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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-84951; File No. SR-FICC-2018-013]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Expand Sponsoring Member Eligibility in the Government Securities Division Rulebook and Make Other Changes

December 21, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 13, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.³ The Commission is publishing this notice to 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 would amend the FICC Government Securities Division (“GSD”) Rulebook (“Rules”)⁴ in order to (i) allow a broader group of Netting

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 13, 2018, FICC filed this proposed rule change as an advance notice (SR-FICC-2018-802) 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, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

⁴ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

Members to participate in FICC as Sponsoring Members, (ii) allow a Sponsoring Member to establish a Sponsoring Member Omnibus Account that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member, which Sponsoring Member Omnibus Account could be in addition to or in lieu of a Sponsoring Member Omnibus Account in which only transactions between a Sponsored Member and its Sponsoring Member would be permitted, and (iii) make certain conforming and technical changes in Rules 1 and 3A.

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

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

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

1. Purpose

The purpose of this proposed rule change is to (i) allow a broader group of Netting Members to participate in FICC as Sponsoring Members, (ii) allow a Sponsoring Member to establish a Sponsoring Member Omnibus Account that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member, which Sponsoring Member Omnibus Account could be in addition to or in lieu of a Sponsoring Member Omnibus Account in which only transactions

between a Sponsored Member and its Sponsoring Member would be permitted, and (iii) make certain conforming and technical changes in Rules 1 and 3A.

(i) Background

Under Rule 3A (Sponsoring Members and Sponsored Members), Bank Netting Members that are “well-capitalized” (as defined by the Federal Deposit Insurance Corporation’s applicable regulations)⁵ and have at least \$5 billion in equity capital are permitted to sponsor, as “Sponsoring Members,” qualified institutional buyers as defined by Rule 144A⁶ under the Securities Act of 1933, as amended (“Securities Act”),⁷ and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A under the Securities Act, satisfy the financial requirements necessary to be qualified institutional buyers as specified in that paragraph (i.e., Sponsored Members) into GSD membership.

Under Rule 3A, a Sponsoring Member is permitted to submit to FICC for comparison, novation, and netting certain types of eligible securities transactions between itself and its Sponsored Members (Sponsored Member Trades).⁸ The Sponsoring Member is required to establish an omnibus account at FICC for all its Sponsored Members’ FICC-cleared securities transactions (Sponsoring Member Omnibus Account),⁹ which is separate from the Sponsoring Member’s regular netting accounts.

⁵ 12 U.S.C. 1831o(a).

⁶ 17 CFR 230.144A.

⁷ 15 U.S.C. 77a *et seq.*

⁸ Rule 1, definition of “Sponsored Member Trade,” supra note 4.

⁹ Rule 1, definition of “Sponsoring Member Omnibus Account,” supra note 4.

For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members' obligations to FICC, including their securities and funds-only settlement obligations.¹⁰

Governance and Risk Management of Sponsoring Members

All Sponsoring Members are subject to the following governance, market risk management, and credit risk management processes specifically related to their status as Sponsoring Members under the current Rules, which would continue to apply equally to all Sponsoring Members notwithstanding the proposed rule changes described in this filing.

The governance process applicable to the approval of every applicant to become a Sponsoring Member is set forth in Rule 3A. In order to become a Sponsoring Member, an applicant is required to go through an application process, which includes a risk management review of the applicant by FICC specifically related to the activity it proposes to submit to FICC as a Sponsoring Member, and an approval of such applicant by the FICC Board of Directors¹¹ as a new Sponsoring Member.¹² This application process is separate from the applicant's original Netting Member application process. If the FICC Board of Directors denies the application of a Sponsoring Member applicant, FICC is required to handle such denial in the same way as set forth in Section 6 of Rule

¹⁰ Rule 3A, Sections 5, 6, 7, 8, and 9, supra note 4.

¹¹ FICC Board of Directors means the Board of Directors of Fixed Income Clearing Corporation or a committee thereof acting under delegated authority. Rule 1, supra note 4.

¹² Rule 3A, Section 2, supra note 4.

2A with respect to Netting Member applications.¹³ FICC may also require that a Sponsoring Member applicant be a Netting Member for a time period deemed necessary by FICC prior to being considered to become a Sponsoring Member.¹⁴

Once a Sponsoring Member is approved by the FICC Board of Directors, it is subject to ongoing credit surveillance and may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors as set forth in Rule 3, as FICC deems necessary to protect FICC and its members.¹⁵

FICC mitigates the market risk associated with Sponsored Member activity through the collection of Clearing Fund from the Sponsoring Member.¹⁶ A Sponsoring Member is required to maintain a Required Fund Deposit for all the Sponsored Member activity, which is calculated twice daily on a gross basis, in its Sponsoring Member Omnibus Account.¹⁷ Specifically, for purposes of calculating the Unadjusted GSD Margin Portfolio Amount for a Sponsoring Member Omnibus Account, each Sponsored Member's activity is assigned a separate VaR Charge, and, as such, the Unadjusted GSD Margin Portfolio Amount for the Sponsoring Member Omnibus Account is not reduced by any netting of positions as between different Sponsored Members within that Sponsoring Member Omnibus Account.¹⁸ In addition, for purposes of calculating the

¹³ Rule 3A, Section 2(b) and Rule 2A, Section 6, supra note 4.

