Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2026–37 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–PEARL–2026–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2026–37 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–16286 Filed 8–10–26; 8:45 am]

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[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106053; File No. SR–FICC–2026–008]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Establish a Guaranty Fund at the Government Securities Division

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2026, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2026–008. On August 4, 2026, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the proposed rule change.[3] The proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the ''Proposed Rule Change''), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

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

The Proposed Rule Change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') [4] in connection with the proposed establishment of a guaranty fund designed to cover losses that may arise due to a Member default or a non-default loss event (''Guaranty Fund'').

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

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

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

1. Purpose

Executive Summary

FICC, through GSD and the Mortgage-Backed Securities Division (''MBSD'') (each a ''Division'' and together the ''Divisions''), serves as a central counterparty (''CCP'') and provider of clearance and settlement services for fixed income transactions. FICC–GSD, specifically, provides CCP services in U.S. government securities, as well as repurchase and reverse repurchase transactions involving U.S. government securities.[5]

FICC proposes to establish a Guaranty Fund at GSD, which would be designed to cover and mutualize the risk of losses that may occur as a result of (i) a Defaulting Member Event [6] under a wide range of foreseeable stress scenarios or (ii) a Declared Non-Default Loss Event.[7]

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

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 made certain changes the description of the proposed rule change. Specifically, Partial Amendment No. 1 corrects certain figures in the description of the proposed rule change regarding the anticipated impact on FICC's Members for the average overall Guaranty Fund size. Additionally, Partial Amendment No. 1 clarifies certain statements regarding the effects on Member Backtesting Charges had the proposed changes been in place during the period of the Backtesting Study. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below. FICC filed the proposed rule change as an advance notice (SR–FICC–2026–802) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4 under the Act, 17 CFR 240.19b–4. A copy of the advance notice is *available at www.dtcc.com/legal/sec-rule-filings.* On August 4, 2026, FICC filed Partial Amendment No. 1 to the advance notice to make the same clarifications and corrections to the advance notice as Partial Amendment No. 1 to the proposed rule change.

[4] Capitalized terms not defined herein shall have the meaning assigned to such terms in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

[6] A ''Defaulting Member Event'' is defined in the GSD Rules as a determination by FICC to cease to act for a Member pursuant to GSD Rule 21 or Rule 22. *See* Section 7 of GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. These GSD Rules provide that FICC's Board of Directors may suspend a Member or prohibit or limit a Member's access to FICC's services in enumerated circumstances; this includes, among other things, a default in delivering funds or securities to FICC, a Member insolvency or a Member experiencing such financial or operational difficulties that FICC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its membership. *See* GSD Rule 21 (Restrictions on Access to Services) and GSD Rule 22 (Insolvency of a Member), *supra* note 4.

[7] A ''Declared Non-Default Loss Event'' is a determination by the FICC Board of Directors that a loss or liability incident to the clearance and settlement business of FICC may be a significant

The Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's ''default fund'' [8] and enable FICC to treat its Member's Clearing Fund deposits as ''initial margin,'' [9] excluding the Clearing Fund from loss mutualization and supporting bankruptcy remote treatment for Clearing Fund deposits at GSD.

As part of the proposal, FICC would make the following changes to the GSD Rules:

- Adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund each month at an amount sufficient to cover the stress test deficiency (*i.e.,* losses observed in daily stress testing over required Clearing Fund deposits) that may arise as a result of the default of the two Netting Member Affiliated Families [10] that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (a ''Cover 2 Standard'' or ''Cover 2 Requirement''); (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain established thresholds;
- Modify GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to ''borrow'' Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.
- Relocate the loss allocation rules in Section 7 (Loss Allocation Waterfall, Off-the-Market Transactions) of GSD Rule 4 to new proposed Rule 4C (Loss Allocation) and modify those rules to (i) incorporate the proposed Guaranty Fund into the GSD loss allocation waterfall and exclude the Clearing Fund from the calculation of loss allocation obligations; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day ''cooling-off period'' for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an ''Event Period''); and (iv) impose an assessment cap on loss allocation during each Event Period equal to two times (or 200 percent of) the Member's Guaranty Fund requirement for any Event Period in lieu of the existing loss allocation rounds system.
- Make other conforming changes throughout the GSD Rules to reflect the adoption of the Guaranty Fund as described herein.

FICC has discussed this proposal with Members, who generally expressed support for the proposed changes. By establishing a separate Guaranty Fund for loss mutualization and capping each Netting Member's loss allocation in Defaulting Member Events and Declared Non-Default Loss Events that occur during an Event Period at 200 percent of the Netting Member's Guaranty Fund requirement, FICC would provide greater transparency around each Member's potential exposures to FICC. The proposed Guaranty Fund, which would be sized and allocated based on the results of daily stress testing under a wide range of foreseeable historical and hypothetical scenarios, would also provide a more risk sensitive measure of FICC's stress exposures. FICC also notes that by establishing a Guaranty Fund and sizing it to a Cover 2 Standard, the proposal would align FICC's risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market's systemically important infrastructures.[11]

The proposal also includes changes to the GSD Rules to make it clear that Members' Clearing Fund deposits represent initial margin, excluding the Clearing Fund from the loss allocation calculation, and to facilitate the ability of Members to conclude that Clearing Fund deposits are bankruptcy remote [12] from FICC within the meaning of the Basel capital framework. The proposed changes would protect the Clearing Fund deposits of all Members from loss mutualization in the event of a Member default scenario where the losses incurred by FICC exceed the resources of the defaulting Member. The proposed changes would protect non-defaulting Members' Clearing Fund deposits from an FICC insolvency and thereby facilitate the ability of Clearing Members to conclude they do not need to hold regulatory capital against such deposits, providing additional capital relief to such Members, as discussed in further detail below.

Background

FICC–GSD maintains financial resources in the form of its Clearing Fund designed to enable it to cover potential losses resulting from the failure of the Member or Member family to which it has the largest credit exposure. FICC–GSD collects Clearing Fund deposits from its Members using a risk-based margin methodology. These amounts operate, individually, as the Member's initial margin, and the aggregate of all such Members' deposits is referred to collectively as the Clearing Fund, which operates as GSD's default fund. This risk-based methodology enables FICC to identify the risks posed by a Member's unsettled portfolio and to quickly adjust and collect additional deposits as needed to cover those risks.

and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Members in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner. *See* Section 7 of Rule 4 of the GSD Rules, *supra* note 4.

[8] A CCP's default fund is typically used to mutualize certain risks, such as losses that may occur under extreme but plausible stress scenarios that exceed a defaulting member's initial margin.

[9] Initial margin is collateral collected by a CCP to cover its current and potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin is generally not mutualized and used only to cover the losses of the participant posting such initial margin.

[10] ''Affiliated Family'' is defined in the GSD Rules as a group of Members, excluding from the group any Member that is a securities clearinghouse, depository, exchange or other market infrastructure, in which each Member in the group is an Affiliate of at least one other Member in the group. *See* Section 1 of GSD Rule 1 (Definitions), *supra* note 4.

[11] For example, CME Securities Clearing Inc. and ICE Clear Credit LLC maintain default funds that are separate from initial margin and sized to a Cover 2 Standard. *See* Chapter 4 of the Rules of CME Securities Clearing Inc., *available at www.cmegroup.com/rulebook/cmesc/,* and Chapter 8 of the Treasury Clearing Rules of ICE Clear Credit LLC, *available at www.ice.com/clear-credit/us-treasury-clearing.*

[12] FICC would obtain a legal memorandum from outside counsel regarding the bankruptcy remote treatment of the Clearing Fund.

Each Member's required Clearing Fund deposit (or Required Fund Deposit) is calculated at least twice daily for GSD Members pursuant to a formula set forth in GSD Rule 4 and the Margin Component Schedule of the GSD Rules.[13] The Clearing Fund is sized to an amount sufficient to cover a wide range of potential stress scenarios, including the default of the Member and its affiliated Members that would cause the largest aggregate credit exposure to GSD in extreme but plausible market conditions (that is, to a ''Cover 1 Standard'').

Currently, under GSD Rule 4, if there is a loss (i) as a result of an obligation of a defaulting Member to FICC that was not fully satisfied by the application of its resources or the proceeds from the liquidation of its portfolio, or (ii) due to an event other than a Member default (*i.e.,* a Declared Non-Default Loss Event), FICC has recourse to the loss allocation waterfall. FICC allocates losses differently between Tier One Netting Members, which generally include all Netting Members unless otherwise specified by FICC, and Tier Two Members, which include CCIT Members and Registered Investment Company Netting Members.[14]

Under the current GSD Rules, triggering events for loss allocation purposes, which may include both Member defaults and non-default events, are grouped together chronologically into discrete ''Event Periods'' of ten business days.[15] Losses arising from a group of events that occurred within the same Event Period, whether a default loss or a non-default loss, would be allocated as follows:

• Before the allocation of losses to Members, FICC would apply 50 percent of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the applicable event period (referred to as the ''Corporate Contribution''), or such greater amount as the Board of Directors may determine to satisfy the losses.[16]

• If a loss is related to a Defaulting Member Event, FICC would allocate the loss between the Tier One Netting Members and the Tier Two Members, and the loss allocation process applicable to Tier One Netting Members and Tier Two Members would proceed via two separate, parallel, and simultaneous streams. If a loss is related to a Declared Non-Default Loss Event, FICC would allocate the loss to Tier One Netting Members. Tier Two Members are not subject to loss allocation with respect to Declared Non-Default Loss Events.[17]

• With respect to Tier One Netting Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount among Tier One Netting Members that were Tier One Netting Members on the first day of the applicable Event Period, ratably in accordance with their average daily Required Fund Deposit over the prior 70 business days or such shorter period of time that the Tier One Netting Member has been a Tier One Netting Member, divided by the sum of the average Required Fund Deposit amounts of all Tier One Netting Members subject to loss allocation in such round. Each Tier One Netting Member must pay its allocation amount within two business days of receiving notice of the amount.[18]

• With respect to Tier Two Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount to Tier Two Members to the extent they traded with the defaulting Member and their trades resulted in the loss. FICC would assess Tier Two Members ratably based on their loss as a percentage of the entire amount of the remaining loss attributable to Tier Two Members. Tier Two Members are required to pay their loss allocation obligation in full.[19]

The GSD Clearing Fund also acts as a source of liquidity for FICC. FICC's qualifying liquid resources[20] are described in the Clearing Agency Liquidity Risk Management Framework (''LRM Framework'')[21] and include (i) cash deposits to the respective Clearing Funds[22] of GSD and MBSD and (ii) the Capped Contingency Liquidity Facility (''CCLF'') for each of GSD and MBSD. Collectively, these resources provide FICC with liquidity to complete end-of-day settlement in the event of the default of a GSD Netting Member.[23]

The Clearing Agencies also maintain a Clearing Agency Stress Testing Framework (''ST Framework''), which sets forth the manner in which FICC (i) performs stress testing of the sufficiency of its prefunded financial resources and (ii) determines the amount and regularly tests the sufficiency of FICC's liquidity resources.[24] FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, to size and test the sufficiency of the proposed Guaranty Fund.

Description of Proposed Change

FICC proposes to establish a Guaranty Fund for GSD, which is designed to

[13] *See* Rule 4 and Margin Component Schedule of the GSD Rules, *supra* note 4.

[14] *See* Section 7 of GSD Rule 4, *supra* note 4.

[15] *See id.*

[16] The amount of the Corporate Contribution to be applied to any losses arising from events that may occur in subsequent event periods during the next 250 business days would be reduced to the remaining unused portion of the Corporate Contribution amount, if any. If the losses are attributable to only one Division, the Corporate Contribution to the losses would be up to the amount then available. If the losses occur simultaneously at both Divisions, the Corporate Contribution to the losses would be applied ratably between the Divisions. *See* Section 7a of GSD Rule 4, *supra* note 4.

[17] *See* Section 7 of GSD Rule 4, *supra* note 4. Losses relating to the events within the same Event Period may be allocated iteratively.

[18] *See id.*

[19] *Id.*

[20] ''Qualifying liquid resources,'' as defined by Rule 17ad–22(a) under the Act, include three types of assets: (i) cash held either at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements, such as: (A) committed arrangements without material adverse change provisions, including (1) lines of credit, (2) foreign exchange swaps and (3) repurchase agreements, or (B) other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency. *See* 17 CFR 240.17ad–22(a).

[21] FICC and its affiliate clearing agencies, The Depository Trust Company and National Securities Clearing Corporation (together, the ''Clearing Agencies''), have adopted the LRM Framework, which sets forth the manner in which FICC measures, monitors and manages the liquidity risks that arise in or are borne by it. *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the LRM Framework to include the Guaranty Fund and the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC as sources of qualifying liquid resources for FICC–GSD.

[22] Cash deposits to the Clearing Funds are held either at a Federal Reserve Bank or creditworthy commercial banks that provide same-day access to funds.

[23] The Commission also recently issued a Notice of No Objection to FICC's proposal to establish a commercial paper program in order to raise prefunded default liquidity (''Commercial Paper Program''). The Commercial Paper Program, once implemented, would also constitute an additional source of qualifying liquid resources for FICC. *See* Securities Exchange Act Release No. 105319 (Apr. 27, 2026), 91 FR 23318 (Apr. 30, 2026) (SR–FICC–2026–801).

[24] *See* Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the ST Framework to make conforming changes to reflect the utilization of FICC's stress testing methodology and scenarios in sizing and testing the sufficiency of the Guaranty Fund.

cover losses that may arise due to a Member default or a non-default loss event and enable FICC to support bankruptcy remote treatment for its Clearing Fund deposits. The proposed changes would include, among other things:

• Adopting new GSD Rule 4A (Guaranty Fund) to set forth requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund at an amount sufficient to meet a Cover 2 Requirement; (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain thresholds.

• Modifying GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to ''borrow'' Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.

• Relocating the loss allocation rules in Section 7 of GSD Rule 4 to a new Rule 4C (Loss Allocation) and modifying the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day ''cooling off period'' for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an ''Event Period''); and (iv) impose an assessment cap on loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member's Guaranty Fund requirement for each Event Period in lieu of the existing loss allocation rounds system.

• Make other conforming changes throughout the GSD Rules to reflect the adoption of the Guaranty Fund as described herein.

The proposed changes are discussed in detail below.

