with the Exchange Act. Nor does the Commission have a basis to conclude that it would.

Ronin states that, assuming a hard cap is ''unpalatable,'' another alternative to the CCLF would be for FICC to model a liquidity plan based on NSCC's SLD requirements, which excludes smaller

securities] financed by the largest individual dealers, fire-sale conditions could materialize if collateral is liquidated in a disorderly manner, which could prevent covered clearing agencies from meeting payment obligations.'' CCA Standards Adopting Release, 81 FR at 70872–73.

[149] *Id.*

[150] ICBC Letter I at 3; ICBC Letter II at 4; ICBC Letter III at 3; Ronin Letter II at 4–5; Ronin Letter III at 4–6; Ronin Letter IV at 5–6.

[151] ICBC Letter I at 3.

[152] Ronin Letter II at 2–3; Ronin Letter IV at 1, 7.

[153] Ronin Letter II at 3.

[154] This design is consistent with Commission requirements for certain clearing agencies, such as FICC, that provide central counterparty services. Exchange Act Rule 17Ad–22(e)(4)(v) requires a covered clearing agency to ''maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds.'' 17 CFR 240.17Ad–22(e)(4)(v). *See also* GSD Rule 4, *supra,* note 10. FICC is a covered clearing agency because it has been designated systemically important by the Financial Stability Oversight Council. *See* 17 CFR 240.17Ad–22(a)(5).

[155] Ronin Letter II at 2–3; Ronin Letter IV at 1, 7.

[156] Based on FICC's public financial disclosures and information made available to the Commission in its capacity as FICC's supervisory authority, the Commission understands that, when comparing the average size of the cash component of the GSD clearing fund to the liquidity needs presented by Netting Members, it is possible for a Netting Member that would not be subject to the Individual Supplemental Amount under the proposal to present liquidity needs to FICC in amounts greater than the cash component of the GSD clearing fund. *See* FICC Annual Financial Statements for 2016 and 2015, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/financials/2016/FICC-Annual-Financial-Statements-2016-and-2015.pdf.*

[157] Ronin Letter III at 2.

[158] *See* Section 2a of Rule 17 of MBSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.* In particular, Section 2a(c) of Rule 17 groups MBSD members into bank and non-bank categories, whereas the Proposed Rule Change does not distinguish between bank or non-bank status but rather applies the Tier 1 and Tier 2 liquidity need-based categories described above. Similarly, Section 2a(b)(v) of Rule 17 describes certain obligations that apply to MBSD bank members but not to MBSD non-bank members, whereas the Proposed Rule Change does not include a similar feature based on Netting Member status as a bank or non-bank.

[159] Ronin Letter II at 4.

[160] 15 U.S.C. 78s(b)(2)(C).

netting members.[161] SLD operates in a manner whereby NSCC collects mandated cash deposits from its members during the normal course of business of an options expiry period [162] to meet NSCC's liquidity needs during, and only during, that period.[163] In contrast, the CCLF would allow FICC to access Netting Member financing on a contingent basis, which means that Netting Members would not be required to provide FICC with pre-funded resources to meet their potential future CCLF obligations, as suggested by Ronin.[164] Moreover, the CCLF is designed to address FICC's liquidity needs at all times, not just during discrete, monthly periods.

In light of these differences, the Commission agrees with FICC that the CCLF represents a reasonable method of ensuring that FICC can meet its liquidity obligations, and that the possibility of a hard cap or an SLD-modeled alternative does not render CCLF inconsistent with the Exchange Act.[165] Moreover, CCLF, like SLD, is designed to place the largest funding obligations on members with the largest liquidity needs. Specifically, SLD applies to the NSCC Clearing Members that present NSCC with the largest liquidity need.[166] Although all FICC GSD Netting Members would have a CCLF obligation, the majority of the total CCLF obligation would be borne by the Netting Members that present the largest liquidity needs.[167]

Although Ronin argues that in meeting their CCLF obligation, large Netting Members that have access to the Federal Reserve Discount Window could merely ''footnote the liability at no cost'' or simply state that they are ''good for it,'' [168] the ability of some Netting Members to potentially access the Federal Reserve Discount Window as a means of funding their CCLF obligations does not render the proposal inconsistent with the Exchange Act. FICC has made its central counterparty services accessible to a large and diverse population of entities, including banks and registered broker-dealers. As such, each Netting Member satisfies the obligations of FICC membership (including financial risk management obligations) and accesses the benefits of central clearing subject to its own specific business model and regulatory framework, which can include various means of access to funding. Consistent with this general principle, the Proposed Rule Change does not prescribe a specific means by which any one Netting Member or group of Netting Members must satisfy their CCLF obligation. Rather, the proposal provides flexibility to account for FICC's diverse membership, enabling Netting Members to apply a funding mechanism that fits their specific business needs and regulatory framework.

Ronin and ICBC also describe several concerns that they believe would result from the proposal's impact on competition. ICBC argues that the proposal could force smaller Netting Members to exit the clearing business or terminate their membership with FICC due to the cost of CCLF funding obligations, thereby: (i) Inhibiting competition; (ii) increasing market concentration; (iii) increasing FICC's credit exposure to its largest participant families; and (iv) driving smaller Netting Members to clear transactions bilaterally instead of through a central counterparty.[169] Similarly, Nasdaq suggests that the costs associated with the CCLF would increase the cost of FICC membership, which may have an effect on the ''ecosystem'' of the U.S. Treasury market.[170]

In response to Ronin's concerns that the CCLF could cause a reduction in the population of Netting Members clearing through FICC, decreasing competition and concentration risk, FICC states that: (i) It does not wish to force any Netting Members to clear through larger institutions or exit the business as a result of the Proposed Rule Change; [171] and (ii) Ronin merely asserts that such negative results ''may or could'' happen, without providing substantive support for those concerns.[172] FICC argues that the proposal includes provisions that will assist Netting Members in monitoring and managing their liquidity risk.[173] For example, FICC will provide each Netting Member with a daily liquidity funding report, and during the 12-month period before the CCLF is implemented, FICC will provide Netting Members with information (*e.g.,* estimates of their Individual Total Amounts) that will allow Netting Members to assess the impact of their CCLF requirements and make any changes they deem necessary to lower their required contribution amounts.[174] However, both Ronin and ICBC argue that the liquidity funding report would be of little or no use to Netting Members because the report would not provide information on FICC's future Historical Cover 1 Liquidity Requirement.[175] FICC responds by clarifying that the liquidity funding report would indeed provide Netting Members with daily information, including information on FICC's Historical Cover 1 Liquidity Requirement, enabling Netting Members to monitor their liquidity exposure as well as FICC's regulatory liquidity requirements.[176]