¹⁴ Rule 3A, Section 2(a), supra note 4.

¹⁵ Rule 3, Section 12, supra note 4.

¹⁶ Rule 3A, Section 10, supra note 4.

¹⁷ Rule 3A, Section 10(a), supra note 4.

¹⁸ Rule 3A, Section 10(c), supra note 4.

Unadjusted GSD Margin Portfolio Amount applicable to a Sponsoring Member Omnibus Account, FICC applies the higher of the Required Fund Deposit calculation as of the beginning of the current Business Day and intraday on the current Business Day.¹⁹ FICC has the right to apply all such Clearing Fund deposits plus all other Clearing Fund deposits of the Sponsoring Member for its Netting System accounts against any obligations owing to FICC by the Sponsoring Member, including (but not limited to) in a Sponsoring Member default situation.²⁰ In a Sponsoring Member default situation, FICC may apply all such Clearing Fund deposits against any obligations owing to FICC by the Sponsoring Member before any of the other resources in the GSD default loss waterfall would be used, including, in the final tranche of such waterfall, potential loss mutualization to Netting Members.²¹

Moreover, Sponsoring Members are also responsible for providing FICC with a Sponsoring Member Guaranty²² whereby the Sponsoring Member guarantees to FICC the payment and performance by its Sponsored Members of their obligations under the Rules.²³ Although Sponsored Members are principally liable to FICC for their own

¹⁹ Id.

²⁰ Rule 3A, Section 10(b), supra note 4.

²¹ See Rule 3A, Section 10(b) and Rule 4, Section 6, supra note 4.

²² Section 2(c) of Rule 3A provides “Each Netting Member to become a Sponsoring Member shall also sign and deliver to [FICC] a Sponsoring Member Guaranty” A “Sponsoring Member Guaranty” is defined in Rule 1 as “a guaranty ... that a Sponsoring Member delivers to [FICC] whereby the Sponsoring Member guarantees to [FICC] the payment and performance by its Sponsored Members of their obligations under [the] Rules, including, without limitation, all of the securities and funds-only settlement obligations of its Sponsored Members under [the] Rules.” Supra note 4.

²³ Rule 3A, Section 2(c), supra note 4.

settlement obligations under the Rules, the Sponsoring Member is required to provide a Sponsoring Member Guaranty to FICC with respect to such obligations whereby if a Sponsored Member defaults and does not satisfy its settlement obligations to FICC, the Sponsoring Member is required to satisfy those settlement obligations on behalf of its defaulted Sponsored Member. As long as the Sponsoring Member performs under the Sponsoring Member Guaranty, it would not separately be considered in default to FICC, but failure to do so would be grounds for FICC to cease to act for the Sponsoring Member.²⁴

Proposed Rule Changes to Expand Sponsoring Member Eligibility

As described above, Rule 3A (Sponsoring Members and Sponsored Members) currently provides that Bank Netting Members that are “well-capitalized” (as defined by the Federal Deposit Insurance Corporation’s applicable regulations)²⁵ and have at least \$5 billion in equity capital are eligible to become Sponsoring Members.²⁶

In 2017, the Commission approved FICC rule filing SR-FICC-2017-003,²⁷ which expanded the types of entities that are eligible to participate in FICC as Sponsored Members under Rule 3A. Since that time, Netting Members that are not Bank Netting Members have expressed interest to FICC in participating in FICC as Sponsoring Members.

²⁴ Rule 3A, Section 2(g), supra note 4.

²⁵ 12 U.S.C. 1831o(a).

²⁶ Rule 3A, Section 2(a), supra note 4.

²⁷ Securities Exchange Act Release No. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR-FICC-2017-003).

The proposed rule change would create two categories of Netting Members that would be eligible to become Sponsoring Members. The first category of Netting Members would include currently eligible Bank Netting Members that are “well-capitalized” (as defined by the Federal Deposit Insurance Corporation’s applicable regulations)²⁸ and have at least \$5 billion in equity capital (hereinafter and in the proposed rule change, “Category 1 Sponsoring Members”). The second category of Netting Members eligible to become Sponsoring Members would include Netting Members that are Tier One Netting Members, except for Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers with respect to activity in their Segregated Repo Accounts (hereinafter and in the proposed rule change, “Category 2 Sponsoring Members”). As such, the proposed rule change would provide that Category 2 Sponsoring Member applicants could include, for example, Dealer Netting Members, Futures Commission Merchant Netting Members, and Foreign Netting Members.

FICC is proposing that neither Inter-Dealer Broker Netting Members nor Non-IDB Repo Brokers with respect to activity in their Segregated Repo Accounts be eligible to become Category 2 Sponsoring Members. Although Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers are types of Netting Members, a cap applies to their respective loss allocation obligations to FICC under Rule 4, Section 7²⁹ that does

²⁸ 12 U.S.C. 1831o(a).