1. Proposed Establishment of a Guaranty Fund

FICC proposes to adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the proposed Guaranty Fund. The proposed rules would describe (i) general terms and requirements applicable to the Guaranty Fund; (ii) the maintenance of the Guaranty Fund; (iii) the form and investment of Guaranty Fund deposits; (iv) daily stress testing requirements for the Guaranty Fund; (v) the monthly sizing of the Guaranty Fund; (vi) intramonth resizing of the Guaranty Fund; (vii) the allocation of Guaranty Fund requirements among Netting Members; (viii) the setting of initial Guaranty Fund Requirements for new Netting Members and adjustments to Guaranty Fund Requirements due to certain business activities of Netting Members; (ix) the purpose and use of Guaranty Fund; and (x) the withdrawal of excess Guaranty Fund deposits, replenishing of any deficits in Guaranty Fund, and return of Guaranty Fund deposits after a Member withdraws from membership at GSD.

The term ''Guaranty Fund'' would be defined in GSD Rule 1 to mean the Guaranty Fund established by FICC pursuant to Rule 4A (as proposed herein), which shall be comprised of the aggregate of all contributions of Netting Members, excluding Registered Investment Company Netting Members. The proposed definition would further provide that the Guaranty Fund may be used to cover losses incurred by FICC as a result of a Defaulting Member Event or Declared Non-Default Loss Event. The term ''Guaranty Fund Deposit'' would also be defined in GSD Rule 1 as the deposit to the Guaranty Fund made by a Netting Member pursuant to Rule 4A (as proposed herein).

The proposed Guaranty Fund would be sized to a Cover 2 Requirement based on the results of daily stress testing using a range of historical and hypothetical scenarios. FICC would size the Guaranty Fund on a monthly basis; however, FICC would retain authority to resize the Guaranty Fund on an intramonth basis if it observes stress test deficiencies that breach certain established thresholds. Each Netting Member's required Guaranty Fund contribution would be determined as their pro rata share of the Cover 2 Requirement based on average daily largest stress test deficiencies. FICC would also have the authority to impose additional margin charges on a Netting Member or Affiliated Family whose Stress Test Deficiencies (as defined in Section 1.d. below) either (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause either the monthly or intramonth size of the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund.

The proposed Guaranty Fund and associated GSD Rules are discussed in detail below.

a. General Rules

Section 1 of proposed Rule 4A would set forth general provisions applicable to the Guaranty Fund and proposed Rule 4A. Specifically, Section 1 of proposed Rule 4A would clarify that, for purposes of proposed Rule 4A, the term Netting Member shall not include Registered Investment Company Netting Members, except for purposes of determining the total size of the Guaranty Fund or the application of any potential Stress Test Deficiency Charge, as defined below.[25] The proposed rule is intended to reflect the elimination of the concept of Tier Two Members and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members, to which proposed Rule 4A would not apply) from Guaranty Fund requirements and the calculation of loss allocation obligations, which are discussed in further detail below.

In addition, Section 1 of proposed Rule 4A would provide that FICC shall maintain on its public website information regarding the stress test scenarios, Guaranty Fund sizing parameters, and intramonth resizing thresholds used to determine the size of the Guaranty Fund. FICC believes that making these key details available on its public website would promote clarity and transparency for its Members, market participants, and the general public.

[25] For example, a Registered Investment Company Netting Member's Stress Test Deficiencies would be included in stress testing for purposes of determining the overall Cover 2 Requirement for the Guaranty Fund. However, Registered Investment Company Netting Member stress test exposures would not be considered in the Guaranty Fund allocation process.

b. Maintenance of Guaranty Fund

Section 2 of proposed Rule 4A would require each Netting Member to make and maintain on an ongoing basis a contribution to the Guaranty Fund. The proposed rule would further provide that the amount of each Netting Member's required Guaranty Fund contribution (referred to as the ''Guaranty Fund Requirement'') as well as the timing of payment of the Guaranty Fund Requirement shall be determined by FICC in accordance with the terms of proposed Rule 4A, as further discussed below.

In addition, FICC would update GSD Rule 1 to include a definition for Guaranty Fund Requirement to mean a Netting Member's required Guaranty Fund contribution as determined in accordance with proposed Rule 4A.

c. Form and Investment of Guaranty Fund

Section 3 of proposed Rule 4A would require that each Netting Member's Guaranty Fund Requirement be made in the form of cash in immediately-available funds and would permit FICC to invest cash in the Guaranty Fund in accordance with the Clearing Agency Investment Policy.[26] Under the proposed rule, each Netting Member would be entitled to such interest earned or paid on Guaranty Fund Cash deposits as FICC may determine from time to time. FICC believes that requiring Guaranty Fund contributions to be provided in cash would provide an important source of qualifying liquid resources for FICC.

d. Daily Stress Testing

Section 4(a) of proposed Rule 4A would require that FICC perform daily stress testing of its total financial resources at least once each day using a wide range of foreseeable scenarios, including both historical and hypothetical scenarios. Such daily stress testing would be used to determine ''Stress Test Deficiencies'' for purposes of sizing the Guaranty Fund. The term ''Stress Test Deficiency'' would be defined in GSD Rule 1 to mean the losses observed in FICC's daily stress testing in excess of applicable Required Fund Deposits of Netting Members or an Affiliated Family of Netting Members.

As proposed herein, the Required Fund Deposits of Netting Members would be treated as initial margin at GSD. As a result, FICC believes the proposed approach for determining Stress Test Deficiencies would be consistent with practices of other CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, utilizing a ''stress loss over initial margin'' approach to sizing and testing the sufficiency of CCP default funds.[27] As noted above, FICC would leverage its stress testing methodology and inventory of stress scenarios, as described in the ST Framework, for its daily stress testing for the Guaranty Fund.[28]

e. Monthly Sizing of Guaranty Fund

Section 4(b) of proposed Rule 4A would describe the monthly sizing of the Guaranty Fund. Specifically, the proposed rule would provide that the size of the Guaranty Fund would be established on a monthly basis at an amount determined by FICC to be sufficient to cover the Stress Test Deficiency that may arise as a result of the default of the two Netting Member Affiliated Families that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (*i.e.,* the Cover 2 Requirement). The proposed rule would further provide that FICC may maintain the Guaranty Fund size at an amount larger than the Cover 2 Requirement (*e.g.,* by applying an additional buffer amount) based on FICC's assessment of historical or recently observed Stress Test Deficiencies, fluctuations in Member portfolios, fluctuations in volatility or market conditions, or to prevent significant fluctuations in Guaranty Fund Requirements that may result in a deficiency in the Cover 2 Requirement or the need for imminent or frequent intramonth resizing. In addition, the proposed rule would provide that FICC may establish parameters (or ''collars'') to limit monthly fluctuations in the size of the Guaranty Fund, which would apply to both increases or decreases in the size of the overall Guaranty Fund.[29]

Section 4(b) of proposed Rule 4A would further provide that, if FICC observes Stress Test Deficiencies for a Netting Member or Affiliated Family that (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, FICC may impose a ''Stress Test Deficiency Charge'' on the Netting Members driving such stress test exposures. The proposed Stress Test Deficiency Charge is designed to enable FICC to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or cap. The proposed Stress Test Deficiency Charge would be set forth in the Margin Component Schedule of the GSD Rules, as described in Section 2.c. below.

FICC believes that the proposed approach would help FICC to limit significant month-over-month changes in the size of the Guaranty Fund and align with a ''defaulter pays'' approach to addressing the additional risk presented by those Members driving significant stress test exposures, providing important stability and predictability for monthly changes in the Guaranty Fund and Netting Members' individual contribution requirements.

Section 4(b) of proposed Rule 4A would also require that, unless otherwise notified by FICC that it will receive such information at a different time, FICC shall inform each Netting Member of its monthly Guaranty Fund

[26] *See* Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR–DTC–2016–007; SR–FICC–2016–005; SR–NSCC–2016–003). FICC would file a separate proposed rule change with the Commission to update the Clearing Agency Investment Policy to permit the overnight investment of Guaranty Fund cash in either commercial bank deposits or its FRBNY account (similar to the Clearing Fund).

[27] For example, CME Securities Clearing Inc. sizes its guaranty fund to a cover two standard that measures the shortfall between the stress loss and collateral on deposit for initial margin. *See* Rule 402(a) of the Rules of CME Securities Clearing Inc., *supra* note 11. ICE Clear Credit LLC also determines the amount of required contributions to its Treasury Guaranty Fund based on stress loss over initial margin concepts. *See* Rule 801(a) of the Treasury Clearing Rules of ICE Clear Credit LLC, *supra* note 11.

[28] *See supra* note 24.

[29] FICC would initially establish parameter values of (i) 20 percent to limit month-over-month increases such that the size of the Guaranty Fund cannot increase by more than 20 percent from the beginning of one month to the beginning of the subsequent month and (ii) 15 percent to limit month-over-month decreases such that the size of the Guaranty Fund cannot decrease by more than 15 percent from the beginning of one month to the beginning of the subsequent month. These parameter values would be subject to periodic review and adjustment and would be subject to the governance process set forth in the Clearing Agency Model Risk Management Framework (''MRM Framework''). The Clearing Agencies have adopted and maintain the MRM Framework, which sets forth the model risk management practices that the Clearing Agencies follow to identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. *See* Securities Exchange Act Release No. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008).

Requirement no later than the first Business Day of each month. Pursuant to the proposed rule, any deficit in a Netting Member's Guaranty Fund Requirement must be funded by the Monthly Guaranty Fund Deposit Deadline on the first Business Day of each month unless otherwise determined by FICC. The term ''Monthly Guaranty Fund Deposit Deadline'' would be defined in GSD Rule 1 to mean the deadline set forth by FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.[30]

In addition, Section 4(b) of proposed Rule 4A would state that the Guaranty Fund Requirement of each Netting Member to the Guaranty Fund would be determined pursuant to the allocation calculation set forth in the proposed rules, as discussed in Section 1.g. below.

Section 4(b) of proposed Rule 4A would also permit FICC to recalculate the size of the Guaranty Fund more frequently than monthly or reestablish the monthly size of the Guaranty Fund under certain circumstances set forth in the proposed rules, as discussed in Section 1.f. below.

In connection with these proposed changes, FICC would also update GSD Rule 1 to include a definition for ''Cover 2 Requirement'' that refers to the meaning given to that term in Section 4 of proposed Rule 4A.

f. Intramonth Resizing of Guaranty Fund

Section 4(c) of proposed Rule 4A would set forth requirements for any intramonth resizing of the Guaranty Fund. Under the proposed rule, if at any time FICC observes a daily Stress Test Deficiency that exceeds certain thresholds established by FICC (''Intramonth Resizing Threshold''), FICC would have the authority to reestablish the size of the Guaranty Fund on an intramonth basis (''Intramonth Resizing'') at an amount determined by FICC to reduce such Stress Test Deficiency below the Intramonth Resizing Threshold (''Adjusted Guaranty Fund Size''). The proposed rule would also provide that FICC may establish parameters to limit intramonth fluctuations in the size of the Guaranty Fund, similar to the collars established for monthly sizing of the Guaranty Fund discussed above. Pursuant to the proposed rule, the reallocation of Guaranty Fund Requirements due to any Intramonth Resizing would be done based on the Adjusted Guaranty Fund Size pursuant to the standard allocation formula used for monthly Guaranty Fund sizing discussed in Section 1.g. below.

Under the proposed rule, FICC would notify each Netting Member of any Intramonth Resizing of the Guaranty Fund, and any deficit due to an Intramonth Resizing of the Guaranty Fund must be funded by the Intramonth Guaranty Fund Deposit Deadline on the same Business Day of notification unless otherwise determined by FICC. The term ''Intramonth Guaranty Fund Deposit Deadline'' would be defined in GSD Rule 1 as the deadline set forth by FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.[31] The terms ''Intramonth Resizing Threshold'' and ''Intramonth Resizing'' would also be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

In addition to resizing the Guaranty Fund, FICC would also propose rules to allow FICC to collect Stress Test Deficiency Charges directly from those Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for any intramonth resizing of the Guaranty Fund. FICC believes that the proposed approach would align with a ''defaulter pays'' approach to addressing the additional risk presented by those Members whose Stress Test Deficiencies drive significant stress test exposures at FICC on an intramonth basis and also help to provide important stability and predictability for potential intramonth changes in the Guaranty Fund. The proposed Stress Test Deficiency Charge is discussed in further detail in Section 2.c. below.

g. Allocation of Guaranty Fund Requirements

Section 4(d) of proposed Rule 4A would set forth the allocation calculation used to determine each Netting Member's Guaranty Fund Requirement. Pursuant to the proposed rule, each Netting Member's Guaranty Fund Requirement shall be calculated as the greater of (i) the Netting Member's pro rata share of the largest Cover 2 Requirement observed over a designated lookback period or (ii) the minimum Guaranty Fund Requirement as determined by FICC from time to time (''Minimum Guaranty Fund Requirement''). The Minimum Guaranty Fund Requirement for each Netting Member would be set by FICC at an amount no less than $100,000 and no greater than $5 million,[32] and each Netting Member's pro rata share of the largest Cover 2 Requirement would be determined using each Netting Member's average daily largest Stress Test Deficiencies as compared to the sum of all Netting Members' average daily largest Stress Test Deficiencies over a designated lookback period.[33] In addition, the term Minimum Guaranty Fund Requirement would be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

FICC believes that the proposed allocation methodology would appropriately allocate each Netting Member's contribution to the Guaranty Fund, and their associated loss allocation obligations, in direct proportion to the risk presented by each Netting Member's contribution to Stress Test Deficiencies observed by FICC under its daily stress testing.

h. Initial and Adjusted Guaranty Fund Requirements

Sections 4(e) and 4(f) of proposed Rule 4A would describe initial Guaranty Fund Requirements for new Netting Members and FICC's authority to adjust Guaranty Fund Requirements in the event of actions such as mergers, consolidations, position transfers, and business expansions.

Section 4(e) of proposed Rule 4A would state that the initial Guaranty Fund Requirement of each new Netting Member would be equal to the Minimum Guaranty Fund Requirement established by FICC pursuant to Section 4(d) of proposed Rule 4A.

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30 FICC generally expects to notify Members of their monthly contribution requirement by no later than 11:00 a.m. Eastern Time on the first business day of each month and would require all deficits to be satisfied by 2:45 p.m. Eastern Time on the first business day of the month.

31 FICC generally expects to notify Members of any intra-month collection by no later than 11:00 a.m. Eastern Time and would require any deficits to be satisfied by 2:45 p.m. Eastern Time.

32 FICC would initially set the Minimum Guaranty Fund Requirement at $1 million, subject to adjustment pursuant to FICC's internal market risk management procedures. FICC would review the Minimum Guaranty Fund Requirement on at least an annual basis to ensure that it is calibrated to an amount that is consistent with achieving FICC's targets for the sufficiency of total prefunded financial resources. Netting Members would be notified of any changes to the Minimum Guaranty Fund Requirement via Important Notice and update to the FICC website at least one business day in advance.

