

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact [request.schedule@nara.gov](mailto:request.schedule@nara.gov) for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

## Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

## Schedules Pending

1. Department of Justice, Executive Office for Immigration Review, Charging Document Bond Files (DAA–0582–2023–0001).

**Laurence Brewer,**  
*Chief Records Officer for the U.S. Government.*

[FR Doc. 2023–18101 Filed 8–22–23; 8:45 am]

**BILLING CODE 7515–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98159; File No. SR–NYSEAMER–2023–40]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify the NYSE American Options Fee Schedule

August 17, 2023.

Pursuant to section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934

<sup>1</sup> 15 U.S.C. 78s(b)(1).

(“Act”) <sup>2</sup> and Rule 19b–4 thereunder, <sup>3</sup> notice is hereby given that, on August 8, 2023, NYSE American LLC (“NYSE American” or “Exchange”) 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 self-regulatory organization. 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding Floor Broker incentives and the Strategy Execution Fee Cap. The Exchange proposes to implement the fee changes effective August 8, 2023. <sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

The purpose of this filing to amend the Fee Schedule to (1) delete text relating to the expired Floor Broker Grow With Me Program and add a new Floor Broker incentive, and (2) add dividend strategies to the list of strategy executions eligible for the Strategy Execution Fee Cap (the “Strategy Cap”). The Exchange proposes to implement the rule changes on August 8, 2023.

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> The Exchange previously filed to amend the Fee Schedule on July 31, 2023 (SR–NYSEAMER–2023–38) and withdrew such filing on August 8, 2023.

## Floor Broker Incentives

The Exchange proposes to modify Section III.E.2. of the Fee Schedule to delete text providing for the Floor Broker Grow With Me Program (the “Grow With Me Program”), which expired on July 31, 2023, and to introduce the Floor Broker Manual Billable Incentive Program (the “Manual Billable Incentive Program”). The Exchange proposes that Floor Brokers would be eligible for rebates on manual billable volume through the Manual Billable Incentive Program by achieving certain qualifying levels of average daily manual billable contracts. Specifically, a Floor Broker would earn a rebate of (\$0.05) per manual billable side by executing an average daily volume of 40,000 manual billable contracts; a rebate of (\$0.07) per manual billable side by executing an average daily volume of 100,000 manual billable contracts; or a rebate of (\$0.09) per manual billable side by executing an average daily volume of 150,000 manual billable contracts. Rebates available through the Manual Billable Incentive Program would be payable back to the first contract, and Floor Brokers would earn the highest rebate for which they qualify.<sup>5</sup> The Exchange believes that the proposed qualifications for rebates available through the Manual Billable Incentive Program are reasonable and attainable by Floor Brokers based on their recent manual billable volume.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their manual billable volume, the proposed change is designed to continue to incentivize Floor Brokers to do so by offering rebates on manual billable volume. All Floor Brokers would be eligible to earn a rebate through the Manual Billable Incentive Program, as proposed.

## Strategy Cap

Currently, the Strategy Cap provides for a \$1,000 cap on transaction fees for strategy executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.<sup>6</sup> The Strategy Cap applies to each strategy execution executed in standard option contracts on the same trading day. In addition, the cap is reduced to \$200 on transactions fees for qualifying strategies traded on the same trading

day for those ATP Holders that trade at least 25,000 monthly billable contract sides in qualifying strategy executions.

The Exchange now proposes to modify Section I.J. of the Fee Schedule to add dividend strategies as item (f) in the list of strategy executions eligible for the Strategy Cap (and to make non-substantive conforming changes to include an item (f) in such list). The Exchange also proposes that dividend strategies would be included among the strategies that contribute to an ATP Holder’s qualification for the lower cap of \$200. Finally, the Exchange proposes to add new subparagraph (f) to Section I.J. of the Fee Schedule to define a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

The Exchange notes that other options exchanges currently offer caps on fees for dividend strategy executions.<sup>7</sup> Although the Exchange cannot predict with certainty whether the proposed change would encourage ATP Holders to increase their dividend strategy executions, the proposed change is intended to encourage additional dividend strategy executions on the Exchange by including them in the strategies eligible for the Strategy Cap (including the lower cap for qualifying ATP Holders).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

## The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference

for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>10</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>11</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 7% market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed deletion of the language describing the Grow With Me Program is reasonable because the program has expired, and the deletion would thus improve the clarity of the Fee Schedule and reduce confusion as to the fees and credits that are currently in effect. The Exchange also believes that the removal of obsolete text from the Fee Schedule would further the protection of investors and the public interest by promoting clarity and transparency in the Fee Schedule and making the Fee

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>11</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>12</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange’s market share in equity-based options decreased from 7.43% for the month of June 2022 to 6.57% for the month of June 2023.

<sup>5</sup> For example, a Floor Broker that executes an average daily volume of 100,000 manual billable contracts would be eligible for the (\$0.07) rebate but would not also earn the (\$0.05) rebate.

<sup>6</sup> See Fee Schedule, Section I.J., Strategy Execution Fee Cap.