²⁹ Section 7 of Rule 4 provides that “an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall not be subject to an aggregate loss allocation in an amount greater than \$5 million pursuant to this Section 7 for losses and liabilities resulting from an Event Period.” Supra note 4. The limit on loss allocation for these Members reflects their risk profile. Specifically, an Inter-Dealer Broker Netting Member is required to (A) limit its business to acting exclusively as a broker, (B) conduct all of its business in Repo Transactions with Netting Members, and (C) conduct at

not apply to other types of Netting Members; therefore, FICC does not believe it would be appropriate to allow either Inter-Dealer Broker Netting Members or Non-IDB Repo Brokers to be eligible to become Category 2 Sponsoring Members. However, to the extent an Inter-Dealer Broker Netting Member or Non-IDB Repo Broker also has another type of Netting Member status with respect to which it is not subject to the loss allocation cap described above, such Inter-Dealer Broker Netting Member or Non-IDB Repo Broker could apply to become a Category 2 Sponsoring Member under such other Netting Member status.

The minimum financial requirements applicable to Netting Member applicants to become Category 2 Sponsoring Members would be the same as those that apply to them with respect to their respective Netting Member category under Section 4(b) of Rule 2A. However, since a Category 2 Sponsoring Member may have substantially less capital than a Category 1 Sponsoring Member, the proposed rule change would provide that FICC could impose financial requirements on an applicant to become a Category 2 Sponsoring Member that are greater than the financial requirements applicable to such applicant in its capacity as a Netting Member under Section 4(b) of Rule 2A. FICC's determination as to whether to impose such increased financial requirements on a Category 2 Sponsoring Member applicant would be based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through

least 90 percent of its business in transactions that are not Repo Transactions with Netting Members. Rule 3, Section 8(e), supra note 4. Likewise, a Non-IDB Repo Broker is required to operate in the same way as a Broker with respect to activity in its Segregated Repo Account. Rule 1, definition of "Repo Broker," supra note 4.

FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant. Such a determination by FICC to impose increased financial requirements on a Category 2 Sponsoring Member applicant would be subject to the approval of the FICC Board of Directors in connection with its approval of the application of such Category 2 Sponsoring Member, and, once approved, FICC would thereafter regularly review such Category 2 Sponsoring Member regarding its continued adherence to such increased financial requirements.

In addition to reserving the right of FICC to impose financial requirements on a Category 2 Sponsoring Member that are greater than the financial requirements applicable to it in its capacity as a Netting Member under Section 4(b) of Rule 2A, the proposed rule change would also impose an activity limit on a Category 2 Sponsoring Member's Sponsored Member activity so that such Sponsoring Member would only be permitted to novate new Sponsored Member activity to FICC to the extent the sum of the VaR Charges of its Sponsoring Member Omnibus Account(s) and its Netting System accounts (hereinafter "Aggregate VaR Charges") do not exceed its Netting Member Capital. The ratio of a Category 2 Sponsoring Member's Aggregate VaR Charges to its Netting Member Capital would be calculated by FICC on at least an hourly basis for monitoring purposes. To the extent a Category 2 Sponsoring Member's Aggregate VaR Charges exceed its Netting Member Capital, it would not be permitted to submit new Sponsored Member activity to FICC until its Netting Member Capital equals or exceeds its Aggregate VaR Charges, unless otherwise determined by FICC in order to promote orderly settlement, which would include, but not be limited to, circumstances in which

the novation of such activity would have a risk-reducing impact on the Category 2 Sponsoring Member's overall FICC-cleared portfolio.

FICC selected the ratio of Aggregate VaR Charges to Netting Member Capital for purposes of establishing the activity limit for Category 2 Sponsoring Members because this ratio is an important indicator that a Category 2 Sponsoring Member's financial resources, as measured by its net assets or equity capital, are sufficient to meet the largest component of its Required Fund Deposit (i.e., VaR Charges). VaR Charges and Netting Member Capital are also metrics that already exist in the Rules for purposes of determining Netting Members' Excess Capital Ratios, and, in turn, whether an Excess Capital Premium could be applied by FICC to Netting Members' Required Fund Deposits as provided in Section 14 of Rule 3 (Ongoing Membership Requirements).³⁰ As such, Netting Members that are interested in becoming Category 2 Sponsoring Members should already be familiar with and should be currently monitoring their FICC-cleared portfolio with respect to such metrics.

FICC proposes to apply the above-referenced activity limit only on Category 2 Sponsoring Members and not on Category 1 Sponsoring Members. This is because Category 1 Sponsoring Members are "well-capitalized"³¹ and, as banks, subject to extensive prudential supervision and regulation with respect to their obligations under guaranties of performance, such as the Sponsoring Member Guaranty; therefore, FICC believes the imposition of a limit on their Sponsored Member activity would be unnecessary. However, given that FICC would not require Category 2 Sponsoring

³⁰ Rule 3, Section 14, supra note 4.

³¹ 12 U.S.C. 1831o(a).