33 FICC would initially establish this lookback period as a rolling 12-month period, which may be subject to periodic adjustment under the governance process set forth in the MRM Framework. *See supra* note 29.

In addition, proposed Section 4(e) would permit FICC to adjust the Guaranty Fund Requirement of a Netting Member, until such time as FICC determines, to address any change in the risk profile of such Netting Member due to mergers, consolidations, position transfers, business expansions, membership approval or other similar events.

FICC believes that the proposed initial and adjusted Guaranty Fund Requirement processes are appropriate to allocate the expected risks that may be presented by Netting Members until such time as those risks can be incorporated into FICC's stress test results over the applicable lookback period.

i. Purpose and Use of Guaranty Fund; Replenishing Deficits in the Guaranty Fund

Section 5 of proposed Rule 4A would describe the intended purpose and use of the Guaranty Fund. Pursuant to the proposed rule, each Netting Member's deposit to the Guaranty Fund may be used by FICC (i) to secure each Netting Member's performance of obligations to FICC, including, without limitation, each Netting Member's obligations with respect to any loss allocations as set forth in proposed Rule 4C (discussed below) and any obligations arising from a Cross-Guaranty Agreement pursuant to GSD Rule 41 (Cross Guaranty Agreements) or a Cross-Margining Agreement pursuant to GSD Rule 43 (Cross-Margining Arrangements); (ii) to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Guaranty Fund; and (iii) for investment as set forth in Section 3 of proposed Rule 4A (as discussed above).

The proposed rule would further provide that, upon the occurrence of a Defaulting Member Event with respect to a Netting Member, FICC shall, after appropriate application of such Netting Member's Clearing Fund and other funds in the accounts of such Netting Member, apply such Netting Member's Guaranty Fund Deposit to satisfy any loss, liability, or the performance of any obligations to FICC prior to applying the Corporate Contribution or allocating losses pursuant to proposed Rule 4C.

The proposed rule would also clarify that each time FICC uses any part of the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations for more than 30 calendar days, FICC, at the Close of Business on such 30th calendar day (or, if such day is not a Business Day, on the first Business Day thereafter) from the day of such use, shall consider the amount used but not yet replenished by FICC as a loss to the Guaranty Fund and immediately allocate such loss in accordance with proposed Rule 4C.

Section 7 of proposed Rule 4A would then describe the requirements for Netting Members to replenish any deficits in the Guaranty Fund. Specifically, the proposed rule would state that, if FICC's application or use of a Netting Member's Guaranty Fund Deposit as permitted pursuant to proposed Rule 4C results in any deficiency in the Netting Member's Guaranty Fund Requirement, the Netting Member shall, upon FICC's demand, satisfy the deficit in its Guaranty Fund Requirement, immediately or within such time as FICC shall require, subject to the Loss Allocation Caps set forth in proposed Rule 4C (as described in Section 3 below). The proposed rule would further state that if the Netting Member fails to do so, FICC may take disciplinary action against such Netting Member pursuant to Rule 21 or Rule 48, and any such disciplinary action that FICC takes or the voluntary or involuntary cessation of membership shall not affect the Netting Member's obligations to FICC or any remedy to which FICC may be entitled under applicable law.

j. Withdraw of Excess and Return of Guaranty Fund Deposits

Sections 6 and 8 of proposed Rule 4A would describe the withdrawal of excess Guaranty Fund Deposits and the return of a Netting Member's Guaranty Fund Requirement after their withdrawal from membership at GSD. Section 6 of proposed Rule 4A would provide that, following the completion of any resizing of the Guaranty Fund, FICC would determine whether the amount deposited by a Member in the Guaranty Fund is in excess of its Guaranty Fund Requirement (''Excess Guaranty Fund Deposit''). If FICC has determined that an Excess Guaranty Fund Deposit exists, FICC would notify each such Member of such excess and return the Member's Excess Guaranty Fund Deposit in accordance with such procedures as FICC may set forth from time to time, subject to FICC's rights to require additional amounts to be deposited by a Member. However, the proposed rule would further provide that Excess Guaranty Fund Deposits shall not be returned to a Member to the extent that such return would (i) reduce the amount of the Member's Cross-Guaranty Repayment Deposit to the Guaranty Fund below the amount required to be maintained pursuant to Section 4 of Rule 41 or (ii) reduce the amount of the Member's Cross-Margining Repayment Deposit to the Guaranty Fund below the amount required to be maintained pursuant to Section 6 of Rule 43 (as described in further detail in Section 4.a. below).[34] The proposed rule would, however, also provide FICC with the discretion to retain some or all of a Member's Excess Guaranty Fund Deposit if the Member has an outstanding payment or margin obligation to FICC, including but not limited to outstanding deficits in such Member's Required Fund Deposit or unpaid Funds-Only Settlement Amounts. FICC notes that the proposed rule is generally similar to the GSD Rules concerning withdrawal of excess Clearing Fund deposits, with certain modifications intended to reflect the differing treatment between Clearing Fund as initial margin and the Guaranty Fund as a default fund.[35]

Pursuant to Section 8 of proposed Rule 4A, if a Member gives notice to FICC of its election to withdraw from membership, the Member's Guaranty Fund Deposit would be returned to it within thirty (30) calendar days after all of its transactions have settled and all matured and contingent obligations to FICC for which the Member was responsible while a Member have been satisfied. Additionally, FICC would have the discretion to retain an amount equal to any Cross-Guaranty Repayment Deposit and/or Cross-Margining Repayment Deposit of any Member until such time as FICC determines that such Member is no longer liable to FICC under Rule 41 and/or Rule 43 to reimburse FICC for any Cross-Guaranty Repayment or Cross-Margining Repayment, respectively, that it may be obligated to make under any relevant Cross-Guaranty Agreement or Cross-Margining Agreement. FICC notes that this authority is generally consistent with the GSD Rules concerning the return of a Member's Clearing Fund deposits.[36] Furthermore, the proposed rule would clarify that, if FICC ceases to act for a Member, FICC would return any excess Guaranty Fund Deposit to it within thirty (30) calendar days after all of its obligations have been satisfied, and until such time, FICC may use such Guaranty Fund Deposit to the same

[34] FICC notes that the proposed limitations on withdrawing Excess Guaranty Fund Deposits below the Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit amounts is consistent with existing limitations on the withdraw of Excess Clearing Fund Deposits in Section 10 of GSD Rule 4, which would be removed from the GSD Rules and replaced with the proposed rule described above.

[35] *See* Section 10 of GSD Rule 4, *supra* note 4.

[36] *See* Section 8 of GSD Rule 4, *supra* note 4.

extent as would be permissible had FICC not ceased to act for the Defaulting Member.

2. Proposed Changes to the Clearing Fund

FICC proposes to modify GSD Rule 4 and the Margin Component Schedule of the GSD Rules and make other conforming changes throughout the GSD Rules to (i) support bankruptcy remote treatment for Clearing Fund deposits as initial margin; (ii) exclude Clearing Fund deposits from the loss allocation calculation; (iii) adopt a new Stress Test Deficiency Charge that would be imposed on Netting Members or Affiliated Families whose Stress Test Deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund; (iv) eliminate fixed minimum Required Fund Deposit amounts and minimum charges for Segregated Indirect Participants Accounts and for Cross-Margining Customers Accounts; (v) modify the associated minimum cash requirements for Required Fund Deposits; (vi) modify the GSD Rules concerning the use of Clearing Fund for liquidity risk management purposes; and (vii) make other clean up changes to Rule 4 concerning Clearing Fund requirements.

a. Bankruptcy Remoteness of Clearing Fund

FICC proposes to modify GSD Rule 4 to provide for Clearing Fund deposits at GSD to be bankruptcy remote from FICC. FICC understands that many Members are subject to regulatory capital rules (either directly or on a consolidated basis) that require such Members to hold capital against margin they post to a CCP unless such margin is ''bankruptcy remote'' from the CCP. The U.S. regulatory capital rules define ''bankruptcy remote'' as, ''with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding.'' [37] FICC understands that market participants generally view this definition as being satisfied if the institution ''can conclude that the margin is subject to arrangements that would prevent the margin from being subject to (1) competing claims of (and, thus, distribution to) a CCP's creditors generally or (2) loss due to the CCP's default, including insolvency (*e.g.,* as a result of the CCP's exercise of re-use, repledge, rehypothecation or other transfer rights), such that, in either case, the margin (or its liquidation value) would be unavailable for return to the [institution] in the CCP's [i]nsolvency.'' [38]

The proposed changes to the GSD Rules include a number of provisions designed to facilitate Members' ability to conclude that Clearing Fund posted to FICC is bankruptcy remote from FICC for purposes of the regulatory capital rules. In particular, FICC proposes changes to Section 1 (Required Fund Deposit) of GSD Rule 4 to provide for FICC to credit all Clearing Fund it collects to a ''securities account'' on FICC's books and records (*i.e.,* the Netting Member Clearing Fund Custody Account) and to treat such Clearing Fund as ''financial assets'' within the meaning of the Uniform Commercial Code as in effect in the State of New York (''NYUCC''). The proposed changes would further provide that New York would be the ''securities intermediary's jurisdiction'' for purposes of the NYUCC and New York law would govern all issues specified in Article 2(1) of the Hague Securities Convention. These would ensure that New York law would be the ''otherwise applicable non-bankruptcy law'' for purposes of ascertaining which assets constitute property of FICC's estate in the event of FICC's insolvency, as discussed in more detail below.

In addition, the proposed changes to Section 1 of GSD Rule 4 would require FICC to hold Clearing Fund either (i) in an account at a commercial bank, which must be a ''bank'' within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation and is a qualified custodian under the Investment Company Act of 1940, as amended or (ii) in an account at the Federal Reserve Bank of New York (''FRBNY''). In the case of the former, the proposed rules would require that the account be segregated from any other account of FICC, used exclusively to hold Clearing Fund, and be subject to a written agreement that Clearing Fund in such account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. In the case of the latter, the proposed changes would provide that the account may not be subject to any lien or security interest other than such as is required by FRBNY. In order to ensure that such lien is never operative, the proposed rules would require FICC to maintain sufficient funds within the account at all times to satisfy all fees or costs incurred and owed to the FRBNY and would prohibit FICC from taking any action that would result in over-drafting or a negative balance or otherwise give rise to any obligation (other than for fees) secured by any lien on the account. FICC also proposes other changes throughout GSD Rule 4 to prohibit FICC from using Clearing Fund other than to secure the posting Member's performance of obligations to FICC (Section 5 of GSD Rule 4), to allow for investment in accordance with FICC's Investment Policy (Section 5 of GSD Rule 4), and to grant the security interest in any FRBNY account required by FRBNY (Sections 1 and 11 of GSD Rule 4).

The foregoing changes would ensure that, in the event of FICC's insolvency, the Clearing Fund would not form part of FICC's estate or be available to FICC's general creditors, and that, instead, the Netting Members who posted the Clearing Fund would have the right to its return.

The only insolvency or resolution regimes to which FICC could be subject are the U.S. Bankruptcy Code or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Orderly Liquidation Authority,'' or ''OLA''). In any such proceeding, the question of whether a given asset, such as Clearing Fund, constitutes property of FICC's estate would be a question of otherwise applicable non-bankruptcy law. This is because neither the U.S. Bankruptcy Code nor OLA specifies the assets in which a debtor has a legal or equitable interest [39] (and because FICC

[37] 12 CFR 217.2 ''Bankruptcy remote.''

[38] Futures Industry Association, Arrangements Necessary to Support a Positive Bankruptcy Remoteness Conclusion Under the Cleared Transaction Rules of U.S. Basel III With Respect to Collateral Posted by a Clearing Member to a Central Counterparty (Oct. 31, 2013), *available at www.fia.org/sites/default/files/2019-05/FIA%20Guidance%20on%20CCP%20Bankruptcy%20Remote%20Requirements.pdf.*

[39] *See* 11 U.S.C. 541(a)(1) (defining a Bankruptcy Code debtor's estate as generally including ''all legal or equitable interest of the debtor in property''); *Butner* v. *United States,* 440 U.S. 48, 54–55 (''The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors. Apart from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law''); *In re FCX, Inc.,* 853 F.2d 1149, 1153 (4th Cir. 1988) (''[N]either 541(a), nor any other Bankruptcy Code provision, answers the threshold questions of whether a debtor has an interest in a particular item of property and, if so, what the nature of that interest is. . . . The existence and nature of a debtor's, and hence the estate's, interest in property must be determined by resort to nonbankruptcy law.''). OLA is heavily modeled on the Federal Deposit Insurance Act (the ''FDIA''), under which it is well established that the ''rights,

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is not eligible for the special distributional rules applicable to ''commodity brokers'' [40] and ''stockbrokers'' [41]).

As discussed above, New York law would be the ''otherwise applicable non-bankruptcy law'' that determines whether FICC has any interest in the Clearing Fund. Because the proposed changes to the GSD Rules would provide for FICC to credit the Clearing Fund to a ''securities account'' and to treat such Clearing Fund as ''financial assets'' within the meaning of the NYUCC, each Netting Member would be an ''entitlement holder'' and have a ''security entitlement'' against FICC with respect to the Clearing Fund it posts, and FICC would be a ''securities intermediary,'' within the meaning of the NYUCC.[42] NYUCC Section 8–503(a) provides:

To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8–511 [of the NYUCC].

Accordingly, in the event of FICC's insolvency, the Clearing Fund that FICC holds for Members would not be part of FICC's estate and would be reserved for its entitlement holders, *i.e.,* the Members, except as provided in NYUCC Section 8–511. That provision states, in relevant part, that, with limited exceptions:

if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

The exceptions to the foregoing rule only apply in the event that the securities intermediary has pledged the financial assets underlying the security entitlements to creditors. As described above, the proposed rules would affirmatively prohibit FICC from pledging any Clearing Fund it holds, with the exception of the lien that FRBNY may require on the Clearing Fund held in an account at FRBNY. Because the proposed rules would require FICC to maintain at all times sufficient funds within such account to satisfy all fees or costs incurred and owed to the FRBNY and prohibit FICC from taking any action that would give rise to any obligation (other than for fees) secured by such lien, the FRBNY's lien would never be operative. As a result, it would not interfere with the operation of NYUCC Section 8–503.

Accordingly, the proposed changes to the GSD Rules would serve to render Clearing Fund bankruptcy remote from FICC by ensuring that such Clearing Fund does not form part of FICC's estate, is not available to any competing creditors of FICC, and is available for distribution to Members in an FICC insolvency.

