

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

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–14062 Filed 6–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100401; File No. SR–FICC–2024–007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3–3a

June 21, 2024.

I. Introduction

On March 14, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–FICC–2024–007 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b–4 ² thereunder to modify FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) to calculate, collect, and hold margin for proprietary transactions of a Netting Member separately from margin that the Netting Member submits to FICC on behalf of indirect participants and to address conditions of Note H to Rule 15c3–3a under the Exchange Act (the “Proposed Rule Change”).³ The Proposed Rule Change was published for public comment in the **Federal Register** on March 28, 2024.⁴ The

Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

On April 24, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ The Commission is instituting proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

A. Background

FICC, through its GSD, is a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. FICC manages its credit exposures to its Netting Members through the collection of margin to mitigate potential losses from a member default.

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies, such as FICC.⁹ These amendments require covered clearing agencies that clear transactions in U.S. Treasury securities (“Treasury CCAs”) to calculate, collect, and hold margin for direct participants and their customers separately.¹⁰ The Commission also amended its broker-dealer customer protection rule (“Rule 15c3–3”) ¹¹ and the reserve formulas thereunder (“Rule 15c3–3a”) ¹² to permit margin required and on deposit with Treasury CCAs to be included under certain conditions as a debit in the broker-dealer reserve formulas.¹³

Currently, the GSD Rules ¹⁴ allow Netting Members to record proprietary transactions that a Netting Member enters into for its own benefit in the same account as transactions Netting

Members submit on behalf of non-member market participants (“indirect participants”) through the prime brokerage/correspondent clearing services.¹⁵ Transactions submitted on behalf of an indirect participant through the correspondent clearing/prime broker services currently can be netted against a Netting Member’s proprietary transactions for purposes of calculating the Netting Member’s margin requirements.

B. Proposed Rule Change

The Proposed Rule Change seeks to address the Commission’s new margin and account separation requirements and the conditions for including margin in the broker-dealer reserve formulas discussed in part II.A above.¹⁶ First, the Proposed Rule Change would provide for the separate and independent calculation, collection, and holding of (i) margin deposited by a Netting Member to support its proprietary transactions and (ii) margin deposited by a Netting Member to support the transactions of an indirect participant. Specifically, FICC would do so by providing for the establishment of proprietary accounts to record the transactions that the Netting Member enters into for its own benefit and of separate indirect participant accounts to record transactions that the Netting Member submits on behalf of an indirect participant. FICC would also provide that a Netting Member’s Margin Portfolio, which is utilized to determine a Netting Member’s margin requirement, cannot include both proprietary and indirect participant accounts. As a result, the transactions a Netting Member submits to FICC on behalf of an indirect participant would no longer be netted against a Netting Member’s proprietary transactions for purposes of calculating a Netting Member’s margin requirements.

The Proposed Rule Change would also clarify the types of accounts in which Netting Members may record transactions to clarify the purpose and use of these accounts.¹⁷

2024. Securities Exchange Act Release No. 99845 (Mar. 22, 2024), 89 FR 21586 (Mar. 28, 2024) (File No. SR–FICC–2024–802).

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-007/sr-ficc-2024007.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 100022 (Apr. 24, 2024), 89 FR 34289 (Apr. 30, 2024) (File No. SR–FICC–2023–007).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See *supra* note 3.

¹⁰ 17 CFR 240.17Ad–22(e)(6)(i).

¹¹ 17 CFR 240.15c3–3.

¹² 17 CFR 240.15c3–3a.

¹³ See *supra* note 3.

¹⁴ The GSD Rules are available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf. Terms not otherwise defined herein are defined in the GSD Rules.

¹⁵ Indirect participants currently may access GSD’s clearing services indirectly through a Netting Member through two indirect participation models: the correspondent clearing/prime broker services and the Sponsored Service. For the Sponsored Service, Netting Members are approved to be “Sponsoring Members” to sponsor certain institutional firms (“Sponsored Members”) into GSD membership. FICC’s existing prime broker/correspondent clearing services are an alternative to the Sponsored Service, where a Netting Member may submit to FICC eligible transactions on behalf of its customer (an “Executing Firm”).

¹⁶ See *supra* note 3.

¹⁷ FICC’s “Accounts” are not custodial accounts in which FICC holds assets, but rather a mechanism for FICC to record and group transactions. These

¹⁹ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7–23–22) (“Adopting Release,” and the rules adopted therein as “Treasury Clearing Rules”). See also 17 CFR 240.15c3–3a.

⁴ Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21603 (March 28, 2024) (File No. SR–FICC–2024–007) (“Notice of Filing”). FICC also filed a related Advance Notice 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 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on March 28,

Second, FICC states that the Proposed Rule Change would allow for the segregation of certain customer margin in a manner that satisfies the conditions for a broker-dealer to record a debit in the customer or PAB reserve formula under recently added Note H to Rule 15c3–3a.¹⁸ Specifically, FICC would permit a Netting Member, including a non-broker-dealer Netting Member, to designate any of its indirect participants accounts for segregation. For any account so designated, FICC would calculate the margin requirements applicable to the account on a gross basis (*i.e.*, FICC would not net the transactions of one indirect participant against the transactions of another indirect participant). FICC would also segregate the margin deposited for transactions in that account from any margin for a Netting Member's proprietary positions, both on FICC's own books and records and at FICC's custodians. FICC would only be able to use such segregated margin to satisfy the obligations of the customer for whom such margin is held. FICC would not be able to apply such margin to the proprietary obligations of the Netting Member that deposited it with FICC or to the obligations of any other Netting Member or participant.

