shareholders based on net asset value. Expenses of $729,000 incurred in connection with the reorganization were paid by the applicant, the applicant's investment adviser, and the acquiring fund.

Filing Dates: The application was filed on May 2, 2022, and amended on July 11, 2022.

Applicant's Address: edward.paz@usbank.com.

Massachusetts Mutual Variable Annuity Fund 2 [File No. 811–02196]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On January 28, 2019, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $18,015 incurred in connection with the liquidation were paid by Massachusetts Mutual Insurance Company.

Filing Date: The application was filed on July 21, 2022.

Applicant's Address: gmurtagh@massmutual.com.

Touchstone Institutional Funds Trust [File No. 811–21113]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Sands Capital Select Growth, a series of First Touchstone Funds Group Trust and on December 9, 2020 made a final distribution to its shareholders based on net asset value. Expenses of $98,700 were incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on June 30, 2022.

Applicant's Address: abigail.hemnes@klgates.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18854 Filed 8–31–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95614; File No. SR–PEARL–2022–33]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

August 26, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to (i) adopt a new volume based pricing incentive, referred to as the ''Step-Up Added Liquidity Rebate,'' in which a qualifying Equity Member[3] (or ''Member'') will receive a rebate for executions of certain orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange; (ii) increase the rebate provided under Tier 2 of the Market Quality Tiers table; and (iii) add an additional qualifying requirement to the Remove Volume Tiers table. The Exchange originally filed this proposal on August 9, 2022, (SR–PEARL–2022–32). On August 18, 2022, the Exchange withdrew SR–PEARL–2022–32 and resubmitted this proposal.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1% of the overall market share.[4]

Adoption of Step-Up Added Liquidity Rebate

The Exchange currently provides a standard rebate of $0.0029 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers various volume-based tiers and incentives through which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the specified criteria that corresponds to a particular tier/incentive.

The Exchange now proposes to adopt a new volume-based incentive, referred to by the Exchange as the Step-Up Added Liquidity Rebate, in which the Exchange will provide a rebate of $0.0031 per share for executions of certain orders that constitute Added

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

[2] 17 CFR 240.19b–4.

[3] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[4] *See* MIAX's ''The market at a glance, MTD Average'', available at *https://www.miaxoptions.com/,* (last visited July 25, 2022).

Displayed Volume for a Member that qualifies for the Step-Up Added Liquidity Rebate by achieving a Step-Up ADAV [5] as a % of TCV [6] of at least 0.03% over the baseline month of July 2022.[7] For example, assume a Member has an ADAV as a percent of TCV of 0.01% in July 2022. That Member must achieve an ADAV as a percent of TCV [8] equal to or greater than 0.04% in a month in order to qualify for the Step-Up Added Liquidity Rebate. As proposed, a Member that qualifies for the Step-Up Added Liquidity Rebate will receive a rebate of $0.0031 per share for each of such Member's executions of orders that constitute Added Displayed Volume. The Exchange notes that the Step-Up Added Liquidity Rebate will not apply to executions of orders in securities priced below $1.00 per share or executions of orders that constitute added non-displayed liquidity.

The Exchange believes that the proposed Step-Up Added Liquidity Rebate provides an incremental incentive for Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of July 2022) to receive the proposed rebate for qualifying executions of Added Displayed Volume. As such, the proposed Step-Up Added Liquidity Rebate is designed to incentivize Members that provide liquidity on the Exchange to increase their orders that add liquidity to the Exchange in order to qualify for the $0.0031 per share rebate for qualifying executions of Added Displayed Volume, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed Step-Up Added Liquidity Rebate is comparable to other volume-based incentives and discounts, which have been adopted by other exchanges,[9] including pricing incentives that provide an enhanced rebate for firms that achieve a specified Step-Up ADAV threshold.[10]

Market Quality Tier 2 Rebate Increase

The Exchange offers a tiered pricing structure, Market Quality Tiers, designed to improve market quality on the Exchange in certain specific securities, the ''Market Quality Securities'' or ''MQ Securities,'' [11] in the form of an enhanced rebate for executions of displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange for Members that meet certain minimum quoting requirements as defined in Tier 1 and Tier 2 of the Market Quality Tiers table. The Exchange now proposes to increase the rebate provided for executions that meet the Tier 2 criteria from $0.0034 to $0.0035 per share (the Tier 1 rebate remains unchanged under this proposal). The proposed change is for business and competitive reasons.