FICC also suggested a variety of methods for Netting Members to comply with their CCLF obligations at a reasonable cost, including: (i) Using a one-month term repo arrangement with an overnight reverse repo arrangement, which FICC estimates would cost an average of 4 basis points (''bps'') (or $40,000 per $100 million of repo notional trade amount) annualized; (ii) obtaining other external liquidity arrangements; (iii) securing intercompany liquidity agreements; (iv) and increasing capital allocation for the contingent exposure.[177] Ronin argues that FICC underestimates the cost of using a one-month repo and overnight reverse repo, suggesting that the cost during the 2008 financial crisis averaged 37 bps, and questioning whether such arrangements would even be available during a future financial crisis.[178] Ultimately, FICC states that the CCLF is designed to mutualize GSD's liquidity risk, and that all Netting Members should support the potential liquidity risk created by their trading activity.[179] FICC believes that CCLF obligations are allocated appropriately, and Netting Members are in the best position to monitor and manage their liquidity risk

[161] Ronin Letter I at 7; Ronin Letter II at 4; Ronin Letter IV at 6–7; *see* SLD Rule, *supra* note 133.

[162] *See* SLD Rule, *supra* note 133.

[163] FICC Letter I at 5; Ronin Letter IV at 7. *See also* SLD Rule, *supra* note 133.

[164] *See* Notice, 82 FR at 14408.

[165] Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if the change is consistent with the requirements of the Exchange Act and the rule and regulations thereunder applicable to such organization. 15 U.S.C. 78s(b)(2)(C). Therefore, the Commission is required to approve the proposal unless the existence of alternatives identified by commenters renders the proposal inconsistent with the Exchange Act.

[166] *See* SLD Rule, *supra* note 133.

[167] For example, the Aggregate Supplemental Amount would have been approximately 80 percent of the total CCLF obligation, based on the six-month look-back period of July 1, 2016 to December 31, 2016. Notice, 82 FR at 14405.

[168] Ronin Letter I at 5; Ronin Letter III at 2; Ronin Letter IV at 1, 6–7.

[169] ICBC Letter I at 2–6; ICBC Letter III at 2–3. Like Ronin, the ICBC Letters I and III also argue that increased costs to Netting Members from the CCLF could inhibit competition by forcing smaller Netting Members to exit the clearing business or terminate their membership with FICC. ICBC Letter I at 2–4; ICBC Letter III at 3.

[170] *See* Nasdaq Letter at 2–3.

[171] FICC Letter I at 7.

[172] FICC Letter II at 6.

[173] *Id.;* Notice, 82 FR at 14407–09.

[174] Notice, 82 FR at 14407–09.

[175] Ronin Letter IV at 4–5; ICBC Letter III at 3.

[176] FICC Letter II at 4.

[177] FICC Letter II at 2–3.

[178] Ronin Letter IV at 2–4.

[179] FICC Letter II at 6.

in a manner that would not cause them to exit FICC or the business.[180]

Ronin and ICBC further argue that the possibility of a reduced Netting Member population resulting from the possible costs associated with complying with the proposal could, in turn, lead to larger problems, such as: (i) Increasing the size of FICC's exposure to those Netting Members that generate the largest liquidity needs for FICC (because some of the departed Netting Members could become customers of, and clear their transactions through, such remaining Netting Members); (ii) increasing Netting Member concentration risk at FICC due to the reduced overall population of Netting Members following the implementation of the CCLF; and (iii) increasing systemic risk because of the increased exposure and concentration risks described above.[181]

In response to the assertion that the CCLF could increase systemic risk by forcing smaller Netting Members to clear their transactions through larger Netting Members or exit GSD, FICC argues that the proposal would actually reduce systemic risk.[182] FICC states that it plays a critical role for the clearance and settlement of securities transactions in the U.S., and, in that role, it assumes risk by guaranteeing the settlement of the transactions it clears.[183] By providing FICC with committed liquidity to meet its settlement obligations to non-defaulting members during extreme market stress, FICC asserts that the CCLF would promote settlement finality to all Netting Members, regardless of size, and the safety and soundness of the securities settlement system, thereby reducing systemic risk.[184]

ICBC argues that the CCLF could cause FICC members to reduce their balance sheets devoted to the U.S. government securities markets, which would have broad negative effects on markets and taxpayers.[185] ICBC further argues that the CCLF could cause traders with hedged positions to reduce market activity, which could lead to reduced liquidity, inefficient pricing, and an increased likelihood of disruptions in the U.S. government securities markets.[186] ICBC raises an additional concern that the CCLF could result in FICC's refusal to clear certain trades, thereby increasing the burden on The Bank of New York Mellon (hereinafter, ''BONY'' as referred to by ICBC), the only private bank that clears a large portion of U.S. government securities.[187] Separately, ICBC questions whether the proposal is operationally feasible because it does not consider possible limitations that may manifest due to certain internal risk and operational requirements that BONY could apply in its role as clearing bank for FICC, as well as the systemic risks that may potentially result from such operational limitations.[188] Finally, ICBC argues that the CCLF would effectively drain liquidity from other markets by requiring more liquidity to be available to FICC than is necessary.[189]

In response to comments that the CCLF would cause a material negative effect on the government securities markets and would drain liquidity from the limited amount of liquidity available in the market, FICC reiterates that the term repo costs and other suggested actions to reduce peak liquidity exposure would enable Netting Members to comply with CCLF obligations at a reasonable cost, with no material negative effects on the broader government securities market.[190]

Ronin argues that the CCLF would impose an unfair burden by forcing smaller Netting Members to subsidize the ''outsized liquidity risks'' posed by the largest Netting Members, and that the proposal would do nothing to discourage an increase in FICC's Historical Cover 1 Liquidity Requirement.[191] Similarly, Ronin argues that CCLF is solely designed to protect FICC from the liquidity needs presented by global systemically important banks, and not smaller Netting Members.[192]

FICC disagrees with the commenters' assertions that the CCLF would require smaller Netting Members to subsidize the ''outsized liquidity risks'' posed by the largest Netting Members (*i.e.,* global systemically important banks), and that the proposal would do nothing to discourage an increase in FICC's Historical Cover 1 Liquidity Requirement. FICC argues that the CCLF is appropriately designed so that: (1) Each Netting Member's CCLF requirement would be a function of the liquidity risk that the Netting Member's trading activity presents to FICC; (2) citing supporting data, the allocation of CCLF requirements to each Netting Member would be a fraction of the Netting Member's peak liquidity exposure that it presents to FICC; and (3) Netting Members that generate higher liquidity needs would be allocated higher CCLF requirements, thus minimizing the burden on smaller Netting Members.[193] Additionally, FICC argues that bank capital requirements force banks to maintain a minimum ratio of capital to assets based on the underlying risk exposure of those assets.[194] Thus, large bank Netting Members with high CCLF requirements will have an incentive to limit their liquidity needs because they would be required to hold capital for their contingent exposure.[195]

[180] FICC Letter I at 7.