Members to be banks or bank holding company affiliates, a Category 2 Sponsoring Member may not be subject to a regulatory standard equivalent to “well-capitalized”³² and/or may not be subject to the same type of prudential supervision and regulation as a Category 1 Sponsoring Member; therefore, FICC believes it would be prudent from a risk management perspective to impose a limit on Category 2 Sponsoring Members’ Sponsored Member activity.

Moreover, in order to be consistent with FICC’s authority under Section 7 of Rule 3 (Ongoing Membership Requirements) with respect to Members and applicants to become such, FICC proposes to reserve the right to require each Sponsoring Member, or any Netting Member applicant to become such, to furnish to FICC such adequate assurances of its financial responsibility and operational capability within the meaning of Section 7 of Rule 3 as FICC may at any time or from time to time deem necessary or advisable in order to protect FICC and its members, to safeguard securities and funds in the custody or control of FICC and for which FICC is responsible, or to promote the prompt and accurate clearance and settlement of securities transactions. Such a determination by FICC to impose adequate assurances on a Sponsoring Member applicant would be subject to the approval of the FICC Board of Directors in connection with its approval of the application of such Sponsoring Member, and, once approved, FICC would thereafter regularly review such Sponsoring Member regarding its continued adherence to such adequate assurances requirements, as appropriate. Any adequate assurances requirements imposed on a Sponsoring Member after its approval would be

³² Id.

memorialized in writing to the Sponsoring Member and regularly reviewed by senior risk management of FICC.

Proposed Rule Changes to Expand Sponsored Member Trade Definition

Currently, the term “Sponsored Member Trade” is defined in Rule 1 as “a transaction between a Sponsored Member and its Sponsoring Member”³³ Certain prospective Sponsoring Members have expressed an interest in allowing Sponsored Members to submit to FICC eligible securities transactions with Netting Members other than their Sponsoring Members. In light of the fact that in all cases, a Sponsoring Member is in control of which securities transactions it submits for clearing on behalf of its Sponsored Members³⁴ and, in turn, its related obligations to FICC with respect to the Clearing Fund,³⁵ loss allocation,³⁶ Capped Contingency Liquidity Facility[®] (“CCLF[®]”),³⁷ the Sponsoring Member Guaranty,³⁸ and fees,³⁹ FICC is proposing to allow

³³ Rule 1, definition of “Sponsored Member Trade,” supra note 4.

³⁴ Section 6(b) of Rule 3A provides “The Sponsoring Member shall act as processing agent for performing all functions and receiving Reports and information set forth in the trade submission and comparison Rules on behalf of its Sponsored Members.” Supra note 4.

³⁵ Section 10(a) of Rule 3A provides “Each Sponsoring Member shall make and maintain so long as such Member is a Sponsoring Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in the Sponsoring Member Omnibus Account... .” Supra note 4.

³⁶ Rule 3A, Section 12, supra note 4.

³⁷ Approved by the Commission, CCLF will be implemented on November 15, 2018. Securities Exchange Act Release No. 82090 (November 15, 2017), 82 FR 55427 (November 21, 2017) (SR-FICC-2017-002).

³⁸ Section 2 of Rule 3A provides “Each Netting Member to become a Sponsoring Member shall also sign and deliver to [FICC] a Sponsoring Member Guaranty” A “Sponsoring Member Guaranty” is defined in Rule 1 as “a guaranty ... that a Sponsoring Member delivers to [FICC] whereby the Sponsoring Member

a Sponsoring Member to establish a Sponsoring Member Omnibus Account that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member, which Sponsoring Member Omnibus Account could be in addition to or in lieu of a Sponsoring Member Omnibus Account in which only transactions between a Sponsored Member and its Sponsoring Member would be permitted.⁴⁰

Benefits of the Proposal

FICC believes that the novation of eligible securities transactions to FICC provides Sponsoring Members and their Sponsored Members the benefits of FICC's independent risk management and guaranty of completion of settlement of such transactions. In addition, Sponsoring Members may be able to offset or otherwise reduce their balance sheets with respect to their obligations to FICC on Sponsored Member Trades, as well as take lesser capital charges than would be required to the extent they engaged in the same securities transactions with their Sponsored Members outside of a central counterparty.⁴¹ By participating in FICC as Sponsored Members, eligible

guarantees to [FICC] the payment and performance by its Sponsored Members of their obligations under [the] Rules, including, without limitation, all of the securities and funds-only settlement obligations of its Sponsored Members under [the] Rules.” Supra note 4.

³⁹ Fee Structure, supra note 4.

⁴⁰ To the extent a Sponsoring Member elects to establish a Sponsoring Member Omnibus Account that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member, the Required Fund Deposit for such Sponsoring Member Omnibus Account would be calculated to be inclusive of all transactions submitted into such account, including any transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member as well as any transactions between a Sponsored Member and the Sponsoring Member.

⁴¹ Sponsoring Members interested in such relief should discuss this matter with their accounting and regulatory capital experts.

institutional firms may be afforded increased lending capacity and income because balance sheet and capital constraints on their Sponsoring Members may be alleviated. Specifically, the opportunity for Sponsoring Members to intermediate their Sponsored Members' securities transactions in a more capital efficient manner through FICC may allow such Sponsoring Members to engage in a greater number of securities transactions, thereby potentially increasing their Sponsored Members' opportunity to lend and, in turn, their income.