FICC would also provide specific procedures to allow Netting Members to obtain the return of excess segregated margin. FICC notes that these changes would allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, and to be able to segregate margin they deposit.¹⁹

FICC is also proposing a minimum \$1 million cash margin requirement for each Segregated Indirect Participant, similar to the \$1 million minimum cash margin requirement currently applicable to each Netting Member. FICC believes that this minimum margin amount is appropriate because FICC's analysis has shown a heightened risk of backtesting

records are utilized by FICC in its calculation of a Netting Member's margining, settlement, and other obligations. Proprietary Accounts would include "Dealer Accounts," which would be available for all Netting Members, and "Cash Broker Accounts" and "Repo Broker Accounts," which would only be available for Inter-Dealer Broker Netting Members. Non-Proprietary Accounts would include, in the case of a Sponsoring Member, Sponsoring Member Omnibus Accounts for purposes of recording Sponsored Member Trades, and, in the case of an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers.

¹⁸ 17 CFR 240.15c3–3a. See Notice of Filing, *supra* note 4, at 89 FR 21603.

¹⁹ *Id.* at 21606.

deficiencies for members with lower deposits, and segregated customer margin would not be available to address losses from other direct or indirect participants.²⁰

Third, the Proposed Rule Change would seek to align the description of FICC's margin methodology with the revised account types, consolidate the terms relating to margin calculation in a single, easily identifiable schedule, and make certain changes to the methodology to increase precision and predictability. Further, the Proposed Rule Change would provide a method for allocating net unsettled positions to individual indirect participants for calculating margin requirements.

In addition, the Proposed Rule Change would revise and clarify the calculation of the excess capital premium component of the Clearing Fund, to cap such amount at two times the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital, clarify the capital amounts that are used in the calculation of such amount, limit FICC's discretion to waive the amount, and provide that FICC may calculate the premium based on updated available information. The Proposed Rule Change would also take steps to ensure that the excess capital premium does not result in differential treatment of indirect participants simply because of the particular capital level of the Netting Member providing access to FICC's clearance and settlement systems.

Lastly, the Proposed Rule Change would modify the terms relating to brokered transactions to require that only transactions that an Inter-Dealer Broker Netting Member executes on the Inter-Dealer Broker Netting Member's own trading platform benefit from favorable loss allocation treatment.²¹ FICC believes that these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.²²

²⁰ *Id.* at 21611.

²¹ See Rule 4, Section 7 ("Notwithstanding the foregoing, however, 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 14.

²² See Notice of Filing, *supra* note 4, at 89 FR 21604.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.²³ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,²⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act²⁵ and the rules thereunder, including the following provisions:

- Rule 15c3–3 under the Exchange Act,²⁶ which permits permit margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in a registered broker-dealer's customer reserve formula, subject to the conditions specified in the rule;

- Section 17A(b)(3)(F) of the Exchange Act,²⁷ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;

- Rule 17ad–22(e)(4)(i) under the Exchange Act,²⁸ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ *Id.*

²⁵ 15 U.S.C. 78q–1.

²⁶ 17 CFR 240.15c3–3a.

²⁷ 15 U.S.C. 78q–1(b)(3)(F).

²⁸ 17 CFR 240.17ad–22(e)(4)(i).

its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

- Rule 17ad-22(e)(6)(i) under the Exchange Act,²⁹ which requires that a covered clearing agency establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities;

- Rule 17ad-22(e)(18)(iv)(C) under the Exchange Act,³⁰ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the covered clearing agency provides central counterparty services in transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants;

- Rule 17ad-22(e)(19) under the Exchange Act,³¹ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities;

- Rule 17ad-22(e)(23)(ii) under the Exchange Act,³² which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they

incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F)³³ and Rules 15c3-3, 17Ad-22(e)(4)(i), (e)(6)(i), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii)³⁴ of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Exchange Act,³⁵ any request for an opportunity to make an oral presentation.³⁶

The Commission asks that commenters address the sufficiency of FICC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing³⁷ in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FICC-2024-007 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-FICC-2024-007. This file

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ 17 CFR 240.15c3-3 and 17ad-22(e)(4)(i), (e)(6)(i), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

³⁵ 17 CFR 240.19b-4(g).

³⁶ Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³⁷ See Notice of Filing, *supra* note 4.

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 such filing also will be available for inspection and copying at the principal office of FICC and on FICC's website (www.dtcc.com/legal/sec-rule-filings).

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-FICC-2024-007 and should be submitted on or before July 18, 2024. Rebuttal comments should be submitted by August 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Vanessa A. Countryman,
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[FR Doc. 2024-14069 Filed 6-26-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-647, OMB Control No. 3235-0697]

Submission for OMB Review; Comment Request; Extension: Form SD

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

³⁸ 17 CFR 200.30-3(a)(31).

²⁹ 17 CFR 240.17ad-22(e)(6)(i).

³⁰ 17 CFR 240.17ad-22(e)(18)(iv)(C).

³¹ 17 CFR 240.17ad-22(e)(19).

³² 17 CFR 240.17ad-22(e)(23)(ii).