[181] ICBC Letter I at 2, 6; ICBC Letter II at 2–3; ICBC Letter IV at 3–4; Ronin Letter I at 1–9; Ronin Letter II at 1–5. In addition to the commenters' arguments regarding competition, Ronin also argued that a separate FICC proposal to expand FICC's Sponsored Membership program (Securities Exchange Act Release No. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003)) could increase FICC's Historical Cover 1 Liquidity Requirement, and thereby ''force smaller Netting Members to subsidize an increasing [CCLF] liquidity requirement.'' Ronin Letter I at 6. As stated in FICC Letter I, FICC responded to Ronin's concerns regarding the expansion of the Sponsored Membership program in a separate response letter as part of the notice and comment for that proposal. FICC Letter I at 9. *See* letter from Murray Pozmanter, Managing Director, Head of Clearing Agency Services, FICC, dated April 17, 2017, to Robert W. Errett, Deputy Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2017-003/ficc2017003.htm.* In that letter, FICC stated its belief that it would be unlikely for Sponsored Member activity to increase FICC's Historical Cover 1 Liquidity Requirement because the Sponsored Membership program is generally used to facilitate short-term cash investments. *Id.* at 4. Moreover, the two-tiered CCLF proposal means that only Netting Members with liquidity needs beyond $15 billion would be required to contribute to an increased Historical Cover 1 Liquidity Requirement (*i.e.,* only such larger Netting Members would be subject to Individual Supplemental Amounts). *Id.* at 4–5. The Commission approved FICC's proposal to expand its Sponsored Membership program on May 1, 2017. *See* Securities Exchange Act Release No. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003). In that approval order, the Commission stated that while Sponsored Members would not be required to contribute to the CCLF, those responsibilities would be borne by the relevant Sponsoring Member. *Id.* at 21286.

[182] FICC Letter I at 7–8.

[183] *Id.*

[184] *Id.*

[185] ICBC Letter I at 3; ICBC Letter III at 4.

[186] ICBC Letter I at 4; ICBC Letter III at 3.

[187] ICBC Letter I at 2, 5; ICBC Letter II at 3.

[188] ICBC Letter II at 2–4. The Commission understands ICBC's reference to BONY as FICC's clearing bank to mean BONY's role in providing both the cash lender and the cash borrower with certain operational, custodial, collateral valuation, and other services to facilitate the repo transactions. For example, BONY may facilitate and record the exchange of cash and securities on a book-entry basis for each of the counterparties to the repo transaction, as well as make the collection and transfer of collateral that may be required under the terms of the repo transaction. *See* Federal Reserve Bank of New York, Tri-Party Repo Infrastructure Reform, *https://www.newyorkfed.org/medialibrary/media/banking/nyfrb_triparty_whitepaper.pdf* (last visited November 10, 2017).

[189] ICBC Letter I at 5; ICBC Letter III at 2; *see also* Ronin Letter II at 4.

[190] FICC Letter II at 4–5.

[191] Ronin Letter I at 2; Ronin Letter II at 2–3; Ronin Letter III at 6; Ronin Letter IV at 1, 7.

[192] Ronin Letter I at 2–3.

[193] FICC Letter I at 3–4.

[194] *Id.* at 5.

[195] *Id.*

In response to Ronin's concern that the CCLF could cause FICC's liquidity needs to grow, FICC states that in its outreach to Netting Members over the past two years, bilateral meetings with individual Netting Members, and testing designed to evaluate the impact that changes to a Netting Member's trading behavior could have on the Historical Cover 1 Liquidity Requirement, FICC has found opportunities for Netting Members to reduce their CCLF requirements and, as a result, decrease the Historical Cover 1 Liquidity Requirement.[196] Specifically, FICC states that during its test period, which spanned from December 1, 2016 to January 31, 2017, participating Netting Members voluntarily adjusted their settlement behavior and settlement patterns to identify opportunities to reduce their CCLF requirements.[197] According to FICC, the test resulted in an approximate $5 billion reduction in GSD's peak Historical Cover 1 Liquidity Requirement, highlighting that growth of the Historical Cover 1 Liquidity Requirement could be limited under the proposal.[198]

Ronin and ICBC also argue that the proposal does not prescribe uniform compliance guidelines.[199] Ronin adds that the proposal is discriminatory because some Netting Members are subject to different regulatory authorities that may take opposing positions on the permissibility of various CCLF compliance methods.[200] Ronin and ICBC question whether Netting Members would have the ability to change their trading behavior to reduce their peak liquidity needs, and thereby, reduce their CCLF obligations, despite FICC's claims to the contrary.[201] Specifically, Ronin and ICBC question the utility of the daily liquidity report to assist in reducing their liquidity needs because the report would not provide information on the peak liquidity need generated by the Affiliated Family to which FICC has the largest exposure or future settlement obligations.[202] Similarly, Ronin and ICBC assert that the information in the report will have ''limited value'' and will ''not [be] particularly useful'' because the report will ''tell member firms, after the fact, what its requirement is,'' but it will not ''have any forecasting value.''[203] Finally, Ronin and ICBC argue that changes to Netting Member trading behavior would involve burdensome costs,[204] the proposal would effectively require Netting Members to ''pre-fund'' their CCLF requirements,[205] and Netting Member liquidity needs would actually increase during a financial crisis, contrary to FICC's assertion.[206]