<sup>7</sup> See, e.g., BOX Options Fee Schedule, Section V.D. (Strategy QOO Order Fee Cap and Rebate), available at: <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-July-3-2023.pdf> (providing for daily cap on manual transaction fees for dividend strategies); Nasdaq PHLX LLC Options 7, Section 4, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (providing for daily cap on fees for dividend strategies).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

Schedule easier to navigate and understand.

The Exchange believes that the proposed Manual Billable Incentive Program is reasonable because it is designed to continue to incent Floor Brokers to increase their manual billable volume executed on the Exchange. The Exchange also believes that the proposed change is reasonable because the proposed volume thresholds to qualify for the rebates are attainable based on recent manual billable volume executed by Floor Brokers, and the proposed rebates would be available to all Floor Brokers.

The Exchange believes the proposed modification of the Strategy Cap is reasonable because it is designed to encourage ATP Holders to increase their dividend strategies executed on the Exchange by including dividend strategies among the strategy executions eligible for the Strategy Cap. The Exchange also believes the proposed change could incent ATP Holders to execute and aggregate dividend strategy orders as well as other types of strategy orders at NYSE American as a primary execution venue.

To the extent that the proposed changes attract greater volume and liquidity, the Exchange believes they would improve the Exchange's overall competitiveness, strengthen its market quality for all market participants, and continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads, and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

In addition, in the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those that also offer caps on dividend strategies.<sup>13</sup> Thus, ATP

Holders have a choice of where they direct their order flow, including their strategy executions. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange, thereby promoting market depth and enhancing order execution opportunities for market participants.

#### The Proposed Rule Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed deletion of language relating to the expired Grow With Me Program would eliminate text from the Fee Schedule no longer applicable to any Floor Brokers, thus impacting all similarly situated Floor Brokers on an equal basis and improving the clarity of the Fee Schedule to the benefit of all market participants. The proposed Manual Billable Incentive Program is equitable because it is based on the amount and type of business transacted on the Exchange; Floor Brokers can choose to execute manual billable volume to earn rebates through the program or not. In addition, the rebates offered through the Manual Billable Incentive Program would be available to all qualifying Floor Brokers equally. The Exchange further believes that the proposed change is equitable because it is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. To the extent the proposed change continues to encourage increased liquidity on the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

The Exchange also believes that the proposed change to the Strategy Cap is an equitable allocation of fees and credits because it is based on the amount and type of business transacted on the Exchange, and ATP Holders can opt to avail themselves of the Strategy Cap or not. The modified Strategy Cap, as proposed, would continue to be available to all ATP Holders that direct strategy executions, including dividend strategies, to the Exchange. Moreover, the proposal is designed to continue to encourage ATP Holders to aggregate strategy executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more dividend strategies to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality

for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

#### The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory. The proposed elimination of text describing the expired Grow With Me Program would affect all Floor Brokers on an equal and non-discriminatory basis, as the program would no longer be available to any Floor Brokers. The Exchange believes that the proposed Manual Billable Incentive Program is not unfairly discriminatory because all Floor Brokers are eligible to qualify for the rebates offered through the program. Moreover, the proposed change is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The Exchange also believes the proposed change is not unfairly discriminatory because the proposed modification of the Strategy Cap would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposal is based on the amount and type of business transacted on the Exchange, and ATP Holders are not obligated to try to achieve the Strategy Cap, nor are they obligated to execute any dividend strategies. Rather, the proposal is designed to encourage ATP Holders to increase their dividend strategy executions and to utilize the Exchange as a primary trading venue for all strategy executions (if they have not done so previously).

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by attracting more order flow to the Exchange, thereby improving market-wide quality and price discovery, the resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

<sup>13</sup> See note 7, *supra*.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>14</sup>

*Intramarket Competition.* The Exchange does not believe that the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The proposed changes are designed to attract order flow to the Exchange. The proposed Manual Billable Incentive Program is intended to attract additional order flow to the Exchange by offering Floor Brokers rebates on manual billable volume, which could increase the volume of contracts traded on the Exchange. The proposed modification of the Strategy Cap to include dividend strategies is intended to attract additional dividend strategies to the Exchange and could also encourage ATP Holders to aggregate all strategy executions on the Exchange to qualify for the Strategy Cap. Greater liquidity benefits all market participants on the Exchange, and increased manual billable transactions and strategy executions could increase opportunities for execution of other trading interest. Finally, the proposed deletion of language relating to the Grow With Me Program would remove language from the Fee Schedule no longer applicable to any Floor Brokers and, accordingly, would not have any impact on intramarket competition.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market

participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>15</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>16</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to continue to incent additional manual billable volume and dividend strategy volume to the Exchange, to provide liquidity, and to attract order flow. To the extent the proposed changes encourage Floor Brokers and other market participants to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, as other competing options exchanges currently offer fee caps for dividend strategies.<sup>17</sup> Finally, the Exchange believes that deleting text describing the Grow With Me Program would add clarity to the Fee Schedule by removing expired pricing and, accordingly, would not have any impact on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section

19(b)(3)(A)<sup>18</sup> of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the 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.