In connection with the foregoing changes, FICC also proposes to delete rule text in Section 1 of GSD Rule 4 stating that FICC shall not be required to segregate each Netting Member's Actual Deposit, but shall maintain books and records concerning the assets that constitute each Netting Member's Actual Deposit, as this rule would be replaced and superseded by the proposed rules concerning the treatment of the Netting Member Clearing Fund Custody Account discussed above.

FICC would also define the term ''Netting Member Clearing Fund Custody Account'' in GSD Rule 1 to mean a securities account within the meaning of the NYUCC maintained by FICC, in its capacity as securities intermediary as such term is used in the NYUCC, for the benefit of such Netting Member.

FICC also proposes additional clarifying and conforming changes throughout the GSD Rules in connection with the proposed changes to support the bankruptcy remote treatment of Clearing Fund deposits. Specifically, FICC would modify Section 11 (Corporation's Authority to Pledge and Assign) of GSD Rule 4 concerning its authority to pledge and assign Clearing Fund to reflect that, under the proposed changes, FICC would no longer have broad authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing loans made to FICC. Rather, the proposed rule would only provide that FICC would, solely to the extent and for the purpose of satisfying any requirement imposed by the Federal Reserve Bank of New York in connection with any account maintained by it, have full power and authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing FICC's obligation to the Federal Reserve Bank of New York,.

FICC would also make changes throughout GSD Rule 4 to remove language describing Clearing Fund securities as pledged or used to secure open account indebtedness at FICC and make clear that such securities, as well as all Clearing Fund consisting of cash, constitute Clearing Fund deposits credited to the relevant Netting Member's Netting Member Clearing Fund Custody Account. Considering that all Clearing Fund posted by a Netting Member, whether in the form of cash or securities, would remain property of the Netting Member pledged to FICC to secure all obligations of the Netting Member under the Rules, there would be no need for the Rules to refer to open account indebtedness or to suggest that only Clearing Fund securities are pledged.

FICC would also modify Section 4 (Lien) of GSD Rule 4 to include the proposed Guaranty Fund deposits in the list of Netting Member assets in which a Netting Member grants to FICC a first priority perfected security interest in its right, title and interest in and to. This language would make clear that Guaranty Fund deposits posted by a

titles, powers, and privileges'' acquired by the FDIC as receiver are generally to be determined pursuant to applicable state law. *See O'Melveny & Myers* v. *FDIC,* 512 U.S. 79, 86–87 (1994) (''It is hard to avoid the conclusion that [12 U.S.C.] 1821(d)(2)(A) places the FDIC in the shoes of the insolvent S & L, to work out its claims *under state law* . . . .''); 12 U.S.C. 5390(a)(1)(i) (containing substantially similar language to 12 U.S.C. 1821(d)(2)(A)). While the Bankruptcy Code sets forth certain special distributional rules for commodity brokers and stockbrokers, these rules would not be applicable to FICC. *See* 11 U.S.C. 101(6) (defining ''commodity broker'' to mean ''futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title''); 11 U.S.C. 761(8) (defining ''futures commission merchant'' by reference to the Commodity Exchange Act); 11 U.S.C. 761(2) (defining ''clearing organization'' as a registered derivatives clearing organization); 17 CFR 190.00(c) (limiting the scope of the Commission's Part 190 Rules to futures commission merchants and registered derivatives clearing organizations); 11 U.S.C. 101(53A) (defining ''stockbroker'' as a person with respect to which there is a customer as defined in 11 U.S.C. 741 and that is engaged in the business of effecting transactions in securities for the account of others or with members of the general public, from or for such person's own account).

[40] *See* 11 U.S.C. 761, *et seq.*

[41] *See* 11 U.S.C. 741, *et seq.*

[42] *See* NYUCC § 8–102(a)(14)(ii) (defining ''securities intermediary'' as ''a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity''). As a registered clearing agency, FICC is also automatically a securities intermediary within the meaning of the NYUCC. *See* NYUCC § 8–102(a)(14)(i) (defining ''securities intermediary'' to include a ''clearing corporation''); NYUCC § 8–102(a)(5) (defining clearing corporation as a person that is registered as a clearing agency under the Securities Exchange Act).

Netting Member to FICC, like all Clearing Fund deposits, would secure all of the obligations of the Netting Member under the Rules.

b. Exclusion of Clearing Fund From the Calculation of Loss Allocation Obligations

In connection with proposed changes to support the bankruptcy remote treatment of Clearing Fund, FICC proposes to modify Rule 4 of the GSD Rules to exclude non-defaulting Members' Clearing Fund deposits from the calculation of loss allocation obligations at GSD.

FICC would remove the majority of the rules in Section 7 of GSD Rule 4 concerning the loss allocation waterfall from GSD Rule 4, and relocate those rules to new proposed Rule 4C (as discussed in Section 3 below), with substantial modifications to reflect the exclusion of non-defaulting Members' Required Fund Deposits from the calculation of loss allocation obligations and the replacement thereof with the 200 percent of a Member's Guaranty Fund Requirement discussed above. Section 7 of GSD Rule 4 would be renamed to ''Off-the-Market Transactions'' and would retain only those rules related to the direct allocation of losses to the specific Member that was the counterparty to any Off-the-Market Transactions.[43]

FICC also proposes to modify Section 5 (Use of Clearing Fund and Segregated Customer Margin) of GSD Rule 4 to remove language stating that the obligations of each Member to FICC the performance of which FICC may secure using Clearing Fund include each Member's obligations to FICC with respect to any loss allocations as set forth in Section 7 of GSD Rule 4. Such language is not necessary and may cause confusion considering there are a number of other obligations a Member has to FICC. FICC also proposes to add language to clarify that the Clearing Fund could be used to satisfy any loss or liability incurred by FICC as the result of the failure of a specific Defaulting Member to fulfill its obligations to FICC as set forth in Section 6 of GSD Rule 4.

Additionally, FICC would update Section 6 (Application of Clearing Fund Deposits and Other Amounts to Defaulting Members' Obligations) of GSD Rule 4 to reflect that any loss or liability incurred by FICC as the result of the failure of a Defaulting Member to fulfill its obligations shall ''first'' be satisfied as set forth in Section 6 ''prior to the application of the resources pursuant to proposed Rule 4C.'' FICC would also update Section 6 of GSD Rule 4 to reflect that the collateral and other assets held by FICC securing a Defaulting Member's obligations include such Defaulting Member's Guaranty Fund Deposits.

c. Stress Test Deficiency Charge

FICC proposes to adopt a new ''Stress Test Deficiency Charge'' to address changes in stress test exposures and significant increases in Netting Member Stress Test Deficiencies. The Stress Test Deficiency Charge would be defined in the Margin Component Schedule of the GSD Rules as an additional charge that may be added to a Netting Member's Required Fund Deposit to address Stress Test Deficiencies for any Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family)[44] or (ii) exceed the upper bound parameter established for monthly or intramonth resizing of the Guaranty Fund.[45] FICC would also update GSD Rule 1 to include a definition for ''Stress Test Deficiency Charge'' to have the meaning given that term in the Margin Component Schedule.

With respect to Stress Test Deficiencies exceeding the predetermined thresholds in relation to the total Required Fund Deposits of all other Members (or the Required Fund Deposit ''ratio''), the Stress Test Deficiency Charge would be determined as an amount needed to reduce the ratio below the Required Fund Deposit ratio threshold. For Stress Test Deficiencies exceeding the upper bound parameter for changes in the Guaranty Fund size, the Stress Test Deficiency Charge would be determined as the amount needed to reduce the allocation (to all Netting Members) of any resized Guaranty Fund in excess of the upper bound parameter or ''collar.''

The proposed rule would also provide FICC with the authority to maintain any Stress Test Deficiency Charge until the next monthly sizing of the Guaranty Fund. Accordingly, upon the application of a Stress Test Deficiency Charge, FICC would generally maintain the charge for the remainder of the month and review the charge prior to the next monthly reset of the Guaranty Fund to determine if the charge should remain based on the application of these predefined thresholds and parameters.

The Stress Test Deficiency initial margin add-on would be imposed to collect additional initial margin resources to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or collar established for limiting increases in the size of the Guaranty Fund, as discussed above. The proposed Stress Test Deficiency charge would serve two purposes. First, it would allow FICC to preemptively address Stress Test Deficiencies to reduce the likelihood of an intramonth resizing and avoid the allocation of such risks to Members that are not driving those exposures. Second, to the extent that a Member incurs a Stress Test Deficiency that exceeds the collar established for limiting increases in the Guaranty Fund, the Stress Test Deficiency initial margin add-on charge would also be applied to mitigate or reduce amount of the Guaranty Fund increase that is allocated to Members that are not driving those exposures.

As described in Section 1.a. above, while Registered Investment Company Netting Members are generally excluded from Guaranty Fund Requirements, Registered Investment Company Netting Members may be subject to Stress Test Deficiency Charges to address additional risk exposures that may arise if their Stress Test Deficiencies exceed the applicable thresholds and parameters discussed above. FICC notes that any resources collected in the form of a Stress Test Deficiency Charge would be part of the Registered Investment Company Netting Member's initial margin and would therefore be consistent with the exclusion of Registered Investment Company Netting Members from loss mutualization.

FICC believes that the Stress Test Deficiency Charge is necessary and appropriate to address increases in stress test exposures so that FICC is able to collect sufficient financial resources from its Members prior to exceeding the Cover 2 Requirement, and to allocate those charges to the Netting Members driving those increased exposures. FICC believes that the proposed Stress Test Deficiency Charge would align with a ''defaulter pays'' approach to addressing

[43] Section 7 of GSD Rule 4 provides, in part, that to the extent that a loss or liability of FICC is determined to arise in connection with the close-out or liquidation of an Off-the-Market Transaction in the portfolio of a Defaulting Member, it shall be allocated directly and entirely to the Member that was the counterparty to such Off-the-Market Transaction. *See* Section 7 of GSD Rule 4, *supra* note 4. This part of the GSD Rules would remain unchanged.

[44] FICC would initially establish this threshold as a ratio of 30 percent, which is aligned to its existing Cover 1 stress testing ratio thresholds for monitoring a Member's stress deficiency in relation to the total Required Fund Deposits of all other Members (excluding such Member).

[45] *See supra* note 29 and associated text.

FICC's stress test exposures and associated risks and help to provide important stability and predictability for Guaranty Fund sizing and associated requirements for its Netting Members.

d. Elimination of Fixed Minimum Required Fund Deposit Amounts

FICC proposes to modify the Margin Component Schedule of the GSD Rules to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers.

Section 2(d) of the Margin Component Schedule discusses minimum charges and total Required Fund Deposit amounts for Netting Member Margin Portfolios, Sponsoring Member Omnibus Account Required Fund Deposits, Agent Clearing Member Omnibus Account Required Fund Deposits, and Sponsored GC CIL Omnibus Account Required Fund Deposits. Pursuant to this rule, FICC currently imposes a Required Fund Deposit amount equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of $1 million (or, in the case of a Netting Member Margin Portfolio that includes Broker Accounts, a minimum charge of $5 million).[46]

FICC proposes to modify Section 2(d) of the Margin Component Schedule to remove the fixed minimum Required Fund Deposit amounts and instead provide that FICC may from time to time establish a minimum charge for each Netting Member's Margin Portfolios, which shall not be greater than $1 million (''Minimum RFD Charge''). The proposed changes to Section 2(d) of the Margin Component Schedule would also clarify that margin requirements for Margin Portfolios and Required Fund Deposits for each applicable account type would be equal to the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges; and (ii) any Minimum RFD Charge imposed by FICC, if applicable (rather than the fixed minimum charges currently set forth in the GSD Rules). Upon implementation of the proposed change, FICC would initially set all Minimum RFD Charge amounts at $0. However, FICC would monitor its margin coverage and reserve the right to impose a Minimum RFD Charge of up to $1 million for particular account types as determined appropriate by FICC based on factors such as backtesting coverage data.

FICC would make similar modifications to Section 3(c) of the Margin Component Schedule, which discusses minimum charges and total Required Fund Deposit amounts for Segregated Customer Margin Requirements and Segregated Indirect Participants Accounts, and Section 3a(c) of the Margin Component Schedule, which discusses minimum charges and total Required Fund Deposit amounts for Cross-Margining Customer Margin Requirements for Cross-Margining Customers. Pursuant to these rules, FICC currently imposes a margin charge equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of $1 million, with the discretion to adjust the minimum charge if such an adjustment would be appropriate and consistent with achieving FICC's backtesting coverage target.[47]

FICC proposes to modify Section 3(c) and 3a(c) of the Margin Component Schedule to remove the fixed minimum charge amounts for Segregated Indirect Participants and Cross-Margining Customers, respectively, and instead provide that FICC may from time to time establish a minimum charge for each Segregated Indirect Participant, which shall not be greater than $1 million (''Minimum SIP Margin Charge'') and each Cross-Margining Customer, which shall not be greater than $1 million (''Minimum Customer Margin Charge''). FICC would also modify Section 3(c) and 3a(c) of the Margin Component Schedule to clarify that for purposes of determining Required Fund Deposits for Segregated Indirect Participants Accounts and Cross-Margining Customer Margin Requirements, FICC would take the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amounts and all applicable additional charges; and (ii) any Minimum SIP Margin Charge or Minimum Customer Margin Charge imposed by FICC, respectively, if applicable. Upon implementation of the proposed change, FICC would initially set all Minimum SIP Margin Charge and Minimum Customer Margin Charge amounts at $0. However, FICC would monitor its margin coverage and reserve the right to impose a minimum charge of up to $1 million for these account types as determined appropriate by FICC based on factors such as backtesting coverage data.

In connection with these proposed changes, FICC would also add defined terms in GSD Rule 1 for ''Minimum RFD Charge,'' ''Minimum Customer Margin Charge,'' and ''Minimum SIP Margin Charge'' to have the meaning given to such terms in the Margin Component Schedule.

Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICCs Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements,[48] and Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model.[49]

FICC notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (*e.g.,* a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC–GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC–GSD's various access models and/or utilizing multiple accounts under each model. FICC also notes that indirect participants have raised concerns about the $1 million per indirect participant minimum charge limiting the ability of indirect participants to access FICC's segregated customer margin offerings.[50] FICC therefore believes that removing

[46] *See* Section 2(d) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

[47] *See* Sections 3(c) and 3a(c) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

[48] *See* Sections 2(a), 2(c), 3(a), 3a(a) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

[49] *See* Sections 2(b), 2(c), 3(b), 3a(b) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

[50] *See* Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Nov. 12, 2024), *available at www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-539698-1546082.pdf.*

these fixed minimum charges, and imposing minimums only where such charges are necessary for FICC to maintain sufficient coverage of its risk exposures, would promote greater access to clearing for both direct and indirect market participants.