In response to comments that the proposal is unduly burdensome because it does not prescribe uniform compliance guidelines, FICC states that the proposal was specifically designed to not impose prescriptive rules regarding compliance methods in order to provide each Netting Member with the flexibility to consider methods that best suit its specific business, operating model, balance sheet, liquidity plan, and ownership structure.[207] In addition, as mentioned above, FICC has suggested a variety of methods for Netting Members to comply with their CCLF obligations at a reasonable cost, including using a one-month term repo arrangement, obtaining other external liquidity arrangements, securing intercompany liquidity agreements, and increasing capital allocation for the contingent exposure.[208]

After carefully considering the Proposed Rule Change and all comments received, the Commission finds that any aforementioned burden imposed by the proposed CCLF are necessary or appropriate in furtherance of the purposes of the Exchange Act. First, while the Commission acknowledges that the proposal may result in costs to Netting Members and other market participants, the proposal is designed to help ensure that FICC has sufficient qualifying liquid resources to cover the peak cash settlement obligations of the family of affiliated Netting Members that would generate the highest liquidity need for FICC in extreme but plausible market conditions, as required by Rule 17Ad–22(e)(7) under the Exchange Act, as discussed below.[209]

Second, the CCLF would allocate FICC's Historical Cover 1 Liquidity Requirement in a manner that is efficient in the sense that the CCLF allocation mechanism varies Netting Members' liquidity obligations as a function of the varying magnitudes of liquidity demands that Netting Members present to FICC. More specifically, under the proposal, each Netting Member would have a responsibility towards the Aggregate Regular Amount (*i.e.,* the first $15 billion of the Aggregate Total Amount) in proportion to the respective liquidity needs that they presented over the past six months, as described above. The remainder of the Aggregate Total Amount would be allocated only to those Netting Members that presented liquidity needs above $15 billion,[210] using a tiered approach that requires greater CCLF commitments from Netting Members that have historically presented greater liquidity needs. The Commission believes these features of the proposal address concerns that the CCLF would force smaller Netting Members to subsidize the ''outsized liquidity risks'' posed by the largest Netting Members. Additionally, by placing higher CCLF obligations on Netting Members that present greater liquidity needs, the proposal also addresses the concerns that the CCLF does nothing to limit the growth of FICC's liquidity requirements.

Third, FICC has designed the proposal to help enable all Netting Members to manage their commitments under the CCLF. As described above, FICC would provide each Netting Member with a daily report of: (1) The Netting Member's Individual Total Amount, Individual Regular Amount and, if applicable, its Individual Supplemental Amount; (2) FICC's Aggregate Total Amount, Aggregate Regular Amount, and Aggregate Supplemental Amount; and (3) FICC's regulatory liquidity requirements as of the prior business day. Although Ronin and ICBC dispute the usefulness of the report,[211] the Commission understands that, generally, Netting Member's CCLF obligations would not be adjusted daily, but rather every six months, based on

[196] *Id.* at 8–9.

[197] *Id.* at 9–10.

[198] *Id.*

[199] ICBC Letter III at 1; Ronin Letter III at 1; Ronin Letter IV at 2, 4, 6–7.

[200] Ronin Letter III at 2.

[201] *Id.* at 3; ICBC Letter III at 2–3.

[202] Ronin Letter III at 2–3; Ronin Letter IV at 5; ICBC Letter III at 3.

[203] *See* ICBC Letter III at 3; Ronin Letter III at 2–3.

[204] ICBC Letter III at 2–3.

[205] Ronin Letter IV at 7.

[206] *Id.* at 5.

[207] FICC Letter II at 2–3.

[208] *Id.*

[209] 17 CFR 240.17Ad–22(e)(7). In adopting Rule 17Ad–22(e)(7)(i) under the Exchange Act, the Commission acknowledged in the CCA Standards Adopting Release that, regardless of whether CCAs choose to gather liquidity directly from members (*e.g.,* via a mechanism such as the CCLF) or instead choose to rely on third-party arrangements, the costs of liquidity may be passed on to other market participants, eventually increasing transaction costs. CCA Standards Adopting Release, 81 FR at 70870. However, compliance with Rule 17Ad–22(e)(7)(i) may reduce the procyclicality of the CCA's liquidity demands, which may reduce costs to market participants in certain situations. *Id.* Accordingly, while the CCLF would impose costs on Netting Members, it does not render the proposal inconsistent with Rule 17Ad–22(e)(7)(i), or with the Exchange Act.

[210] As noted above, from 2015 to 2016, FICC observed that 85 percent of Netting Members had liquidity needs of $15 billion or less. Notice, 82 FR at 14404.

[211] *See* ICBC Letter III at 3; Ronin Letter III at 2–3.

the Netting Member's peak liquidity exposure that it presents to GSD and GSD's peak liquidity needs during the prior six-month period. Given that the liquidity report would provide this information to Netting Members each day, the Commission, believes that the liquidity report is designed to help Netting Members anticipate and manage their CCLF commitments before a Netting Member's CCLF obligation would change at the start of the next six-month period.

Additionally, the Commission believes that Netting Members would have the flexibility, if necessary, to consider ways in which they could adjust their trading behavior to take into account the ability to reduce their peak liquidity needs, and thereby, reduce their CCLF obligations.[212] As noted by FICC, because CCLF contributions would be a function of each Netting Member's peak liquidity exposure to FICC, each Netting Member could reduce its CCLF obligations by altering its trading activity.[213] For example, as noted by FICC, Netting Members looking to reduce their peak liquidity exposures could stagger the maturities of their repo trades by entering into term repos or modify their settlement activity via term repos or forward starting repos during peak exposure days that significantly increase their liquidity exposure to FICC.[214] While ICBC and Ronin express concern about the potential cost of engaging in such altered trading behavior, as noted above, in adopting amendments to Rule 17Ad–22 under the Exchange Act, the Commission acknowledged that there would be costs associated with gathering the liquidity needed to comply with the Cover 1 Requirement of Rule 17Ad–22(e)(7), either directly from members or through third-party arrangements, and that such costs may be passed on to other market participants, eventually increasing transaction costs.[215] The Commission concluded that these costs were justified by the benefits related to liquidity risk management.[216] Here, although Netting Members may incur some costs in establishing the ability to meet their respective CCLF requirements, each Netting Member would retain flexibility in how they secure such resources.

Furthermore, regarding Ronin's argument that obtaining a line of credit or rolling a one-month term repo to satisfy a CCLF obligation is, in effect, pre-funding the CCLF obligation,[217] the Commission disagrees. The proposal would not require Netting Members to hold or provide to FICC their CCLF contribution (*i.e.,* their Individual Total Amount) prior to a CCLF Event.[218] Rather, the proposal would require Netting Members to attest to their ability to meet their CCLF requirement should FICC declare a CCLF Event. While obtaining of a line of credit or maintaining a one-month term repo in order for a Netting Member to make such an attestation is not costless, it is not the equivalent of pre-funding the entire CCLF requirement.