FICC believes that the proposed rule changes to expand Sponsoring Member eligibility and the Sponsored Member Trade definition, as described above, would help to safeguard the U.S. financial market by lowering the risk of liquidity drain, protecting against fire sale risk,⁴² and decreasing settlement and operational risk.

FICC believes that expanding the types of Netting Members that are eligible to participate in FICC as Sponsoring Members would increase the number of Sponsoring Members and, in turn, the number of Sponsored Member Trades that would be cleared and settled by FICC. Similarly, FICC believes that the proposed rule changes to expand the Sponsored Member Trade definition would also increase the number of Sponsored Member Trades that would be cleared and settled by FICC. FICC believes having more Sponsored Member Trades that clear and settle through FICC would mitigate the risk of a large scale exit by firms from the U.S. financial market in a stress scenario and therefore lower the risk of a liquidity drain in such a scenario. Specifically, to the extent firms

⁴² Fire sale risk is the risk of rapid asset sales of securities held by cash lenders when a dealer defaults. This rapid sale has the potential to create a market crisis because cash lenders are likely to sell large amounts of securities in a short period of time, which could dramatically reduce the price of such securities that such lenders are looking to sell.

would otherwise be engaging in the same type of eligible securities transactions (e.g., repurchase agreement transactions) outside of a central counterparty, FICC believes having such securities transactions novated to FICC and subject to FICC's guaranty of completion of settlement would reduce the risk that such firms discontinue such securities transactions in a Netting Member default situation.

Similarly, FICC believes having more Sponsored Member Trades that clear and settle through FICC would also reduce the potential for market disruption from fire sales. Specifically, in a Netting Member default situation, more securities transactions with the defaulted Netting Member could be centrally hedged and liquidated in an orderly manner by FICC rather than by individual counterparties in potential fire sale conditions.

In addition, to the extent firms would otherwise be engaging in eligible securities transactions (e.g., repurchase agreement transactions) outside of a central counterparty, FICC believes having more Sponsored Member Trades that clear and settle through FICC would also decrease settlement and operational risk in the U.S. financial market in that such securities transactions would now be eligible to be net settled⁴³ and subject to guaranteed settlement, novation, and independent risk management through FICC.

(ii) Proposed Changes to the Rules

Rule 1 (Definitions)

FICC is proposing to add two defined terms: "Category 1 Sponsoring Member" and "Category 2 Sponsoring Member" to Rule 1. In order to conform Rule 1 with the inclusion of these additional defined terms, FICC is also proposing to amend the

⁴³ It should be noted that net settlements of securities for Sponsored Member Trades would be executed by the Sponsoring Member's designated clearing bank in accordance with Rule 12 (Securities Settlement).

definition of “Sponsoring Member” to include references to a Category 1 Sponsoring Member and a Category 2 Sponsoring Member.

FICC is also proposing to amend the definition of “Sponsored Member Trade.” Currently, the term “Sponsored Member Trade” is defined in Rule 1 as “a transaction between a Sponsored Member and its Sponsoring Member”⁴⁴ As described above, in light of the fact that certain prospective Sponsoring Members have expressed an interest in allowing Sponsored Members to submit to FICC eligible securities transactions with Netting Members other than their Sponsoring Member, and that, in all cases, a Sponsoring Member is in control of which securities transactions it submits for clearing on behalf of its Sponsored Members⁴⁵ and, in turn, its related obligations to FICC with respect to the Clearing Fund,⁴⁶ loss allocation,⁴⁷ CCLF,⁴⁸ Sponsoring Member Guaranty,⁴⁹ and fees,⁵⁰ FICC is proposing to expand the Sponsored Member Trade definition to provide that a Sponsored Member Trade is a transaction that satisfies the requirements of Section 5 of Rule 3A and that is (a) between a Sponsored Member and its Sponsoring Member or (b) between a Sponsored Member and a Netting Member.

⁴⁴ Rule 1, definition of “Sponsored Member Trade,” supra note 4.

⁴⁵ Supra note 34.

⁴⁶ Supra note 35.

⁴⁷ Supra note 36.

⁴⁸ Supra note 37.

⁴⁹ Supra note 38.

⁵⁰ Supra note 39.

Similarly, FICC is proposing to amend the definition of “Sponsoring Member Omnibus Account” in Rule 1 to provide that a Sponsoring Member may elect to establish one or more Sponsoring Member Omnibus Accounts, and that each Sponsoring Member Omnibus Account may contain activity within the meaning of clause (a) of the proposed Sponsored Member Trade definition or activity within the meaning of clause (b) of such definition. In addition, FICC is proposing a technical change to revise “the Account” to “an Account” to reflect that a Sponsoring Member may have more than one Sponsoring Member Omnibus Account under this proposal.