While FICC would initially set all minimum charge amounts to $0, FICC would continue to monitor its exposures and would maintain the authority within the GSD Rules to impose minimum charges of up to $1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data to ensure that FICC maintains sufficient coverage of its risk exposures from its participants. FICC would inform Members of any changes in the Minimum RFD Charge, Minimum Customer Margin Charge or Minimum SIP Margin Charge by Important Notice posted to FICC's website.

e. Adjustments To Minimum Cash Requirements for Required Fund Deposits

In connection with the proposed elimination of fixed minimum Required Fund Deposits and minimum charges for Segregated Indirect Participants Accounts and Cross-Margining Customers, FICC would also modify Section 3 (Form of Deposit) of GSD Rule 4 to adjust the minimum cash composition requirements for Netting Member Required Fund Deposits, Segregated Customer Margin Requirement for Segregated Indirect Participants Accounts, and Cross-Margining Customer Margin Requirement for Cross-Margining Customer Accounts. FICC currently imposes a $1 million minimum cash requirement for Netting Member Required Fund Deposits.[51] For Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements, FICC imposes a minimum cash requirement of the product of $1 million and the number Segregated Indirect Participants or Cross-Margining Customers whose Transactions are recorded in their respective accounts.[52]

In the absence of FICC maintaining fixed minimum Required Fund Deposits and minimum charges as discussed above, these minimum cash requirements would serve as unintended default minimum Required Fund Deposits and charges for Members. As a result, FICC proposes to modify these rules to require only that the first $1 million of any Required Fund Deposit Portion, Segregated Customer Margin Requirement for each Segregated Indirect Participants Account, or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash. FICC also proposes to adopt a new requirement that the lesser of $5,000,000 or 10 percent of any Segregated Customer Margin Requirement for each Segregated Indirect Participants Account or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash, with the remaining portion of the requirement to be made and maintained in the form specified in Section 3 of GSD Rule 4. This additional cash composition requirement would align the requirements for Segregated Indirect Participants Accounts and Cross-Margining Customer Accounts with the existing requirement for each Netting Member's Required Fund Deposit Portion.

FICC believes the proposed changes are necessary and appropriate to accommodate the proposed elimination of minimum Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements while still requiring that up to the initial amount of $1 million be funded in cash to ensure a baseline level of highly liquid resources to be deposited as margin in each Netting Member account, Segregated Indirect Participants Account and Cross-Margining Customer Account. Furthermore, FICC notes that under the proposal, Netting Members would also be subject to Minimum Guaranty Fund Requirements, which would be composed entirely of cash.

f. Use of Clearing Fund for Liquidity Risk Management

As part of the proposal, FICC also proposes to modify Section 5 of GSD Rule 4 concerning the use of Clearing Fund and Segregated Customer Margin to (i) clarify that FICC would no longer have the authority to "borrow" Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations and (ii) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations.

First, FICC would remove item (ii) of the first paragraph of Section 5 of GSD Rule 4, which currently provides FICC with the authority to use the Clearing Fund to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Clearing Fund or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity. FICC would also remove the second paragraph of Section 5 of GSD Rule 4, which discusses the charging and allocation of losses for any such Clearing Fund borrowings that remain outstanding for more than 30 calendar days.

Second, FICC would add a new paragraph (b) to Section 5 of GSD Rule 4 setting forth FICC's authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations. The proposed rule would provide that FICC may, for purposes of obtaining liquidity to meet its settlement obligations, exchange Clearing Fund consisting of cash for U.S. Treasury securities, including such securities deposited as Clearing Fund of a Defaulting Member or due to be delivered to a Defaulting Member or a Member who failed to satisfy its settlement obligation. The proposed rule would further provide that FICC shall effect such exchanges proportionally among Netting Members (other than any Defaulting Member) based on the amount of each Netting Member's Clearing Fund consisting of cash relative to the total amount of Clearing Fund consisting of cash, and subject to considerations such as operational feasibility and the value of the specific securities to be exchanged. FICC would notify each Member whose cash Clearing Fund deposits are used in this manner in accordance with FICC's procedures. Pursuant to the proposed rule, any such exchange shall constitute a purchase by each relevant Member of the securities subject to such exchange using such Member's cash Clearing Fund deposits, and the securities subject to such exchange shall be credited to each relevant Member's Netting Member Clearing Fund Custody Account(s) from which the cash Clearing Fund deposits were removed and shall constitute Clearing Fund deposits of such Netting Member.

In addition, the proposed rule would stipulate that the amount of securities that FICC shall provide to the Netting Member in any such sale shall be, at FICC's election, (A) an amount of securities having a market value, after applying the relevant haircut that FICC applies for Clearing Fund purposes, equal to the amount of cash subject to

[51] *See* Section 3(b) of GSD Rule 4, *supra* note 4.

[52] *See* Sections 3(c) and 3(d) of GSD Rule 4, *supra* note 4.

such exchange or (B) an amount of securities having a market value (without regard to haircuts) equal to the cash subject to such exchange, in each case as reasonably determined by FICC. Further, if FICC elects option (B), FICC shall not, for purposes of calculating Clearing Fund requirements, subject any securities sold to the Netting Member pursuant to clause (ii) to a haircut. Under the proposed rule, FICC may, but shall not be obligated to, repurchase the securities sold in such exchange at a date subsequent for the current market value therefor, as reasonably determined by FICC.

In connection with these proposed changes, FICC would also modify GSD Rule 20 (Special Provisions for GCF Repo Transactions) to remove rules allowing FICC to consider borrowing of Clearing Fund for settlement purposes if a Net Funds Payor who is otherwise in good standing does not satisfy its cash obligations to FICC and replace those rules with the authority to consider available Guaranty Fund or other liquidity resources available to FICC.

In sum, the proposal would eliminate FICC's authority to borrow Clearing Fund for liquidity purposes in order to facilitate the bankruptcy remote treatment of Clearing Fund as initial margin and remove Clearing Fund from the loss allocation calculation at GSD. The proposed changes would, however, permit FICC to access an important source of liquidity through the exchange of non-defaulting Netting Members' Clearing Fund deposits in the form of cash for U.S. Treasury securities. Accordingly, FICC believes the proposed change, together with the introduction of the proposed Guaranty Fund, would enhance FICC's default liquidity pool and lower the potential default liquidity obligations from Members.

g. Other Proposed Changes

Finally, FICC proposes additional changes to Rule 4 to clarify and enhance its rules regarding the Clearing Fund. Specifically, FICC would modify Section 9 (Initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirements, and Changes in Members' Required Fund Deposit, Segregated Customer Margin Requirements, and Cross-Margining Customer Margin Requirements) of GSD Rule 4 to remove a specific requirement that Netting Members make their initial Required Fund Deposit, Segregated Customer Margin Requirement (if applicable), and Cross-Margining Customer Margin Requirement (if applicable) no later than five (5) Business Days prior to the Business Day on which such Person becomes a Netting Member and instead require only that such deposits be made within such timeframe as may be prescribed by FICC. Based on FICC's experience with new Member onboarding and account activations, FICC believes that a fixed five (5) Business Day requirement can present burdens and obstacles for Members in funding their requirements prior to determining their account activation dates, which may often occur in a period of time shorter than five (5) Business Days. FICC believes that a more reasonable standard is to allow Netting Members to make their initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirement deposits prior to the activation of their membership, without specifying a fixed number of days.

3. Proposed Changes to Loss Allocation Waterfall

FICC proposes to establish a new Rule 4C titled ''Loss Allocation'' to set forth GSD's loss allocation rules. FICC would relocate the current loss allocation rules in Section 7 of GSD Rule 4 to proposed Rule 4C and modify the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from the loss allocation calculation and loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day ''cooling-off period'' for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an ''Event Period''); and (iv) impose an assessment cap on loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member's Guaranty Fund Requirement during any Event Period in lieu of the existing loss allocation rounds system.

a. Loss Allocation Waterfall Generally

Section 1 of proposed Rule 4C would set forth general terms regarding loss allocation, including that for purpose of proposed Rule 4C, the term Netting Member would not include Registered Investment Company Netting Members. The proposed rule is intended to reflect the elimination of the Tier Two Member category and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members) from loss allocation, as discussed further in Section 3.b. below. Section 1 of proposed Rule 4C would also incorporate the existing definition of ''Defaulting Member'' from Section 7 of GSD Rule 4 (*i.e.,* a Member for which the Corporation has ceased to act pursuant to GSD Rule 21 or GSD Rule 22) for purposes of applying such term to proposed Rule 4C.

Section 2 of proposed Rule 4C would set forth the overall loss allocation framework for FICC–GSD. FICC proposes to relocate the majority of the first introductory section of existing Section 7 of GSD Rule 4 [53] to Section 2 of proposed Rule 4C with several minor modifications.

First, FICC would relocate the definitions of Defaulting Member Event and Declared Non-Default Loss Event at the beginning of Section 7 of GSD Rule 4 to GSD Rule 1, with minor, non-substantive changes to conform to the style of GSD Rule 1, rather than including those definitions in proposed Rule 4C. FICC believes these terms are appropriately defined in GSD Rule 1 as they are used in several GSD Rules and not only in proposed Rule 4C.

Second, the next four paragraphs of the introductory section of Section 7 of GSD Rule 4 would be moved to Sections 2(a), 2(b) and 2(b)(i) and 2(b)(ii), respectively, with only minor modifications. Most significantly, the paragraph describing how FICC would attribute the amount of a loss or liability from one or more Defaulting Member Events would be revised to remove rule text explaining the allocation between Tier One Netting Members and Tier Two Members and instead state that if the loss or liability with respect to an Event Period results from one or more Defaulting Member Events or Declared Non-Default Loss Events, FICC shall determine the amount of such loss or liability that is attributable to Netting Members.

Third, the last paragraph of the introductory section of Section 7 of GSD Rule 4 would be relocated to Section 2(c) of proposed Rule 4C without changes.

Fourth, FICC would delete from the GSD Rules the paragraph in Section 7 of GSD Rule 4 discussing the allocation of losses from Off-the-Market Transactions as that topic is already addressed in Section 6 of GSD Rule 4.

Fifth, FICC would relocate existing Section 7a (Corporate Contribution) of GSD Rule 4 in its entirety to Section 3 of proposed Rule 4C, with only minor modification to remove a reference to ''Section 7 of this Rule'' as a result of the proposed relocation of the Rule.

[53] *See* Section 7 of GSD Rule 4, *supra* note 4.

b. Elimination of Tier One Netting Member and Tier Two Member Categories

FICC proposes to eliminate the concept of Tier One Netting Members and Tier Two Members from the GSD Rules. As discussed above, FICC currently categorizes Members into two different tiers for loss allocation purposes. A Tier One Netting Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss allocation purposes. A Tier Two Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss allocation purposes or a CCIT Member.[54]

Currently, only CCIT Members and Registered Investment Company Netting Members are designated as Tier Two Members.[55] As proposed herein, all Netting Members (except for Registered Investment Company Netting Members) would be subject to Guaranty Fund Requirements and loss allocation, and both CCIT Members and Registered Investment Company Netting Members would be excluded from Guaranty Fund Requirements and loss allocation.

Tier Two Members (*i.e.,* CCIT Members and Registered Investment Company Netting Members) are currently only subject to loss allocation in a limited manner and only with respect to Defaulting Member Events. Specifically, in the event of one or more Defaulting Member Events, FICC would only allocate losses to Tier Two Members, after application of the Corporate Contribution, to the extent they traded with the defaulting Member and their trades resulted in the loss.[56] FICC understands that Registered Investment Companies are subject to regulatory requirements restricting their ability to incur mutualized losses. In addition, CCIT Members only provide liquidity as a cash lender via triparty arrangements in the CCIT Service and do not present market risk to FICC due to the perfected security interest FICC has in such CCIT Member's underlying repo securities. As a result, FICC believes it is appropriate to exclude CCIT Members and Registered Investment Company Netting Members from Guaranty Fund Requirements and loss allocation.

In connection with this proposed change, FICC would remove the Tier Two Members section of Section 7 of GSD Rule 4 from the GSD Rules in its entirety. FICC would also make the following conforming changes to the GSD Rules as these rules would no longer be applicable for the reasons set forth above.

- Remove the definitions of Tier One Netting Members and Tier Two Members from GSD Rule 1;
- Remove rules concerning the categorization of Tier Two Members from Section 2 of GSD Rule 2 (Members);
- Remove a reference to Registered Investment Company Netting Members being Tier Two Members in Section 3 of GSD Rule 2A (Initial Membership Requirements);
- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning the voluntary withdrawal of membership in Section 12 of GSD Rule 3 (Ongoing Membership Requirements);
- Remove a reference to Tier One Netting Members, and include reference to Registered Investment Company Netting Members, in the discussion of members eligible to become Sponsoring Members in Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members);
- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning loss allocation obligations in Section 12 of GSD Rule 3A;
- Remove Section 7 (Loss Allocation Obligations of CCIT Members) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service); and
- Remove references to Tier Two Members and replace them with references to CCIT Members and Registered Investment Company Netting Members in Section 3 of GSD Rule 49 (DTCC Shareholders Agreement);

c. Allocation of Losses to Netting Members

In connection with the proposed changes described above, FICC also proposes to relocate the Tier One Netting Members section of Section 7 of GSD Rule 4 [57] and the rules concerning withdrawal of a Member following loss allocation in Section 7b (Withdrawal Following Loss Allocation) of GSD Rule 4 [58] to Sections 4 and 5 of proposed Rule 4C. The proposed rules would contain modifications to reflect the elimination of the Tier One Netting Member category from the GSD Rules and the application of the loss allocation rules to all Netting Members, excluding Registered Investment Company Netting Members (and excluding CCIT Members).

Section 4 of proposed Rule 4C would describe the loss allocation process for Netting Members. In general, Section 4 of proposed Rule 4C would retain the concept of an Event Period for Defaulting Member Events and/or Declared Non-Default Loss Events that occur within the designated period, and such events would be grouped together for purposes of applying the limits on loss allocation set forth in proposed Rule 4C. Section 4 of proposed Rule 4C would, however, reduce the length of the Event Period from ten (10) Business Days to five (5) Business Days, and modify the application of the loss allocation (or assessment) cap for each Event Period. These changes are discussed in further detail in Section 3.d. below.