In response to Ronin's and ICBC's contention that the attestation requirement is unduly burdensome because it does not prescribe uniform compliance guidelines,[219] FICC explained that the attestation requirement was designed to afford each Netting Member the flexibility to consider methods to meet its CCLF obligations in the manner that also best suits its specific business, operating, and regulatory model, as well as applicable balance sheet, liquidity plan, and ownership structure. As FICC suggests, there are various methods that a Netting Member might utilize to fulfill its CCLF requirement, including: (1) Accessing the repo agreement market to borrow funds through a one-month term repo arrangement; (2) obtaining other external liquidity arrangements; (3) securing intercompany liquidity agreements; and (4) increasing capital allocation for the contingent exposure.[220] The Commission finds that these suggestions are consistent with the fact that FICC has made its central counterparty services accessible to a large and diverse population of entities, including banks and registered broker-dealers. As such, each Netting Member satisfies the obligations of FICC membership (including financial risk management obligations) and accesses the benefits of central clearing subject to its own specific business model and regulatory framework.

Nor is the Commission persuaded that the Proposed Rule Change is unfairly discriminatory because it does not prescribe uniform compliance guidelines. While Ronin is correct that some Netting Members are subject to different regulatory authorities, its assertion that these authorities may have their own view as to how a Netting Member must account for its CCLF obligation is speculative.[221] Moreover, to the extent that this does happen, it is not clear that it will have an unfairly discriminatory effect. Rather, given the different potential responses, the flexibility in the Proposed Rule Change seems reasonable and appropriate.

The Commission is also unconvinced by Ronin's argument against the feasibility of FICC's suggestion that smaller Netting Members could comply with CCLF obligations by using a one-month term repo along with an overnight reverse repo.[222] FICC estimates the cost of such a strategy at 4 bps annualized by calculating the spread between one-month repo and overnight repo between 2012 and 2017.[223] FICC uses this amount to estimate the ongoing costs faced by Netting Members that only would be obligated to contribute to the Aggregate Regular Amount. Ronin disagreed with the estimates provided by FICC, suggesting that the sample period chosen by FICC was a period of low and stable rates and the quotes used by FICC to produce its estimate are indicative and are not necessarily actionable.[224] Using the rates provided by FICC, Ronin demonstrated an average spread between the one-month repo rate and the overnight repo rate of approximately 9.5 bps, with a standard deviation of approximately 13 bps, over the twelve months ending on September 29, 2017.[225] To show the impact of transactions costs on the costs of FICC's suggested strategy, particularly during periods of financial stress, Ronin calculated an average bid-ask spread of approximately 37 bps for one-month repo transactions during the period between September 16, 2008 and November 14, 2008.[226]

The Commission acknowledges that the costs of the repo financing strategy posed by FICC depends on certain macroeconomic environment and financial conditions, and that the difference between the bid price for securities to be repurchased in one-month and the ask price for securities to be repurchased overnight could be volatile. However, the costs of other compliance strategies that do not rely on repo markets would also depend on the prevailing macroeconomic and financial conditions present. As such, the

[212] Ronin Letter III at 3; ICBC Letter III at 2–3.

[213] *See* FICC Letter I at 3,7.

[214] *See* FICC Letter II at 4.

[215] CCA Standards Adopting Release, 81 FR at 70786, 70870.

[216] *Id.*

[217] Ronin Letter IV at 7.

[218] As Ronin notes, a Netting Member could pay for access to a committed line of credit to have sufficient resources to attest that it can meet its CCLF contribution requirement. Ronin Letter I at 5.

[219] ICBC Letter III at 1; Ronin Letter III at 1; Ronin Letter IV at 2, 4, 6–7.

[220] *See* FICC Letter II at 3.

[221] Ronin Letter III at 2.

[222] Ronin Letter IV at 2–4.

[223] FICC Letter II at 3.

[224] Ronin Letter IV at 2–4.

[225] *Id.*

[226] *Id.*

Commission believes that the concerns highlighted by Ronin for this purpose are not unique to smaller Netting Members, but instead are concerns that all Netting Members would consider in connection with any compliance strategy they choose. Furthermore, given FICC's large and diverse membership, Netting Members could access funding to satisfy CCLF obligations through various means depending on each Netting Member's specific business model and regulatory framework. Indeed, FICC has suggested several potential options.[227] The differences in the estimated costs of one particular potential option do not necessarily imply that the burdens of the CCLF are not necessary or appropriate in furtherance of the purposes of the Act, or that such burdens disproportionately fall on some Netting Members and not others. Similarly, the Commission is unconvinced by Ronin's argument that CCLF obligations would be unduly burdensome because a one-month repo and overnight reverse repo arrangement might not be widely available during a financial crisis. Again, FICC did not suggest that financing option as the exclusive option for Netting Members; rather, it is as one of several suggested options for Netting Members to comply with CCLF obligations.[228] In addition, and as discussed above, the Commission believes that the tiered structured of the CCLF, which requires greater CCLF commitments from Netting Members that have historically presented greater liquidity needs, is designed to help addresses concerns that the CCLF unduly burdens smaller Netting Members.

In addition, the concerns expressed by: (i) Ronin and ICBC regarding the potential for reductions in centrally cleared U.S. Treasury trading activity and barriers to entry for new Netting Members; and (ii) ICBC and Nasdaq suggesting that the Commission defer its decision on the Proposed Rule Change in order for detailed studies to be conducted on the CCLF and the U.S. Treasury market more broadly, as described above, are based upon a number of implicit but also specific assumptions about Netting Member behavior that the Commission finds unpersuasive, as detailed below.

1. Assumptions Regarding Market Participation

The magnitude of the stated concerns regarding potential reductions in GSD's Netting Member population, with resultant increases in liquidity demands for FICC, concentration risk, and systemic risk are based upon an assumption regarding how existing Netting Members may participate in the cleared repo market following implementation of the CCLF. The concern that the most significant liquidity demands generated by particular Netting Members could increase because of the CCLF is based upon an assumption that departing Netting Members would choose to become customers of, and clear their repo transactions through, the remaining Netting Members that present the largest liquidity demands for FICC.