Rule 3A (Sponsoring Members and Sponsored Members)

Currently, only Bank Netting Members that are “well-capitalized”⁵¹ and have at least \$5 billion in equity capital are eligible to apply to become Sponsoring Members. In order to establish a second category of Netting Members eligible to become Sponsoring Members, FICC is proposing to amend Section 2(a) of Rule 3A by (i) renaming Sponsoring Members that are well-capitalized Bank Netting Members as Category 1 Sponsoring Members and (ii) adding a sentence to Section 2(a) of Rule 3A that provides that a Netting Member that is a Tier One Netting Member, other than an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, would be eligible to apply to become a Category 2 Sponsoring Member. In addition, FICC is proposing a technical change to add a missing parenthesis in Section 2(a) of Rule 3A.

⁵¹ 12 U.S.C. 1831o(a).

FICC is proposing a conforming change to reorganize Section 2(b) of Rule 3A into four (4) subsections, grouping the current first three sentences in that section into subsection (i) and the current last sentence in that section into subsection (iii).

Under the proposal, Netting Members that are Tier One Netting Members, except for Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers with respect to activity in their Segregated Repo Accounts, would be eligible to apply to become Category 2 Sponsoring Members. Accordingly, an applicant to become a Category 2 Sponsoring Member may have substantially less capital than a Category 1 Sponsoring Member. Therefore, FICC is proposing to add a new subsection (ii) to Section 2(b) of Rule 3A that would provide FICC with the right to impose financial requirements on a Netting Member applying to become a Category 2 Sponsoring Member that are greater than the financial requirements applicable to the applicant in its capacity as a Netting Member under Section 4(b) of Rule 2A, based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant. FICC is also proposing to add that the Board would approve any increased financial requirements imposed by FICC in connection with the approval of an application of a Netting Member to become a Category 2 Sponsoring Member, and FICC would thereafter regularly review such Category 2 Sponsoring Member regarding its compliance with such increased financial requirements.

In addition, in order to be consistent with FICC's authority under Section 7 of Rule 3 (Ongoing Membership Requirements) with respect to Members and applicants to

become such, FICC is proposing to add a new subsection (iv) to Section 2(b) of Rule 3A that would require each Sponsoring Member, or any Netting Member applicant to become such, to furnish to FICC such adequate assurances of its financial responsibility and operational capability within the meaning of Section 7 of Rule 3 as FICC may at any time or from time to time deem necessary or advisable in order to protect FICC and its members, to safeguard securities and funds in the custody or control of FICC and for which FICC is responsible, or to promote the prompt and accurate clearance and settlement of securities transactions. FICC is also proposing to add that the Board would approve any adequate assurances imposed by FICC in connection with the approval of an application of a Netting Member to become a Sponsoring Member, and FICC would thereafter regularly review such Sponsoring Member regarding its compliance with such adequate assurances, as appropriate. Furthermore, FICC is proposing to add that any adequate assurances imposed on a Sponsoring Member by FICC after its approval would be communicated in writing to the Sponsoring Member, and FICC would thereafter regularly review such Sponsoring Member regarding its compliance with such adequate assurances, as appropriate.

Moreover, in order to conform to the proposal to allow a Netting Member that is a Tier One Netting Member, other than an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, to apply to become a Category 2 Sponsoring Member, FICC is proposing to amend Section 2(e) of Rule 3A by deleting the reference to Bank Netting Members and adding language that provides that each Sponsoring Member would submit to FICC the reports and information required to be submitted for its respective type of Netting Member.

Furthermore, in order to impose an activity limit on a Category 2 Sponsoring Member's Sponsored Member activity, as described above, FICC is proposing to add a new sentence to Section 2(h) of Rule 3A that provides if the sum of the VaR Charges of its Sponsoring Member Omnibus Account(s) and its Netting System accounts exceeds its Netting Member Capital, a Category 2 Sponsoring Member would not be permitted to submit activity into its Sponsoring Member Omnibus Account(s), unless otherwise determined by FICC in order to promote orderly settlement. FICC would also make a conforming change to the first sentence in this section to add "Category 1" before the first reference to Sponsoring Member.

2. Statutory Basis

FICC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act⁵² and Rule 17Ad-22(e)(18),⁵³ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.⁵⁴

⁵² 15 U.S.C. 78q-1(b)(3)(F).

⁵³ 17 CFR 240.17Ad-22(e)(18).

⁵⁴ 15 U.S.C. 78q-1(b)(3)(F).

FICC believes that the proposal is designed to remove certain impediments to the clearance and settlement of securities transactions, including the risk of liquidity drain, fire sale risk, and settlement and operational risks as it would enable a greater number of securities transactions to be cleared and settled by a central counterparty. Specifically, FICC believes that the clearance and settlement of securities transactions through a central counterparty would help to safeguard the U.S. financial market by lowering the risk of a liquidity drain through the central counterparty's guaranty of completion of settlement of centrally cleared securities transactions, and would protect against fire sale risk through the central counterparty's ability to centralize and control the hedging and liquidation of a failed counterparty's portfolio. FICC also believes that having more securities transactions clear and settle through a central counterparty would decrease the settlement and operational risks that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be eligible to be net settled and subject to guaranteed settlement, novation, and independent risk management by the central counterparty.