As proposed, the Event Period for a Defaulting Member Event would continue to begin on the day FICC notifies Members that it has ceased to act for the Defaulting Member (or the next Business Day, if such day is not a Business Day), consistent with the existing Section 7 of GSD Rule 4. With respect to a Declared Non-Default Loss Event, an Event Period would continue to begin on the day that FICC notifies Members of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day), which notification shall be issued promptly following any such determination, consistent with existing Section 7 of GSD Rule 4. Section 4 of proposed Rule 4C would also continue to state that, if a subsequent Defaulting Member Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period, consistent with the existing Section 7 of GSD Rule 4. FICC notes, however, that the timeframe for determining the losses or liabilities arising out of or relating to any Defaulting Member Event during a given Event Period would not be limited to the five (5) Business Day Event Period.

Additionally, Section 4 of proposed Rule 4C would provide that each Netting Member that is a Netting Member on the first day of an Event Period shall be obligated to pay its ''Allocated Loss.'' The Allocated Loss of a Netting Member would be defined as the pro rata share, as determined by FICC based on the amount of such Netting Member's Guaranty Fund Requirement as compared to the total

[54] *See* definitions of ''Tier One Netting Member'' and ''Tier Two Member'' in GSD Rule 1, *supra* note 4.

[55] *See* Section 2(c) of GSD Rule 2 and Section 3(a)(viii) of GSD Rule 2A, *supra* note 4.

[56] *See supra* note 19.

[57] *See* Section 7 of GSD Rule 4, *supra* note 4.

[58] *See* Section 7b of GSD Rule 4, *supra* note 4.

Guaranty Fund size (excluding any Corporate Contribution and, in the case of a Defaulting Member Event, any Guaranty Fund Deposits of the Defaulting Member), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in respect of such Event Period. The ''Loss Allocation Cap'' of a Netting Member in respect of an Event Period would be further defined in the proposed rule as an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period, as discussed in further detail in Section 3.d. below. The proposed rules would define each Netting Member's Loss Allocation Cap based on its Guaranty Fund Requirement rather than its Required Fund Deposit, to reflect the adoption of the Guaranty Fund as FICC–GSD's default fund. The proposed rule would also remove the concept of loss allocation ''rounds'' and instead describe the loss allocation process in terms of FICC–GSD's overall Loss Allocation Cap for Netting Members.

Section 4 of proposed Rule 4C would also provide that any Netting Member for which FICC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, shall be deemed to be a Netting Member on the first day of that Event Period. The proposed rule would also require FICC to communicate to Netting Members their respective Allocated Losses by the issuance of a notice specifying such amount and the relevant Event Period to which it relates (the ''Loss Allocation Notice''). These proposed rules would be generally consistent with existing Section 7 of GSD Rule 4 with certain modifications to apply such rules to Netting Members rather than Tier One Netting Members and reflect the proposed adoption of the defined term ''Allocated Losses.'' The proposed rule would also continue to allow each Netting Member five (5) Business Days from the issuance of the first Loss Allocation Notice for the Event Period to notify FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C (as discussed below). Section 4 of proposed Rule 4C would also further clarify that a Defaulting Member whose Guaranty Fund Deposits or other resources remain available for use by FICC in accordance with the Rules shall be deemed to have provided its withdrawal notice on the date of the first Loss Allocation Notice after FICC has ceased to act for such Defaulting Member.

Section 4 of proposed Rule 4C would require Netting Members to pay to FICC the amount specified in any Loss Allocation Notice on the second Business Day after FICC issues any such notice, consistent with existing GSD Rules. Section 4 of proposed Rule 4C would also provide that, if a Netting Member fails to make payment to FICC in respect of a Loss Allocation Notice by the time such payment is due, FICC shall have the right to proceed against such Netting Member as a Defaulting Member that has failed to satisfy an obligation in accordance with proposed Rule 4C, which is also consistent with existing Section 7 of GSD Rule 4.

FICC also proposes to eliminate the loss allocation limitations on Inter-Dealer Broker Netting Members with respect to activity in their Broker Account(s). Under Section 7 of GSD Rule 4, an Inter-Dealer Broker Netting Member with respect to activity in its Broker Account(s) shall not be subject to an aggregate loss allocation in an amount greater than $5 million in losses and liabilities resulting from an Event Period. This current limitation on loss allocation treatment for Inter-Dealer Broker Netting Member Broker Accounts reflects that, while Inter-Dealer Broker Netting Members may have directional position exposure with FICC with respect to the transactions in such accounts, the Inter-Dealer Broker Netting Member is generally intermediating between FICC Members and non-Members with offsetting positions. As a result of the general nature of this activity, FICC recognized the offsetting nature of their overall activity and therefore limited their loss allocation exposures. Under the Commission's Treasury Clearing rules, both of the Inter-Dealer Broker Netting Member's transactions with its respective counterparties will be required to be submitted into clearing, thereby allowing FICC to directly recognize and account for the offsetting exposure within the Inter-Dealer Broker Netting Member's Broker Account(s).[59] With the proposed establishment of the Guaranty Fund, FICC believes that it is appropriate to eliminate this legacy limitation on loss allocation for Inter-Dealer Broker Netting Members and include Inter-Dealer Broker Netting Members' Accounts in the Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts, as applicable) because (i) an Inter-Dealer Broker Netting Member's Broker Account(s) should not be subject to significant Guaranty Fund Requirements stemming from activity in non-directional (*i.e.,* matched book) accounts based on the proposed allocation methodology and (ii) any directional activity of an Inter-Dealer Broker Netting Member in its Dealer Account would present risk to FICC that FICC would need to manage in the event of the default of that Member in the same manner as the directional activity of any other Netting Member. As a result, FICC believes that including Inter-Dealer Broker Netting Members in the proposed Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts) would appropriately capture the risk that should be covered in the loss allocation process.

Section 5 of proposed Rule 4C would set forth the requirements for Netting Members to withdraw from membership following loss allocation to limit their exposures to future loss allocations under a subsequent Event Period. Consistent with existing Section 7 of GSD Rule 4, Section 5 of proposed Rule 4C would provide that, if a Netting Member notifies FICC of its election to withdraw from membership, the Netting Member shall comply with the provisions of Section 5 of proposed Rule 4C. If, after notifying FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C, the Netting Member fails to comply with the provisions of Section 5 of proposed Rule 4C, its notice of withdrawal shall be deemed void and any further losses resulting from any subsequent Event Period may be allocated against it as if it had not given such notice. With respect to an Event Period, only Netting Members that have not submitted a Loss Allocation Withdrawal Notice in accordance with Section 5 of this Rule shall be subject to further loss allocation with respect to any subsequent Event Period.

Section 5 of proposed Rule 4C would also state that a Netting Member that elects to withdraw pursuant to Section 5 of proposed Rule 4C shall not be eligible to re-apply to become a Member unless, prior to submitting such application, it makes the payment(s) to FICC that would have been due pursuant to this Rule as if the Netting Member had not withdrawn, together with interest on that amount at a rate determined by FICC calculated from the

[59] *See* 17 CFR 240.17ad–22(e)(18)(iv)(A) and (B). *See also* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7–23–22).

date on which the Event Period began. The proposed rule would also be largely consistent with existing Section 7 of GSD Rule 4, with two minor modifications. FICC would replace reference to re-applying to become a ''Comparison-Only Member or a Netting Member'' with the more general term ''Member.'' FICC would also replace a reference to the interest rate payable (*i.e.,* Federal Funds Rate plus one percent) with a more general statement that FICC would determine such rate to allow FICC to adjust the rate based on its current investment practices and market rates.

Section 5 of proposed Rule 4C would also set forth the requirements for Netting Members submitting notice of their withdrawal from membership, consistent with the requirements of existing Section 7b of GSD Rule 4. Section 5 of proposed Rule 4C would provide that, if a Netting Member timely notifies FICC of its election to withdraw from membership in respect of an Event Period (hereinafter, the ''Loss Allocation Withdrawal Notice''), the Netting Member shall: (i) specify in the Loss Allocation Withdrawal Notice an effective date for its withdrawal from membership, which date shall not be prior to the scheduled final settlement date of any remaining obligation owed by the Netting Member to FICC, unless otherwise approved by FICC; and (ii) as of the time of such Netting Member's submission of the Loss Allocation Withdrawal Notice to FICC, cease submitting transactions to FICC for processing, clearance or settlement, unless otherwise approved by FICC.

Section 5 of proposed Rule 4C would further provide that a Netting Member that withdraws in compliance with the requirements of this section shall nevertheless remain obligated for its Allocated Loss with respect to any Event Period for which it is otherwise obligated hereunder; however, it shall not be subject to any loss allocation in respect of any subsequent Event Period that commences after the Corporation's receipt of the Member's Loss Allocation Withdrawal Notice. If the Netting Member fails to comply with the requirements, its Loss Allocation Withdrawal Notice would be deemed void, and the Netting Member would remain subject to further loss allocations pursuant to proposed Rule 4C as if it had not given such Loss Allocation Withdrawal Notice.

d. Cooling-Off Period and Loss Allocation Caps

FICC proposes to modify the GSD Rules to adopt a ''cooling-off period'' structure for its loss allocation process that would provide a clear, transparent and ex ante cap on the aggregate liability of its Netting Members for loss allocation during any Event Period. As proposed, Defaulting Member Events and/or Declared Non-Default Loss Events that occur within a period of five (5) Business Days would be grouped together in an Event Period for purposes of applying the limits on loss allocation set forth in proposed Rule 4C. Each Netting Member that is a Netting Member on the first day of an Event Period would be obligated to pay its Allocated Loss, which would be defined as the pro rata share, determined by FICC based on the amount of such Netting Member's Guaranty Fund Requirement as compared to the total Guaranty Fund size (excluding any Corporate Contribution), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in respect of such Event Period. The ''Loss Allocation Cap'' of a Netting Member in respect of an Event Period would be set at an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period.

Under FICC's current loss allocation rules, FICC may assess its Tier One Netting Members in loss allocation ''rounds,'' which are a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Tier One Netting Members (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. FICC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among those Tier One Netting Members who have not submitted a Loss Allocation Withdrawal Notice. Each Tier One Netting Member has five (5) Business Days from the issuance of the first Loss Allocation Notice for each round of loss allocation to notify FICC of its election to withdraw from membership pursuant to Section 7b of GSD Rule 4 and invoke its Loss Allocation Cap, which is equal to the greater of (x) its Required Fund Deposit on the first day of the applicable Event Period and (y) its Average RFD. Accordingly, FICC's current loss allocation rules hypothetically allow for unlimited loss allocation to Tier One Netting Members if they do not submit a Loss Allocation Withdrawal Notice. In practice, however, Tier One Netting Members can, and likely would, limit their overall loss allocation obligations under an extreme stress scenario by notifying FICC of their intent to withdraw from membership.[60]

FICC believes that the proposed 200 percent Loss Allocation Cap would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. Limiting the potential loss allocation amount during extreme market stress scenarios could prevent a ''rush for the exit'' scenario where many Netting Members seek to cap their liability by withdrawing from membership. It may also reduce the possibility of FICC imposing additional stress on its remaining Netting Members due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. While FICC acknowledges that the proposed changes to the Event Period and Loss Allocation Cap could hypothetically limit the amount of resources available to FICC in an extreme stress scenario, FICC notes that the proposed Loss Allocation Cap of 200 percent of a Member's Guaranty Fund Requirement would itself be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC's two largest Netting Member families using the extreme but plausible market shocks. FICC believes that it is unlikely that it would exhaust a 200 percent Loss Allocation Cap that is based on a Cover 2 Requirement during a given Event Period and notes that Netting Members could significantly limit the maximum loss allocation available to FICC under the current GSD Rules by withdrawing from membership in significant numbers during the beginning of any given loss allocation round.

4. Other Proposed Changes

a. Cross-Guaranty Repayment Deposits and Cross-Margining Repayment Deposits

Under the GSD Rules, certain Members may be required to make Cross-Guaranty Repayment Deposits to the Clearing Fund as Cross-Guaranty Beneficiary Members pursuant to Section 4 of GSD Rule 41 (Cross

[60] *See* Section 7 of GSD Rule 4, *supra* note 4.

Guaranty Agreements)[61] or Cross-Margining Repayment Deposits to the Clearing Fund as Cross-Margining Beneficiary Participants pursuant to Section 6 of GSD Rule 43 (Cross-Margining Arrangements).[62] These repayment deposits are intended to account for the amount of any reduction in an assessment made or that otherwise would have been made against a Cross-Guaranty Beneficiary Member or Cross-Margining Beneficiary Participant under the terms of a respective Cross Guaranty Agreement or Cross-Margining Arrangement. Such repayment deposits may be held by FICC for such time as FICC determines it may be liable for a repayment obligation under respective Cross Guaranty Agreement or Cross-Margining Arrangement, and to a resulting loss allocation pursuant to Section 7 of GSD Rule 4.

Because these deposits are intended to offset or reflect a reduction in such Member's loss allocation obligations, FICC believes that they would be more appropriately held in the Guaranty Fund, which would represent the pool of mutualized loss allocation resources, rather than Clearing Fund, which would constitute the Member's initial margin under the proposal described herein. As a result, FICC proposes to update the definition of the terms Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit in GSD Rule 1, Sections 4 and 5 of GSD Rule 41, and Sections 5 and 6 of GSD Rule 43 to reflect that these repayment deposits would be held in the Guaranty Fund. FICC would also modify Section 4 of GSD Rule 41 and Section 6 of GSD Rule 43 to clarify that any Cross-Guaranty Repayment Deposit amount and Cross-Margining Repayment Deposit amount, respectively, shall not be included in the calculation of the Member's Guaranty Fund Requirement.

b. Fine Schedule for Late Guaranty Fund Payments

In connection with the proposed adoption of the Guaranty Fund, FICC also proposes to adopt a new fine schedule for the late satisfaction of Guaranty Fund Requirements. The proposed fine schedule would be similar in structure to the current fine schedules in the GSD Rules for the late satisfaction of Clearing Fund deficiency calls and late payment of funds settlement debits. The proposed fine schedule is set forth below.