Notwithstanding this concern, given the multitude of factors (*e.g.,* capital requirements, balance-sheet restraints, cost of capital, business relations, etc.) that a departing Netting Member would consider in seeking to establish a clearing broker relationship with any remaining Netting Members, the Commission does not believe that the trading activity of departing Netting Members would necessary be cleared through the remaining Netting Members that present the largest liquidity need. For example, it is conceivable that it would be less expensive for departing Netting Members to clear through smaller Netting Members because Netting Members might pass the costs associated with the Individual Supplemental Amount on to their customers, and larger Netting Members might incur higher costs associated with funding their Individual Supplemental Amount. Moreover, for FICC's Historical Cover 1 Liquidity Requirement to increase under the scenario contemplated by Ronin and ICBC, not only would a departed Netting Member need to clear through the remaining Netting Member that generated FICC's Historical Cover 1 Liquidity Requirement, but it also would need to have contributed to that Netting Member having generated that Historical Cover 1 Liquidity Requirement.

Even if the underlying assumption was supported, the extent to which increases in the largest liquidity demands for FICC would implicate systemic risk concerns would be mitigated by features of the CCLF itself: The amount of committed resources available under the CCLF is designed to support FICC's ability to meet liquidity obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation.[229] In other words, the amount of liquidity resources available to FICC under the CCLF would be scaled to FICC's largest liquidity demand, so that even if there were increased concentration and higher liquidity demands, the CCLF would continue to mitigate liquidity risks associated with the default of the participant or participant family that presented the largest liquidity need.

2. Assumptions Regarding the Cost of Clearing

The stated concerns regarding incentives for market participants to choose not to centrally clear their repo transactions through FICC and, instead, execute and manage their repo activity in the bilateral market are based upon certain assumptions regarding how market participants would consider the relative costs and benefits of engaging in cleared repo transactions at FICC versus bilateral repo transactions. ICBC argues that moving to bilateral repo transactions would be somewhat less efficient than continuing to clear repo transactions at FICC, but that it would be materially less expensive.[230] However, this conclusion assumes that market participants would be willing to forgo certain benefits of FICC's central clearing process (*e.g.,* centralized netting, reduction of exposures, and the elimination of the need to maintain multiple risk management and operational relationships with a multitude of counterparties), when moving to bilateral repo transactions, to avoid incurring the cost of committing to provide liquidity to FICC under the CCLF.[231] Notwithstanding the concern raised, the Commission believes that central clearing at FICC would remain an attractive option for firms, after considering the above-described benefits of central clearing, even if the CCLF were implemented.[232]

[227] *See* FICC Letter II at 3.

[228] *See id.*

[229] FICC Letter I at 4.

[230] ICBC Letter I at 3.

[231] The Commission notes that registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets. CCA Standards Adopting Release, 81 FR at 70849. The Commission believes that central clearing generally benefits the markets in which it is available. *Id.*

[232] As discussed in Section III.C., below, the Commission finds that the proposal is consistent with the liquidity requirements of Rule 17Ad–22(e)(7) under the Exchange Act. In considering the benefits, costs, and effects on competition, efficiency, and capital formation, the Commission expressly acknowledged in the CCA Standards Adopting Release that a covered clearing agency (''CCA'') might pass incremental costs associated with Rule 17Ad–22 compliance on to its members, which might cause certain members to choose to terminate their relationships with that CCA. CCA Standards Adopting Release, 81 FR at 70862, 65. The Commission nonetheless concluded that the costs were justified by the benefits relating to liquidity risk management. *Id.* at 70870. Even if CCLF costs drive certain Netting Members to clear their transactions bilaterally rather than through FICC, the Commission believes the proposal is

3. Assumptions Regarding the Transfer of Risk

ICBC raises the concern that the CCLF could transfer risk from FICC to BONY, the only private bank that acts as a tri-party custodian to a large portion of U.S. government securities, if FICC chooses to limit its risk by refusing to clear trades following a default. However, as proposed, the CCLF does not contemplate the refusal to clear trades following the default of a Netting Member, nor does FICC impose trading limits on Netting Members. In addition, the concerns raised by ICBC regarding transferred risk to BONY and operational limitations that BONY might impose on its customers, respectively, are based upon the assumption that the proposal would encourage market participants to move their repo transactions away from central clearing at FICC to the bilateral repo market. As already discussed above in Section III.B.3, the Commission does not believe this assumption is supported.

4. Assumptions Regarding the Impact to U.S. Government Securities Markets

While the Commission acknowledges that the possible exit of traders that primarily hold hedged positions could potentially affect the liquidity of certain segments of the U.S. government securities markets, the argument that these impacts would necessarily result in inefficient pricing and an increased likelihood of disruption are not persuasive. While hedged positions in U.S. government securities may present only limited market risk to FICC, these positions nevertheless present liquidity demands. While the CCLF may raise the costs that certain market participants incur to hedge the market risks associated with providing liquidity, the Commission believes that these costs appropriately reflect the liquidity risks that these participants present to FICC, as the proposal is designed to be tailored to the liquidity risk presented, as described above; thus, it should not result in inefficient pricing, as a potential impact on pricing should appropriately reflect the relevant liquidity risks.