Adopt New Requirement for Remove Volume Tiers

Currently the Exchange offers a tiered pricing structure, Remove Volume Tiers, applicable to fees charged for executions of Removed Volume on the Exchange in securities priced at or above $1.00. Specifically, the Exchange charges a fee of $0.0028 per share for executions of Removed Volume for Members that qualify for Tier 1 by achieving an ADV that is equal to or greater than 0.10% of the TCV; and a fee of $0.0027 per share for Members that qualify for Tier 2 by achieving an ADV that is equal to or greater than 0.15% of the TCV.

The Exchange now proposes to adopt a new requirement that must be satisfied by Members in addition to the aforementioned Tier 1 and Tier 2 criteria. Specifically, the Exchange proposes to require Members to execute at least 1,000 shares of added liquidity during the month to be eligible for the lower fees provided for by either Tier 1 or Tier 2 in the Remove Volume Tiers table. The proposed change is designed to incentivize Members to be active participants on the Exchange by both adding and removing liquidity. Additionally, as a result of adopting this requirement, the Exchange proposes to change the column heading from ''Percentage Threshold'' to ''Required Criteria'' to more accurately describe the information contained in that column of the Remove Volume Tiers table.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [14] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[5] ADAV means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. With prior notice to the Exchange, an Equity Member may aggregate ADAV or ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member's Form BD). *See* MIAX Pearl Equities Exchange Fee Schedule, Definitions, on its public website (available at *https://www.miaxoptions.com/fees/pearl-equities*).

[6] TCV means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). *See* MIAX Pearl Equities Exchange Fee Schedule, Definitions, on its public website (available at *https://www.miaxoptions.com/fees/pearl-equities*).

[7] The Exchange will use a baseline ADAV of 0.00% of TCV for firms that become Members of the Exchange after July 2022 for the purpose of the Step-Up Added Liquidity Rebate calculation.

[8] The Exchange proposes to define ''Step-Up ADAV as a % of TCV'' on its Fee Schedule to mean, ''ADAV as a percent of TCV in the relevant baseline month subtracted from the current month's ADAV as a percent of TCV.''

[9] *See e.g.* the CBOE EDGX Exchange, Inc. (''Cboe EDGX'') Equities Fee Schedule, Add/Remove Volume Tiers, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*); and the MEMX LLC, (''MEMX'') Fee Schedule, Liquidity Provision Tiers, on its public website (available at *https://info.memxtrading.com/fee-schedule/*).

[10] *See e.g.* the CBOE BZX Exchange, Inc. (''Cboe BZX'') Equities Fee Schedule, Step-Up Tiers, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*); and the MEMX LLC, (''MEMX'') Fee Schedule, Step-Up Additive Rebate, on its public website (available at *https://info.memxtrading.com/fee-schedule/*).

[11] A list of the MQ Securities may be found on the Exchange's public website (available at *https://www.miaxoptions.com/fees/pearl-equities*).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[15] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1% of the overall market share. The Commission and the courts have repeatedly expressed their 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.''[16]

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 to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional orders that add liquidity to the Exchange, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

Step-Up Added Liquidity Rebate

As noted above, volume based incentives and discounts have been widely adopted by exchanges (including the Exchange),[17] and are reasonable, equitable and not unfairly discriminatory because they are open to all Members on an equal basis and provide additional benefits that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed Step-Up Added Liquidity Rebate is comparable to other incentives currently offered by other exchanges,[18] and is reasonable, equitable and not unfairly discriminatory for these same reasons, as it provides Members with an additional incentive to achieve a certain volume threshold on the Exchange, is available to all Members and, as noted above, is designed to encourage Members to increase their orders that add liquidity on the Exchange in order to qualify for an enhanced rebate for qualifying executions of Added Displayed Volume, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants.

Cboe BZX provides a comparable volume based incentive, referred to as Step-Up Tiers, where the exchange will provide a rebate of $0.0032 for displayed orders that add liquidity provided the required criteria for the Tier is satisfied.[19] Tier 1 criteria requires (1) MPID has a Step-Up Add TCV[20] from May 2019 ≥ 0.10% and (2) MPID has an ADV ≥ 0.50% of the TCV; Tier 2 criteria requires (1) Member has a Step-Up ADAV from January 2022 ≥ 10,000,000 or Member has a Step-Up Add TCV from January 2022 ≥ 0.10%; and (2) Member has an ADV ≥ 0.30% of the TCV or Member has an ADV ≥ 35,000,000; and Tier 3 criteria requires (1) MPID has a Step-Up ADAV[21] from May 2021 ≥ 30,000,000 or MPID has a Step-up Add TCV from May 2021 ≥ 0.30%; and (2) MPID has an ADV ≥ 0.30% of the TCV or MPID has an ADV ≥ 35,000,000.