Amount	First Occasion	Second Occasion	Third Occasion	Fourth Occasion
Up to $100M	$100	$200	$500	$1,000
Greater than $100M to $900M	300	600	1,500	3,000
Greater than $900M to $1.7MM	600	1,200	3,000	6,000
Greater than $1.7MM to $2.5MM	900	1,800	4,500	9,000
Greater than $2.5MM	1,000	2,000	5,000	10,000

FICC would determine the number of occasions for purposes of imposing a fine over a moving twelve-month period, beginning with the first occasion. If the number of occasions within the rolling period exceeds four, FICC would obtain the concurrence of the Board of Directors as to the amount of the fine. As proposed, a lateness of more than one hour would result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late for more than one hour and it is the member's fourth occasion, FICC would be required to obtain the concurrence of the Board of Directors as to the amount of the fine.

c. Conforming Changes To Incorporate Guaranty Fund and Update References to Loss Allocation Throughout the GSD Rules

FICC proposes the following conforming changes throughout the GSD Rules to incorporate references to the proposed Guaranty Fund.

- Update the definition of ''Legal Risk'' in GSD Rule 1 to include references to Guaranty Fund Deposits and proposed Rule 4A (Guaranty Fund) and proposed Rule 4C (Loss Allocation)
- Update Section 1 of GSD Rule 2 concerning general membership requirements for the provision of FICC's services to include required contributions to the Guaranty Fund;
- Update Section 4 of GSD Rule 2 concerning membership qualifications and standards to include anticipated required contributions to the Guaranty Fund;
- Update Section 4 of GSD Rule 2 concerning membership agreements to include Guaranty Fund Requirements pursuant to proposed Rule 4A;
- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to include a reference to the return of Member's Guaranty Fund Deposits under Section 8 of proposed Rule 4A;
- Update Section 2 of GSD Rule 3A concerning Sponsoring and Sponsored Members to clarify that nothing in the GSD Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member, out of its Guaranty Fund Deposits;
- Update Section 7 of GSD Rule 13 (Funds Only Settlement) concerning the liability of Netting Members to include the Guaranty Fund in the amounts FICC may apply if a Netting Member fails to pay any portion of a Funds-Only Settlement Amount;
- Update GSD Rule 21A concerning the wind-down of a Netting Member to include that a Wind-Down Member would be prohibited from withdrawing Guaranty Fund on deposit in excess of its Guaranty Fund Requirement (in addition to Clearing Fund);
- Update GSD Rule 22C concerning interpretations related to the Federal Deposit Insurance Corporation Improvement Act of 1991 to include the Guaranty Fund in the provisions of the GSD Rules constituting a ''security agreement or arrangement or other credit enhancement;''
- Update GSD Rule 39 concerning limitations of liability to include the Guaranty Fund in the list of GSD assets not available to obligations of MBSD;

FICC also proposes the following conforming changes throughout the GSD Rules to update references to the loss allocation Rules (currently referenced as Rule 4 or Section 7 of Rule 4) to refer to new Rule 4C.

- Update the definition of ''Legal Risk'' in GSD Rule 1 to include references to proposed Rule 4C (Loss Allocation);
- Update the definition of ''Corporate Contribution'' in GSD Rule 1 to refer to the relocation of associated rules in Section 3 of proposed Rule 4C;
- Update the definition of ''Loss Allocation Cap'' in GSD Rule 1 to refer to the relocation of associated rules in Section 7 of proposed Rule 4C;

[61] *See* Section 4 of GSD Rule 41, *supra* note 4.

[62] *See* Section 6 of GSD Rule 43, *supra* note 4.

- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to refer to the relocation of certain loss allocation rules to Sections 4 and 5 of proposed Rule 4C;
- Update Section 12 of GSD Rule 3A concerning loss allocation obligations of Sponsoring and Sponsored Members to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 8 of GSD Rule 3B concerning the CCIT Service to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 7 of GSD Rule 8 (Agent Clearing Service) concerning Agent Clearing Transaction processing rules to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 5 of GSD Rule 13 (Funds-Only Settlement) concerning the Funds-Only Settlement Amount Payment Process to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update GSD Rule 21A (Wind-Down of a Netting Member) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 2 of GSD Rule 22A (Procedures for When the Corporation Ceases to Act) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update GSD Rule 22B (Corporate Default) to refer to the relocation of certain loss allocation rules to proposed Rule 4C; and
- Update GSD Rule 22D (Wind-Down of the Corporation) to refer to the relocation of certain loss allocation rules to proposed Rule 4C.

Anticipated Impact on Members

FICC performed a study of the potential Guaranty Fund sizing and allocation impacts over the period January 2025–December 2025 (''Guaranty Fund Impact Study''). The Guaranty Fund Impact Study showed that the average overall Guaranty Fund size was approximately $6 billion, ranging from approximately $5.25 to $6.37 billion. There were no intramonth collections or resizing observed during the Guaranty Fund Impact Study. With respect to individual Netting Member impacts, the average allocated monthly requirement was approximately $42.6 million, with the maximum monthly allocation being approximately $898 million (or 14 percent of the total Guaranty Fund). The top 10 Netting Members were allocated approximately $3.62 billion each month (or 59 percent of the total Guaranty Fund).

FICC also performed a Member-level impact study of the proposed Stress Test Deficiency Charge over the period January 2025–December 2025 (''Stress Test Deficiency Charge Impact Study''). The Stress Test Deficiency Charge Impact Study compared Netting Members' daily Stress Test Deficiencies to the aggregate Clearing Fund across all Members (excluding the Clearing Fund contribution from the respective Member) using the initial 30% threshold to determine the application of the charge.[63] The Stress Test Deficiency Charge Impact Study demonstrated that no breaches would have occurred in the review period and no Stress Test Deficiency Charges would have been applied using the initial 30% threshold.

Finally, FICC performed a backtesting study of its margin model reflecting the proposed removal of minimum Required Fund Deposit and minimum charge amounts over the period January 2025—December 2025 (''Backtesting Study''). The analysis incorporated recalculation of FICC–GSD's existing Backtesting Charge that would have been applied if a Member incurred deficiencies that fell below the 99 percent coverage target. The Backtesting Study showed that backtesting coverage remained above the 99% coverage target when removing the minimum Required Fund Deposit and minimum charge amounts. The average increase in the Backtesting Charge would have been less than $1 million across all Members, and the maximum increase in the Backtesting Charge would have been approximately $1.74 million. Only three Members (out of 146 in the Backtesting Study) would have incurred an increase in the Backtesting Charge of $1 million or more.

Implementation Timeframe

Subject to FICC receiving all necessary regulatory approvals, FICC expects to implement the proposed changes by no later than March 1, 2027. FICC would announce the effective date of the proposed changes by an Important Notice posted to FICC's website.[64]

[63] *See supra* note 44.

[64] Such approvals would include obtaining the consent of the Commission and the Commodity Futures Trading Commission (''CFTC'') prior to establishing the securities account proposed for the Netting Member Clearing Fund Custody Account, as conditioned under the exemptive order issued by the CFTC in connection with FICC's customer cross-margining arrangement with the Chicago Mercantile Exchange, Inc. *See* Order Providing Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 91 FR 20880, 20885 (April 20, 2026).

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,[65] and Rules 17ad–22(e)(4), (6), (7), (18) and (23) promulgated under the Act,[66] for the reasons described below.

Section 17A(b)(3)(F) of the Act[67] requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest.

FICC's ability to manage its credit exposures to participants and to timely complete settlement are key parts of FICC's role as a CCP and allow FICC to mitigate counterparty risk within the U.S. markets. The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's ''default fund.'' The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. FICC would use the Guaranty Fund to mitigate potential losses and liquidity needs associated with liquidating a defaulting Member's portfolio so that FICC can continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a Member default and to protect investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.

FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established

[65] 15 U.S.C. 78q–1(b)(3)(F).

[66] 17 CFR 240.17ad–22(e)(4), (6), (7), (18) and (23).

[67] 15 U.S.C. 78q–1(b)(3)(F).

for the sizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. As described herein, the proposed Stress Test Deficiency Charge is intended to implement a ''defaulter pays'' approach to addressing the additional risk presented by those Member's whose Stress Test Deficiencies drive significant stress test exposures at FICC. FICC would use the resources collected through the Stress Test Deficiency Charges to mitigate potential losses to FICC (and through loss allocation, to its Members) associated with liquidating a defaulting Member's portfolio and to continue to effect the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC in the event of a Member default, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.

Additionally, FICC believes that adopting a ''cooling-off period'' structure and a Loss Allocation Cap of 200 percent of a Member's Guaranty Fund Requirement for its loss allocation rules would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. The proposed 200 percent Loss Allocation Cap would be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC's two largest Netting Member families using the extreme but plausible market shocks, while also reducing the possibility of FICC imposing additional stress on its remaining Netting Members in a default event due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. FICC believes that these changes would therefore also lower the risk exposure that Members may have with respect to FICC in its role as a CCP. Limiting the potential loss allocation amount during extreme market stress scenarios may also prevent a ''rush for the exit'' scenario where many Netting Members seek to cap their liability by withdrawing from membership. FICC believes the proposed Loss Allocation Cap structure strikes an appropriate balance between these considerations and would allow FICC to address potential losses that may be associated with a sequential default scenario during a given Event Period so that FICC can continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a Member default, consistent with the requirements of Section 17A(b)(3)(F) of the Act.

FICC also believes that the proposed changes would continue to provide sufficient qualifying liquid resources for FICC to meet a Cover 1 Standard for liquidity risk. As discussed above, the proposed change would remove FICC's authority to directly borrow Clearing Fund cash or use a non-defaulting Member's Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity. FICC therefore believes the Proposed Rule Change would allow FICC to continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a Member default, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.

In addition, FICC believes that agreeing to treat Clearing Fund deposits as ''financial assets'' credited to ''securities accounts'' within the meaning of the NYUCC and limiting FICC's ability to use such Clearing Fund would assure the safeguarding of securities and funds in FICC's custody or control. These changes would ensure that Clearing Fund deposits do not constitute property of FICC's estate or property available to FICC's general creditors and instead are safeguarded for the benefit of the Netting Members that posted them. As a result, FICC believes the Proposed Rule Change would help to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in accordance with Section 17A(b)(3)(F) of the Act.

Rule 17ad–22(e)(4) under the Act [68] requires generally that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. Rules 17ad–22(e)(4)(i) and (iii) under the Act [69] requires that such policies and procedures include (i) maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence and (ii) the maintenance of additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (that is, to maintain a Cover 1 Standard for prefunded financial resources to address its credit/market risk).[70]

The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's ''default fund.'' The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement, exclusive of FICC's proposed assessment authority for additional Guaranty Fund contributions. FICC proposes to adopt a more conservative Cover 2 Standard for its Guaranty Fund to align FICC's risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market's systemically important infrastructures.[71] FICC believes that a fixed income market stress event could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC's mandate as a systemically important financial market utility. Further, FICC believes the size of the proposed Guaranty Fund that would be needed to maintain the Cover 2 Requirement would not present a significant burden on its Members based on both the projected size of a Guaranty Fund based on a Cover 2 Standard and resulting allocations, especially when considered with the potential benefits of bankruptcy remote treatment of the

[68] 17 CFR 240.17ad–22(e)(4).

[69] 17 CFR 240.17ad–22(e)(4)(i) and (iii).

[70] Rule 17ad–22(e)(4)(iv) under the Act further requires that such prefunded financial resources be exclusive of assessments for additional guaranty fund contributions. *See* 17 CFR 240.17ad–22(e)(4)(iv).

[71] *See supra* note 11.

current Clearing Fund and exclusion of Member's Clearing Fund deposits from the loss allocation calculation. In addition, FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. For these reasons, FICC believes the proposed changes are consistent with the requirements of Rules 17ad–22(e)(4)(i) and (iii) under the Act.

Rule 17ad–22(e)(4)(vi) under the Act [72] requires that such policies and procedures include requirements for FICC to conduct stress testing of its total financial resources once each day using standard predetermined parameters and assumptions. As described above, the Clearing Agencies maintain the ST Framework, which sets forth the manner in which FICC performs stress testing of the sufficiency of its prefunded financial resources.[73] FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, including their associated parameters and assumptions, to size the Guaranty Fund and test the sufficiency of its total financial resources each Business Day. FICC believes the proposed changes are therefore consistent with the requirements of Rule 17ad–22(e)(4)(vi) under the Act.

Rules 17ad–22(e)(4)(viii) and (ix) under the Act [74] further require that such policies and procedures address the allocation of credit losses FICC may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers, and describe its process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated. As described above, the proposed GSD Rules (and consequently FICC's supporting policies and procedures thereunder) would describe FICC's loss allocation process in proposed Rule 4C. This includes the determination of Event Periods and the Loss Allocation Caps associated therewith. Furthermore, Section 7 of proposed rule 4A would describe FICC's process for replenishing any deficits in the Guaranty Fund that may result from FICC's application or use of a Netting Member's Guaranty Fund Deposit as permitted pursuant to proposed Rule 4C. Section 5(c) of proposed Rule 4A would also address how FICC would repay any funds borrowed from the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations. FICC therefore believes the proposed changes are consistent with the requirements of Rules 17ad–22(e)(4)(viii) and (ix) under the Act.

Rule 17ad–22(e)(6)(iii) under the Act [75] requires that FICC, as a CCP, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

FICC proposes to modify the Margin Component Schedule of the GSD Rules to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers. Rather than specifying fixed minimum charges in the GSD Rules, FICC proposes to modify the GSD Rules to provide the authority for FICC to establish minimum charges of up to $1 million for particular account types and/or access models as determined appropriate by FICC. As described above, upon implementation of the proposal, FICC would initially set all required charge amounts to $0. Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICCs Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements, and Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model. FICC also notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (*e.g.,* a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC–GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC–GSD's various access models and/or utilizing multiple accounts under each model. FICC would continue to monitor its exposures, however, and would maintain the authority within the GSD Rules to impose minimum charges up to $1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad–22(e)(6)(iii) under the Act.

Rule 17ad–22(e)(7)(i) under the Act [76] requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain 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.,* a Cover 1 Standard for liquidity resources).[77]

FICC–GSD's liquidity risk is measured as the settlement payment obligation that FICC–GSD would have in the event of the default of the largest Netting Member Affiliated Family and is calculated based on eligible positions in

[72] 17 CFR 240.17ad–22(e)(4)(vi).

[73] *See supra* note 24.

[74] 17 CFR 240.17ad–22(e)(4)(viii) and (ix).

[75] 17 CFR 240.17ad–22(e)(6)(iii).

[76] 17 CFR 240.17ad–22(e)(7)(i).