Finally, in response to ICBC and Nasdaq's request that the Commission defer its decision on the proposal until there are further studies on the CCLF [233] and the broader U.S. Treasury market,[234] the Commission believes that, given the information and evidence already made available to the Commission in connection with this Proposed Rule Change, including responses to the request for comment in the OIP Extension, such studies are not necessary to make a finding that the Proposed Rule Change is consistent with the Exchange Act. First, in response to ICBC's comment that a review of the proposal should not be confined to the narrow question of whether the proposal would provide FICC with more liquidity,[235] the Commission believes that it has not conducted such a narrow review in evaluating the proposal. To the contrary, as addressed throughout this Section III, the Commission has considered whether the proposal is consistent with the Exchange Act, including a review of (i) whether the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which FICC is responsible, and, in general, protect investors and the public interest, as required by Section 17A(b)(3)(F) of the Exchange Act; [236] (ii) whether the proposal imposes a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act, as required by Section 17A(b)(3)(I) of the Exchange Act; [237] (iii) and whether the proposal is consistent with the rules and regulations under the Exchange Act, such as Rule 17Ad–22(e),[238] as required by Section 19(b)(2)(C) of the Exchange Act.[239] Second, with respect to the list of questions suggested by ICBC for further study regarding the broad, potential effects of the CCLF,[240] those questions mirror the concerns raised throughout ICBC's three comment letters, which the Commission has considered and addressed in this Section III. Third, as early as September 18, 2013, FICC's parent company established a standing member-based advisory group, the Clearing Agency Liquidity Council (''CALC''), including both small and large Netting Members, as a forum to discuss liquidity-related matters.[241] FICC engaged with its members, via the CALC, regarding the CCLF proposal throughout its design and development process, considering such wide-ranging issues as U.S. Treasury market structure dynamics, existing liquidity tools available in the market (and to FICC's parent company) to satisfy FICC's liquidity requirements, and potential alternative mechanisms such as the NSCC SLD and other liquidity plans.[242] Ultimately, the CALC preferred the CCLF to the other options considered.[243] Fourth, FICC conducted bilateral outreach with Netting Members regarding the CCLF over the past two years, including the distribution of impact studies, a CCLF test-period with certain members, and meetings to discuss liquidity drivers.[244] Fifth, the Commission believes that approving the Proposed Rule Change now is appropriate and will not act as an impediment to conducting the studies of clearing arrangements and incentives in the U.S. Treasury markets as suggested by Nasdaq in its comments. In its comments, Nasdaq stated that the Proposed Rule Change will impact, perhaps dramatically, the ecosystem that the U.S. Treasury Department has already singled out as needing further study and reform and therefore the Commission should consider deferring any ruling on the Proposed Rule Change.[245] The kind of study Nasdaq requests is broad and beyond the scope of this Proposed Rule Change, and the Commission does not believe it is necessary to preclude clearing agencies from charging fees or imposing other requirements on their members in an effort to comply with rules to which they are currently subject, prior to conducting such a wide-ranging study. Finally, Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.[246] The Commission believes, for the reasons discussed above and below, that the current record is sufficient for the Commission to make such a finding, and the absence of further studies does not render the Proposed Rule Change inconsistent with the Exchange Act.

For all of the above reasons, Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(I) of the Exchange Act, as the proposal would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

consistent with Rule 17Ad–22(e)(7) under the Exchange Act.

[233] *See* ICBC Letter I at 6; ICBC Letter II at 4; ICBC Letter III at 3–4.

[234] Nasdaq Letter at 3.

[235] *See* ICBC Letter I at 6; ICBC Letter III at 3–4.

[236] 15 U.S.C. 78q–1(b)(3)(F).

[237] 15 U.S.C. 78q–1(b)(3)(I).

[238] 17 CFR 240.17Ad–22(e).

[239] 15 U.S.C. 78s(b)(2)(C).

[240] *See* ICBC Letter I at 6; ICBC Letter III at 3–4.

[241] FICC Letter I at 8.

[242] *Id.*

[243] *Id.*

[244] FICC Letter I at 9.

[245] *See* Nasdaq Letter.

C. Exchange Act Rule 17Ad–22(e)(7)

The Commission believes that the proposed changes associated with the CCLF are consistent with the requirements of Rule 17Ad–22(e)(7) under the Exchange Act, which requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by FICC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[247]

Specifically, Rule 17Ad–22(e)(7)(i) under the Exchange Act requires policies and procedures for maintaining sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[248] As described above, the CCLF would be a rules-based, committed repo facility, designed to provide FICC with a liquidity resource in the event that FICC's other liquidity resources prove insufficient during a Netting Member default. Moreover, the CCLF would be sized to meet GSD's peak liquidity need during the prior six months, plus an additional Liquidity Buffer.

ICBC and Ronin argue, as summarized above, that FICC's current risk models are ''time proven'' and the scenario the CCLF is intended to address (*i.e.,* an inability to access liquidity via the U.S. government securities repo market) is implausible.[249] To support this position, ICBC and Ronin cite to the 2008 financial crisis, in which the repo market continued to function.[250] Ronin also claims that smaller Netting Members have presented ''no liquidity risk to FICC'' [251] because, for the period of March 31, 2016 to March 31, 2017, the peak liquidity need of 53 of the 103 GSD Netting Members did not exceed the amount of cash in the GSD clearing fund.[252]

In response, FICC states that the Federal Reserve took several extraordinary actions at that time to support the government securities markets, such as: (1) Establishing the Term Auction Facility, Primary Dealer Credit Facility, Term Securities Lending Facility, and bilateral currency swap agreements with several foreign central banks; (2) providing liquidity directly to borrowers and investors in key credit markets; (3) expanding its open market operations, lowering longer-term interest rates; and (4) purchasing longer-term securities.[253] FICC points out that many of the above-referenced actions would not be available to the Federal Reserve in a future crisis; therefore, FICC cannot assume that such actions would be available, sufficient, and/or timely in ensuring that FICC would be able to meet its liquidity requirements.[254] Ronin counters FICC's argument by stating that the actions taken by the Federal Reserve after the 2008 crisis dealt with supporting the credit markets, which have little to do with U.S. Treasuries because they are not a credit product.

Without taking a position on the performance of the U.S. Treasury markets during the 2008 financial crisis as a result of action taken or not taken by the Federal Reserve, the Commission believes that Ronin's argument fails to consider that extreme but plausible scenarios are not necessarily limited to only those events that have actually happened in the past, but could also include events that could potentially occur in the future. Moreover, the ''time proven'' FICC risk models highlighted by ICBC are risk models that relate to market risk (*i.e.,* the risk of losses in a Netting Member's trading portfolio arising from movements in market prices), whereas the CCLF is designed to address liquidity risk (*i.e.,* the risk that a Netting Member's default would prevent FICC from meeting its cash settlement obligations when they are due)—a separate category of risk that requires its own mitigation measures. Similarly, in response to Ronin's claim that smaller members have presented ''no liquidity risk to FICC'' [255] because the cash component to the GSD clearing fund has been sufficient to cover the peak liquidity need of 53 of 103 GSD Netting Members over the given period,[256] the GSD clearing fund is calculated and collected to address market risk, not liquidity risk, as discussed above. Also, reliance on the clearing fund exclusively to mitigate all of FICC's liquidity risk, including such risk presented by small Netting Members, could prove inadequate because the composition of the clearing fund, including the cash component, varies over time.

For these reasons, the Commission believes that the proposal is reasonably designed to help FICC effectively measure, monitor, and manage liquidity risk by helping FICC maintain sufficient qualifying liquid resources to settle the cash obligations of the GSD participant family that would generate the largest liquidity need in extreme but plausible market conditions, consistent with Rule 17Ad–22(e)(7)(i) under the Exchange Act.