FICC believes that the proposed rule changes to expand the Sponsored Member Trade definition would increase the number of Sponsored Member Trades that would be cleared and settled by FICC. FICC also believes that the proposed rule changes to expand Sponsoring Member eligibility would increase the number of Sponsoring Members and, in turn, the number of Sponsored Member Trades that would be cleared and settled by FICC.

By lowering the risk of liquidity drain in the U.S. financial market, protecting against fire sale risk, and making a greater number of securities transactions eligible to be net settled and subject to guaranteed settlement, novation, and independent risk management by FICC, FICC believes that these proposed rule changes would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act. Therefore, FICC believes that the proposed rule changes to expand the Sponsored Member Trade definition as well as expand Sponsoring Member eligibility are consistent with Section 17A(b)(3)(F) of the Act.⁵⁵

Section 17A(b)(3)(F) of the Act requires that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.⁵⁶ FICC believes that the risk management that would apply to the proposal would allow FICC to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible. Specifically, as provided under the current Rules and as described above, all Sponsoring Members would continue to be subject to an approval process that is separate from their original Netting Member applications, ongoing credit surveillance in their capacity as Sponsoring Members, as well as the calculation of Required Fund Deposits with respect to their Sponsoring Member Omnibus Accounts whereby no offsets for netting of positions as between different Sponsored Members are permitted and the higher of the Required Fund Deposit

⁵⁵ Id.

⁵⁶ Id.

calculation as of the beginning of the current Business Day and intraday on the current Business Day is applied by FICC.

In addition, as provided under the proposed rule change and as described above, Category 2 Sponsoring Member applicants would be subject to the same financial requirements as those that apply to them with respect to their respective Netting Member category under Section 4(b) of Rule 2A, but FICC would reserve the right to impose greater financial requirements on the Category 2 Sponsoring Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant. An activity limit would also be imposed on a Category 2 Sponsoring Member's Sponsored Member activity so that such Sponsoring Member would only be permitted to novate new Sponsored Member activity to FICC to the extent its Aggregate VaR Charges do not exceed its Netting Member Capital, unless otherwise determined by FICC in order to promote orderly settlement, which would include, but not be limited to, circumstances in which the novation of such activity would have a risk-reducing impact on the Category 2 Sponsoring Member's overall FICC-cleared portfolio.

Moreover, as provided under the proposed rule change and as described above, FICC would reserve the right to require each Sponsoring Member, or any Netting Member applicant to become such, to furnish to FICC such adequate assurances of its financial responsibility and operational capability within the meaning of Section 7 of Rule 3 as FICC may at any time or from time to time deem necessary or advisable in

order to protect FICC and its members, to safeguard securities and funds in the custody or control of FICC and for which FICC is responsible, or to promote the prompt and accurate clearance and settlement of securities transactions.

By structuring the proposal in a way that addresses potential market and credit risks, FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.⁵⁷

In addition, FICC believes that the proposed rule changes to make certain conforming and/or technical changes in Rule 1 and Rule 3A would be designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to Members. Having clear and accurate Rules would facilitate Members' understanding of those rules and provide Members with increased predictability and certainty regarding their obligations. As such, FICC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.⁵⁸

Rule 17Ad-22(e)(18) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.⁵⁹ The proposed rule changes to expand Sponsoring Member eligibility would establish objective, risk-based, and publicly disclosed criteria for additional types of Netting

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ 17 CFR 240.17Ad-22(e)(18).

Members to participate in FICC as Sponsoring Members. Specifically, as described above, an applicant to become a Category 2 Sponsoring Member would be required to be a Netting Member that is a Tier One Netting Member, other than an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, and the Rules establish objective, risk-based, and publicly disclosed criteria in Rules 2A and 3 for Netting Members.⁶⁰ Therefore, FICC believes that the proposed rule changes to expand Sponsoring Member eligibility are consistent with Rule 17Ad-22(e)(18) under the Act cited above.

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

FICC believes that the proposed rule changes to expand Sponsoring Member eligibility could have an impact on competition by both promoting competition and burdening competition. The proposed rule change to expand Sponsoring Member eligibility could promote competition by increasing the types of Netting Members that may participate in FICC as Sponsoring Members. This could promote competition by enabling firms that are not Bank Netting Members and that were not previously eligible to participate in GSD as Sponsoring Members to now do so as Category 2 Sponsoring Members. At the same time, the proposed rule change would also impose certain requirements on Category 2 Sponsoring Members that are different than those that would apply to Category 1 Sponsoring Members. Specifically, the proposed rule change would provide for a limit on the activity Category 2 Sponsoring Members could submit to FICC on behalf of their Sponsored Members, and also provide that FICC could impose greater financial requirements on a Category 2 Sponsoring Member applicant than would

⁶⁰ Rules 2A and 3, supra note 4.