[77] Rule 17ad–22(e)(7)(ii) under the Act further requires that such resources be in the form of qualifying liquid resources in each relevant currency for which FICC has payment obligations owed to its Members. *See* 17 CFR 240.17ad–22(e)(7)(ii) and *supra* note 20.

clearing. The liquidity need is determined by the securities destined to be delivered to the defaulting member, referred to as ''inbound deliveries.'' As discussed above, FICC currently maintains qualifying liquid resources in the form of CCLF and Clearing Fund cash and has received necessary approvals to add a Commercial Paper Program.[78] CCLF is designed to address FICC's liquidity needs by directly engaging in CCLF Transactions for the inbound deliveries driving the liquidity need. However, CCLF Transactions are bilateral repo transactions based on current market value that are subject to market haircuts and may experience significant changes in market value under an extreme stress scenario. Under CCLF, if FICC declares a CCLF event, Members are required to hold and fund their deliveries to the insolvent Member (*i.e.,* the inbound deliveries) up to a predetermined cap by entering into repo transactions (*i.e.,* CCLF Transactions) with FICC.[79] FICC will accept securities delivered by a solvent Member that are destined for the insolvent Member in excess of the solvent Member's CCLF cap on a delivery-versus-payment (DVP) basis for FICC.

FICC may currently utilize Clearing Fund cash deposits or CCLF Transactions involving Clearing Fund Eligible Securities to address any shortfalls that may arise in resources versus liquidity needs resulting from such haircuts and changing market values.

As described above, the proposed change would remove FICC's authority to directly borrow Clearing Fund cash or use a non-defaulting Member's Clearing Fund securities for CCLF Transactions to facilitate the treatment of these deposits as bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. While this may result in an overall reduction of available liquidity resources for FICC, the amount of qualifying liquid resources would remain closely aligned to FICC's daily Cover 1 liquidity measure. Accordingly, FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad–22(e)(7)(i) under the Act.

Rule 17ad–22(e)(7)(ix) under the Act[80] requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any liquid resources that it may employ during a stress event. As described above, FICC proposes changes to the GSD Rules to (i) exclude Clearing Fund from the calculation of loss allocation obligations and from its authority to borrow funds or securities for purposes of meeting its settlement obligations and (ii) establish a Guaranty Fund comprised of cash, which would, among other things, provide liquidity to FICC to meet its settlement obligations. FICC would also update the GSD Rules to describe its process for allocating losses and replenishing the Guaranty Fund in the event that it experiences any losses that would require the replenishment of such funds, which would be substantially similar to its existing process for replenishing any Clearing Fund deposits used as a liquidity resource during a stress event. As a result, FICC believes the proposed changes are consistent with Rule 17ad–22(e)(7)(ix) under the Act.

Rule 17ad–22(e)(18)(iv)(C) under the Act[81] requires FICC establish objective, risk-based, and publicly disclosed criteria for participation, which ensure it has appropriate means to facilitate access to its clearance and settlement services of all eligible market secondary transactions in U.S. Treasury securities, including those of indirect participants. FICC believes that eliminating the $1mm minimum Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement per Segregated Indirect Participant and Cross-Margining Customer, respectively, would facilitate access to FICC's clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities. This is because indirect participants have identified the $1mm minimum charge as serving as a barrier to access FICC's clearance and settlement services.[82] Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. Accordingly, FICC believes eliminating the fixed Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement would facilitate access by indirect participants without disrupting FICC's ability to meet its obligations to Members consistent with Rule 17ad–22(e)(18) under the Act.

Rule 17ad–22(e)(23) under the Act[83] requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures, and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC. The proposed changes to the GSD Rules would clearly set forth the establishment, maintenance, purpose and use of the proposed Guaranty Fund, including Netting Member's obligations to contribute Guaranty Fund Requirements on a pro rata basis. The proposed changes to the GSD Rules would also clearly and transparently describe Netting Members obligations with respect to loss allocation during a Defaulting Member Event, including the associated ''cooling-off period'' and Loss Allocation Caps that would apply to any designated Event Period, and their obligations to replenish any Guaranty Fund deposits used by FICC pursuant to the GSD Rules. The proposed changes to the GSD Rules would also clearly describe the proposed bankruptcy remote treatment of Clearing Fund deposits as ''initial margin'' and the limitations regarding the use of such deposits and their exclusion from loss allocation calculations. The proposed changes to the GSD Rules would also clearly set forth a fine schedule for late satisfaction of Guaranty Fund Requirements. The GSD Rules are publicly available on the FICC website. As a result, FICC believes the proposed changes are consistent with Rule 17ad–22(e)(23) under the Act.

For these reasons, FICC believes the proposal would support its compliance with Rules 17ad–22(e)(4), (6), (7), (18) and (23) under the Act.[84]

[78] *See supra* note 23.

[79] *See* Section 2a of GSD Rule 22A, *supra* note 4.

[80] 17 CFR 240.17ad–22(e)(7)(ix).

[81] 17 CFR 240.17ad–22(18)(iv)(C).

[82] *See supra* note 50.

[83] 17 CFR 240.17ad–22(e)(23).

[84] 17 CFR 240.17ad–22(e)(4), (6), (7), (18) and (23).

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

Section 17A(b)(3)(I) of the Act[85] requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. FICC believes that the Proposed Rule Change could have an impact on competition because by requiring Netting Members to satisfy Guaranty Fund Requirements and Stress Test Deficiency Charges that are allocated based on Netting Member activity, it would require impose greater margin and default fund requirements on certain Netting Members than on others. In addition, by providing FICC with the authority to exchange a Netting Member's Clearing Fund Deposit in the form cash for U.S. Treasury Securities based on the proportion of the Netting Member's Clearing Fund consisting of cash, the Proposed Rule Changes may impose greater liquidity requirements on some Netting Members than others. FICC believes, however, that any impact or burden associated with the Proposed Rule Change is necessary and appropriate in furtherance of the purposes of the Act.

FICC believes any potential impact or burden competition that may be created by the Proposed Rule Change would be necessary and appropriate in furtherance of the purposes of the Act, specifically Section 17A(b)(3)(F) of the Act.[86] The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's ''default fund.'' The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. FICC believes that a fixed income market stress event could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC's mandate as a systemically important financial market utility. By supplementing FICC's existing prefunded financial resources with a prefunded Guaranty Fund, the proposal would contribute to FICC's goal of assuring that FICC has adequate prefunded resources to promptly and accurately meet its settlement obligations notwithstanding the default of any of its Members.

FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. FICC believes that the proposal would align with a ''defaulter pays'' approach to addressing the additional risk presented by those Members driving significant stress test exposures while also allowing FICC with the flexibility to resize the Guaranty Fund on an intra-month basis when a resizing of the Guaranty Fund may be necessary to ensure that FICC continues to meet its Cover 2 Requirement.

In addition, FICC believes that adopting the Guaranty Fund while also providing authority to impose additional Stress Test Deficiency Charges would provide an appropriate balance between maintaining sufficient mutualized default fund resources, sized to a Cover 2 Requirement, and providing for a ''defaulter pays'' approach to addressing additional risks presented by those Member's whose Stress Test Deficiencies drive significant stress test exposures at FICC. The proposed Guaranty Fund would be sized to a Cover 2 Requirement based on the results of daily stress testing using a range of historical and hypothetical scenarios. Each Netting Member's required Guaranty Fund contribution would be determined as their pro rata share of the Cover 2 Requirement based on average daily largest stress test deficiencies for such Members. FICC would also have the authority to impose additional margin charges on a Netting Member or an Affiliated Family whose Stress Test Deficiencies drive significant risk exposures at FICC. FICC therefore believes that the proposed Guaranty Fund and Stress Test Deficiency Charges would be appropriately allocated to Members based on a clear, risk-based methodology that aligns the collection of additional financial resources from Members in direct proportion to each Member's individual stress test exposures at FICC.

Further, FICC believes the size of the proposed Guaranty Fund that would be needed to maintain the Cover 2 Requirement would not present a significant burden on its Members based on both the projected size of a Cover 2 Guaranty Fund and resulting allocations, especially when considered with the potential benefits of bankruptcy remote treatment of the current Clearing Fund and exclusion of Member's Clearing Fund deposits from loss allocation. Moreover, FICC believes that the proposed allocation methodology would appropriately allocate each Netting Member's contribution to the Guaranty Fund, and their associated loss allocation obligations, in direct proportion to the risk presented by each Netting Member's contribution to Stress Test Deficiencies observed by FICC under its daily stress testing.

The Proposed Rule Change would provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations, which may impact Netting Members subject to the utilization of this tool. However, any such exchange would be done proportionally among Netting Members (other than any Defaulting Member) based on the amount of each Netting Member's Clearing Fund consisting of cash relative to the total amount of Clearing Fund consisting of cash, and subject to considerations such as operational feasibility and the value of the specific securities to be exchanged. Moreover, FICC notes that any Netting Member subject to the exchange would not be obligated to hold any Treasury securities sold to it by FICC under this proposed authority and would have the right to immediately hedge the market risk exposure of such securities and/or immediately sell them to mitigate potential market risk exposure and substitute the cash proceeds of such sale as an alternative Clearing Fund deposit to FICC. FICC also notes that the Proposed Rule Change would, in turn, remove FICC's authority to directly borrow Clearing Fund cash or use a non-defaulting Member's Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed changes would therefore permit FICC to access an important source of liquidity through the exchange of non-defaulting Netting Members' Clearing Fund deposits in the form of cash for high quality liquid assets such as U.S. Treasury securities.

[85] 15 U.S.C. 78q–1(b)(3)(I).

[86] 15 U.S.C. 78q–1(b)(3)(F).

Accordingly, FICC believes the proposed change, together with the introduction of the proposed Guaranty Fund, would enhance FICC's default liquidity pool and lower the potential default liquidity obligations from Members and would not present any burden on Members that is not necessary or appropriate in furtherance of the purposes of the Act.

FICC also notes that while the proposed rule change to eliminate the loss allocation limitations on Inter-Dealer Broker Netting Members with respect to activity in their Broker Account(s) would have an impact on Inter-Dealer Broker Netting Members, FICC does not believe it would present a burden on competition that is not necessary or appropriate in furtherance of the goals of the Act. As described herein, under the Commission's Treasury Clearing rules, both of the Inter-Dealer Broker Netting Member's transactions with its respective counterparties will be required to be submitted into clearing, thereby allowing FICC to directly recognize and account for the offsetting exposure within the Inter-Dealer Broker Netting Member's Broker Account(s).[87] With the proposed establishment of the Guaranty Fund, FICC believes that it is appropriate to eliminate this legacy limitation on loss allocation for Inter-Dealer Broker Netting Members and include Inter-Dealer Broker Netting Members' Accounts in the Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts, as applicable) because (i) an Inter-Dealer Broker Netting Member's Broker Account(s) should not be subject to significant Guaranty Fund Requirements stemming from activity in non-directional (*i.e.,* matched book) accounts based on the proposed allocation methodology and (ii) any directional activity of an Inter-Dealer Broker Netting Member in its Dealer Account would present risk to FICC that FICC would need to manage in the event of the default of that Member in the same manner as the directional activity of any other Netting Member. As a result, FICC believes that including Inter-Dealer Broker Netting Members in the proposed Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts) would appropriately capture the risk that should be covered in the loss allocation process. In addition, such changes would subject Inter-Dealer Broker Netting Members and other Netting Members to the same loss allocation rules, thereby placing them on a more level playing field, which would serve to promote competition.

Taken together, the Proposed Rule Change is designed to enhance FICC's ability to collect sufficient prefunded financial resources to continue to complete the prompt and accurate clearance and settlement of securities transactions in the event of the default of its two largest Netting Member families under extreme but plausible market conditions, and thereby mitigating potential impacts on the broader financial system, which helps to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and protect investors and the public interest. Accordingly, FICC believes the Proposed Rule Change is necessary and appropriate to further the purposes of Section 17A(b)(3)(F) of the Act.

Finally, FICC believes that the proposed changes to remove fixed minimum Required Fund Deposits and minimum charges would promote greater competition. FICC notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (*e.g.,* a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC–GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC–GSD's various access models and/or utilizing multiple accounts under each model. Indirect participants, specifically, have raised concerns about $1 million per indirect participant minimum charge limiting the ability of indirect participants to access FICC's segregated customer margin offerings.[88] In addition, such minima may make it more difficult for smaller Netting Members and indirect participants, for whom a $1 million fixed charge is a proportionally greater cost, to compete with larger ones.[89] FICC therefore believes that removing these fixed minimum charges, and imposing minimums only where such charges are necessary for FICC to maintain sufficient coverage of its risk exposures would promote greater access to clearing for both direct and indirect market participants and improve the ability of Netting Members and indirect participants to compete on a level playing field.

For these reasons, FICC does not believe that the Proposed Rule Changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

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

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

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

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

(A) by order approve or disapprove such Proposed Rule Change, or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

The proposal shall not take effect until all regulatory actions required

[87] *See supra* note 59 and associated text.

[88] *See supra* note 50.

[89] The minimum's burden on smaller indirect participants was noted in the Managed Funds Association's comment letter on FICC's segregated customer margin rule proposal, which stated "[The minimum requirement] would discourage smaller indirect participants from selecting a segregated clearing model, which is not consistent with the customer protection objectives of the Securities Exchange Act of 1934 [. . .] or FICC's obligation to facilitate access." *See supra* note 50.

with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2026–008 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FICC–2026–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of FICC and on DTCC's website (*www.dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2026–008 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–16282 Filed 8–10–26; 8:45 am]

BILLING CODE 8011–01–P

[90] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106048; File No. SR–GEMX–2026–29]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Options 7, Section 3, Note 18

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2026, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 amend the Exchange's transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 3, 2026.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings,* and at the principal office of the Exchange.

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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers[3] and Non-Nasdaq GEMX Market Makers.[4] Currently, the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers are $0.43 per contract when the Member is (i) both the buyer and the seller, or (ii) if the Member removes liquidity from another Member as an Affiliated Member[5] or Affiliated Entity.[6] The Exchange proposes to increase this fee for Tier 3 and Tier 4 to $0.47 and $0.45 per contract, respectively. The proposed Tier 3 fee of $0.47 per contract would be in lieu of the default $0.50 per contract Penny Symbol Tier 3 Taker Fee, and the proposed Tier 4 fee of $0.45 per contract would be in lieu of the default $0.49 per contract Penny Symbol Tier 4 Taker Fee, for Market Makers and Non-Nasdaq GEMX Market Makers. A Member would continue to receive the pricing in either note 17 or amended note 18 with respect to SPY, whichever is more favorable, but not both in a given month. While the Exchange is increasing the Taker Fee in note 18, note

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[4] A ''Non-Nasdaq GEMX Market Maker,'' also referred to as a ''FarMM,'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* Options 7, Section 1(c).

[5] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. *See* Options 7, Section 1(c).

[6] An ''Affiliated Entity'' is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. *See* Options 7, Section 1(c).