Rule 17Ad–22(e)(7)(ii) under the Exchange Act requires policies and procedures for holding qualifying liquid resources sufficient to satisfy payment obligations owed to clearing members.[257] Rule 17Ad–22(a)(14) under the Exchange Act defines ''qualifying liquid resources'' to include, among other things, committed repo agreements without material adverse change provisions, that are readily available and convertible into cash.[258] As described above, the proposed CCLF is designed to provide FICC with a committed repo facility to help ensure that FICC has sufficient, readily available liquid resources to meet the cash settlement obligations of the family of affiliated Netting Members generating the largest liquidity need. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(ii) under the Exchange Act.[259]

Rule 17Ad–22(e)(7)(iv) under the Exchange Act requires policies and procedures for undertaking due diligence to confirm that FICC has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has: (a) Sufficient information to understand and manage the liquidity provider's liquidity risks; and (b) the capacity to perform as required under

[247] 17 CFR 240.17Ad–22(e)(7). Although the commenters discuss the proposal in the context of Rule 17Ad–22(b)(3), the Commission has analyzed the proposal under Rule 17Ad–22(e)(7), which includes specific requirements related to the management of liquidity risk. As noted in the CCA Standards Adopting Release, Rule 17Ad–22(e) includes requirements intended to supplement the more general requirements in Rule 17Ad–22(b). *See* CCA Standards Adopting Release, 81 FR at 70786.

[248] 17 CFR 240.17Ad–22(e)(7)(i).

[249] ICBC Letter I at 3; ICBC Letter II at 4; ICBC Letter III at 3; Ronin Letter II at 4–5; Ronin Letter III at 4–6; Ronin Letter IV at 5–6.

[250] ICBC Letter I at 2–3; Ronin Letter III at 5; Ronin Letter IV at 5–6.

[251] Ronin Letter II at 2–3; Ronin Letter IV at 1, 7.

[252] Ronin Letter II at 3.

[253] FICC Letter II at 3.

[254] *Id.* at 5–6.

[255] *Id.* at 2–3; Ronin Letter IV at 1, 7.

[256] Ronin Letter II at 5–6.

[257] 17 CFR 240.17Ad–22(e)(7)(ii).

[258] 17 CFR 240.17Ad–22(a)(14).

[259] Although Ronin and ICBC raised concerns regarding the cost of complying with the CCLF, the Commission, in adopting Rule 17Ad–22(e)(7)(ii), acknowledged that CCAs could comply with Rule 17Ad–22(e)(7)(ii) by requiring their members to act as counterparties in repurchase agreements, with members bearing the associated costs. *See* Ronin Letter I at 2; Ronin Letter II at 1–5; ICBC Letter I at 2–4; CCA Standards Adopting Release, 81 FR at 70871.

its commitments to provide liquidity.[260] As described above in Section II.D., FICC would require GSD Netting Members to attest that they have accounted for their potential Individual Total Amount, and FICC has had discussions with Netting Members regarding ways Netting Members, regardless of size or access to bank affiliates, can meet this requirement.[261] Moreover, FICC proposes to conduct due diligence on a quarterly basis to assess each Netting Member's ability to meet its Individual Total Amount.[262] According to FICC, this due diligence would include a review of all information that the Netting Member provided FICC in connection with its ongoing reporting requirements, as well as a review of other publicly available information.[263]

Ronin's assertion that certain Netting Members could merely submit an attestation declaring that they ''are good for'' their CCLF contribution[264] fails to account for the fact that, as described above, FICC would conduct its own due diligence to verify the support for each Netting Member's attestation. Specifically, on a quarterly basis, FICC would review all of the information that Netting Members provide in connection with their ongoing reporting obligations pursuant to the GSD Rules, and it would review other publicly available information.[265] Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(iv) under the Exchange Act.

Finally, Rule 17Ad–22(e)(7)(v) under the Exchange Act requires policies and procedures for maintaining and testing with each liquidity provider, to the extent practicable, FICC's procedures and operational capacity for accessing its relevant liquid resources.[266] As described above, under the proposal, FICC would test its operational procedures for invoking a CCLF Event and require Netting Members to participate in such tests.[267] Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(v) under the Exchange Act.

IV. Conclusion

Based on the foregoing, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and in particular with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[268] that proposed rule change SR–FICC–2017–002 be, and it hereby is, APPROVED as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[269]

Eduardo A. Aleman,

Assistant Secretary.

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[260] 17 CFR 240.17Ad–22(e)(7)(iv). As discussed in the CCA Standards Adopting Release, a key benefit of the due diligence provisions in Rules 17Ad–22(e)(7)(iv) and (v) is an increased level of assurance that liquidity providers would be able to supply liquidity on demand, while their costs include costs associated with new or updated policies and procedures, and with ongoing monitoring, compliance and testing of liquidity resources. CCA Standards Adopting Release, 81 FR at 70873.

[261] *See* FICC Letter I at 9.

[262] *See* Notice, 82 FR at 14407–08.

[263] *Id.*

[264] Ronin Letter I at 5.

[265] *See* Notice, 82 FR at 14407–08.

[266] 17 CFR 240.17Ad–22(e)(7)(v).

[267] Notice, 82 FR at 14407–08.

[268] 15 U.S.C. 78s(b)(2).

[269] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82088; File No. SR–CBOE–2017–068]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe Functionality of and Adopt Fees for a New Front-End Order Entry and Management Platform

November 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2017, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to describe the functionality of and adopt fees for the use of the Silexx trading platform (''Silexx'' or the ''platform'') in connection with the purchase of assets from Silexx Financial Systems, LLC (SFS).

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to describe the functionality and adopt fees for the use of Silexx, a new front-end order entry and management platform. On the date of this filing, Cboe Silexx, LLC (a wholly owned subsidiary of Cboe Options' parent company, Cboe Global Markets, Inc.) (''Cboe Silexx'') entered into a definitive asset purchase agreement with SFS pursuant to which Cboe Silexx agreed to purchase Silexx, a front-end, broker-neutral, multi-asset class order entry and management trading platform.

Silexx is an order entry and management trading platform for listed stocks and options that support both simple and complex orders.[5] The platform is a software application that is installed locally on a user's desktop. The platform provides users with the capability to send option orders to U.S.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.