otherwise apply to such firm in its capacity as a Netting Member, based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant. These requirements may impact firms that are unable to comply therewith, and thereby burden competition by excluding them from being able to participate in FICC as Category 2 Sponsoring Members. However, FICC does not believe that the proposed rule change would result in a significant burden on competition given that: (i) the metrics proposed by FICC for the limit on Category 2 Sponsoring Members' Sponsored Member activity, namely VaR Charges and Netting Member Capital, already exist in the Rules for purposes of determining whether FICC could apply an Excess Capital Premium to a Netting Member's Required Fund Deposit, therefore, Netting Members interested in becoming Category 2 Sponsoring Members should already be familiar with and should be currently monitoring their FICC-cleared portfolio with respect to such metrics, and (ii) while FICC may subject Category 2 Sponsoring Members to greater financial requirements than would otherwise apply to them as Netting Members, current Sponsoring Members who would be considered Category 1 Sponsoring Members under the proposed rule change are already subject to greater financial requirements than would otherwise apply to them as Bank Netting Members, i.e., they are required to have at least \$5 billion in equity capital and be "well capitalized"⁶¹ rather than have of \$100 million in equity capital, and capital levels and ratios that meet the applicable minimum levels

⁶¹ 12 U.S.C. 1831o(a).

required by their Appropriate Regulatory Agency.⁶² Moreover, FICC would not restrict the ability of Category 2 Sponsoring Members to enter into securities transactions with Sponsored Members outside of GSD.

Regardless of whether the potential burden on competition discussed in the previous paragraph is significant, FICC believes that any resulting burden on competition that may be created by the proposed rule change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁶³ FICC believes that any burden on competition that may be created by the proposed rule change would be necessary in furtherance of the purposes of the Act⁶⁴ because, as described above in Item II(A)2, the Rules must be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or for which it is responsible.⁶⁵ FICC has designed the risk management processes that would be applicable to the Category 2 Sponsoring Members to assure the safeguarding of securities and funds that are in FICC's custody or control or for which it is responsible. As described above, FICC would subject Category 2 Sponsoring Members to the same governance, market risk management, and credit risk management processes as those that apply to Category 1 Sponsoring Members, as well as impose a limit on the activity they could submit to FICC on behalf of their Sponsored Members. FICC would also have the right to subject Category 2 Sponsoring Members to greater financial requirements in their

⁶² Rule 2A, Section 4(b)(ii)(A)(1), supra note 4.

⁶³ 15 U.S.C. 78q-1(b)(3)(I).

⁶⁴ Id.

⁶⁵ 15 U.S.C. 78q-1(b)(3)(F).

capacity as Category 2 Sponsoring Members than would otherwise apply to them in their capacity as Netting Members.

FICC also believes any burden on competition that may be created by the requirements FICC proposes to impose on Category 2 Sponsoring Members that are different than those that apply to Category 1 Sponsoring Members would be appropriate in furtherance of the purposes of the Act⁶⁶ because the proposed rule change must be structured in the context of FICC's prudent risk management processes. Because FICC would not require Category 2 Sponsoring Members to be banks or bank holding company affiliates, a Category 2 Sponsoring Member may not be subject to a regulatory standard equivalent to "well-capitalized"⁶⁷ and/or may not be subject to the same type of prudential supervision and regulation as a Category 1 Sponsoring Member. As such, FICC believes it would be prudent from a risk management perspective to subject them to a limit on the activity they could submit to FICC on behalf of their Sponsored Members and have the right to subject them to greater financial requirements in their capacity as Category 2 Sponsoring Members than would otherwise apply to them in their capacity as Netting Members, as described above.

FICC does not believe that the proposed rule changes to exclude Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers with respect to activity in their Segregated Repo Accounts from being eligible to become Category 2 Sponsoring Members would have an impact on competition because, as described above, Inter-Dealer

⁶⁶ 15 U.S.C. 78q-1(b)(3)(I).

⁶⁷ 12 U.S.C. 1831o(a).

Broker Netting Members and Non-IDB Repo Brokers could apply to become Category 2 Sponsoring Members under another Netting Member status.

FICC believes that the proposed rule change to expand the Sponsored Member Trade definition could have an impact on competition by promoting competition. The proposed rule change to expand the Sponsored Member Trade definition could promote competition by increasing the number of potential counterparties a Sponsored Member could have in clearing. Under the current Rules, the Sponsoring Member must be the counterparty to all of its Sponsored Members' FICC-cleared securities transactions.⁶⁸ The proposed rule changes would provide that as long as a Sponsoring Member establishes a Sponsoring Member Omnibus Account to which securities transactions between its Sponsored Members and other Netting Members could be submitted, its Sponsored Members could transact in clearing with Netting Members other than itself, which could increase trading opportunities for Sponsored Members and Netting Members and thereby promote competition.

FICC does not believe that the proposed rule changes to make the conforming and technical changes described above would have an impact on competition.⁶⁹ These changes would simply provide specificity, clarity, and additional transparency within the Rules and not affect Members' rights and obligations. As such, FICC believes that these proposed rule changes would not have any impact on competition.

⁶⁸ Rule 1, definition of "Sponsored Member Trade," supra note 4.

⁶⁹ 15 U.S.C. 78q-1(b)(3)(I).

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

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

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

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

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2018-013 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-2018-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2018-013 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁰

Brent J. Fields,
Secretary.

⁷⁰ 17 CFR 200.30-3(a)(12).

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