**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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2023-40 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-NYSEAMER-2023-40. 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 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 a.m. and 3 p.m. Copies of the filing also 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

<sup>14</sup> See Reg NMS Adopting Release, *supra* note 10, at 37499.

<sup>15</sup> See note 11, *supra*.

<sup>16</sup> See note 12, *supra*.

<sup>17</sup> See note 7, *supra*.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

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–NYSEAMER–2023–40 and should be submitted on or before September 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Sherry R. Haywood,  
Assistant Secretary.

[FR Doc. 2023–18105 Filed 8–22–23; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98160; File No. SR–FICC–2023–011]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a Portfolio Differential Charge as an Additional Component to the Government Securities Division Required Fund Deposit

August 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2023, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–FICC–2023–011. On August 16, 2023, FICC filed Amendment No. 1 to the proposed rule change, to make clarifications and corrections to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, is described in Items I, II and III below, which Items have been prepared 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 (“Rules”) in order to adopt a Portfolio Differential Charge (“PD Charge”) as an additional component to the GSD Required Fund Deposit, as described in greater detail below.<sup>4</sup>

#### 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

FICC is proposing to enhance the methodology for calculating Required Fund Deposit to the GSD Clearing Fund by adopting a new component, the PD Charge, which would be calculated to mitigate the risk presented to FICC by period-over-period fluctuations in a Member’s Margin Portfolio(s) that may occur between the collections of Member’s Required Fund Deposits.

###### Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. Treasury securities, as well as repurchase and reverse repurchase transactions involving U.S. Treasury securities.<sup>5</sup> As part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate Required Fund Deposit to the GSD Clearing Fund and monitoring its sufficiency, as provided for in the GSD Rules.<sup>6</sup> The

Required Fund Deposit serves as each Member’s margin.

The objective of a Member’s margin is to mitigate potential losses to FICC associated with liquidating a Member’s portfolio in the event FICC ceases to act for that Member (hereinafter referred to as a “default”).<sup>7</sup> The aggregate amount of all Members’ margin constitutes the GSD Clearing Fund. FICC would access the GSD Clearing Fund should a defaulting Member’s own margin be insufficient to satisfy losses to FICC caused by the liquidation of that Member’s portfolio. Each Member’s Required Fund Deposit is calculated at least twice daily at the start-of-day and noon on each Business Day.

FICC regularly assesses market and liquidity risks as such risks relate to its margin methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. For example, FICC employs daily backtesting to determine the adequacy of each Member’s Required Fund Deposit.<sup>8</sup> FICC compares the Required Fund Deposit<sup>9</sup> for each Member with the simulated liquidation gains/losses, using the actual positions in the Member’s portfolio(s) and the actual historical security returns. A backtesting deficiency occurs when a Member’s Required Fund Deposit would not have been adequate to cover the projected liquidation losses estimated from a Member’s settlement activity based on

<sup>7</sup> The GSD Rules identify when FICC may cease to act for a Member and the types of actions FICC may take. For example, FICC may suspend a firm’s membership with FICC or prohibit or limit a Member’s access to FICC’s services in the event that Member defaults on a financial or other obligation to FICC. See GSD Rule 21 (Restrictions on Access to Services) of the GSD Rules, *supra* note 4.

<sup>8</sup> The Model Risk Management Framework (“Model Risk Management Framework”) sets forth the model risk management practices of FICC and states that Value at Risk (“VaR”) and Clearing Fund requirement coverage backtesting would be performed on a daily basis or more frequently. See Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–FICC–2017–014), 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (SR–FICC–2018–010), 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–FICC–2020–004), 92380 (Jul. 13, 2021), 86 FR 38140 (Jul. 19, 2021) (SR–FICC–2021–006), 94271 (Feb. 17, 2022), 87 FR 10411 (Feb. 24, 2022) (SR–FICC–2022–001), and 97890 (Jul. 13, 2023), 88 FR 46287 (Jul. 19, 2023) (SR–FICC–2023–008).

<sup>9</sup> Members may be required to post additional collateral to the GSD Clearing Fund in addition to their Required Fund Deposit amount. See *e.g.*, Section 7 of GSD Rule 3 (Ongoing Membership Requirements), *supra* note 4 (providing that adequate assurances of financial responsibility of a member may be required, such as increased Clearing Fund deposits). For backtesting comparisons, FICC uses the Required Fund Deposit amount, without regard to the actual, total collateral posted by the member to the GSD Clearing Fund.

<sup>19</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibit 3a of the filing (Summary of Impact Study) to incorporate a longer impact analysis. As originally filed, the time-period of the impact analysis was November 2021 to October 2022. As amended by Amendment No. 1, the time-period of the impact analysis is November 2021 to March 2023. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below. FICC has requested confidential treatment of Exhibit 3a, pursuant to 17 CFR 240.24b–2.

<sup>4</sup> Terms not defined herein are defined in the GSD Rules, available at [www.dtcc.com/~media/Files/Downloads/legal/rules/ficc\\_gov\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf).

<sup>5</sup> GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

<sup>6</sup> See GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. FICC’s market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as “credit risks.” 17 CFR 240.17Ad–22(e)(4).