The MEMX Exchange offers a similar volume-based incentive, referred to as the Step-Up Additive Rebate, in which a qualifying Member will receive an additive rebate for executions of certain orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. To qualify for the incentive MEMX members must have (1) a Step-Up ADAV[22] (excluding Retail Orders) from April 2022 ≥ 0.07% of the TCV;[23] or (2) a Step-Up ADAV from July 2022 ≥ 0.05% of the TCV and an ADAV ≥ 0.30% of the TCV.[24]

The Exchange proposes to adopt a single Tier under its Step-Up Added Liquidity Rebate table where Members that satisfy the required criteria of

[15] *See supra* note 4.

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[17] *See supra* note 10.

[18] *See* MEMX LLC, (''MEMX'') Fee Schedule on its public website (available at *https://info.memxtrading.com/fee-schedule/*) which reflects an additive per share rebate of $0.0002 for executions of added displayed volume for firms that qualify for the Step-Up Additive Rebate'' by achieving certain specified volume thresholds based upon Step-Up ADAV; *see also* Cboe BZX Exchange, Inc. (''Cboe BZX'') Equities Fee Schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*) which reflects enhanced rebates for executions of added displayed volume for firms that qualify for the ''Step-Up Tiers'' by achieving certain specified volume thresholds, including thresholds based upon Step-Up ADAV.

[19] See Cboe BZX Fee Schedule, Step-Up Tiers, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[20] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. *See* Cboe BZX Fee Schedule, Definitions, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[21] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV. *See* Cboe BZX Fee Schedule, Definitions, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[22] MEMX defines Step-UP ADAV as the ADAV in the relevant baseline month subtracted from the current ADAV. ADAV is defined as the average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis. *See* MEMX Fee Schedule, Definitions, available on its public website, (available at *https://info.memxtrading.com/fee-schedule/*).

[23] MEMX defines TCV as the total consolidated volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *See* MEMX Fee Schedule, Definitions, available on its public website, (available at *https://info.memxtrading.com/fee-schedule/*).

[24] *See* MEMX LLC, (''MEMX'') Fee Schedule on its public website (available at *https://info.memxtrading.com/fee-schedule/*); *see also* Cboe BZX Exchange, Inc. (''Cboe BZX'') Equities Fee Schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*) which reflects enhanced rebates for executions of added displayed volume for firms that qualify for the ''Step-Up Tiers'' by achieving certain specified volume thresholds, including thresholds based upon Step-Up ADAV.

having a Step-Up ADAV as percentage of TCV from July 2022 ≥ 0.03% of the TCV qualify for an enhanced rebate for of $0.0031 for Added Displayed Volume in securities priced at or above $1.00. As such, the Exchange believes the proposed rebate for qualifying executions of Added Displayed Volume provided under the Step-Up Added Liquidity Rebate for qualifying Members is comparable to other exchanges [25] and is reasonably related to the market quality benefits that such incentive is designed to promote.

The Exchange notes that the proposed Step-Up Added Liquidity Rebate will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other pricing tiers/incentives on the Exchange. Should a Member not meet the required criteria, the Member will merely not receive the corresponding rebate.

Market Quality Tier 2 Rebate Increase

The Exchange believes the proposed increased rebate for executions of displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange for Members that meet the Tier 2 criteria of the Market Quality Tiers table is reasonable, equitable, and consistent with the Act because it is designed to incentivize Members to improve the market quality by quoting at the NBBO for a significant portion of each day in a large number of securities generally, and in a targeted group of securities specifically (the MQ Securities), thereby benefitting the Exchange and other investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increasing the depth of liquidity available the NBBO in a broad base of securities, including the MQ Securities. The Exchange further believes the proposed increased rebate is reasonable and appropriate because it is comparable to, and competitive with, the rebate provided by at least one other exchange with a similar incentive program.[26] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Members and is designed to facilitate increased activity on the Exchange to the benefit of all Members by providing more trading opportunities and promoting price discovery.

Accordingly, the Exchange believes that it is consistent with an equitable allocation of fees and is not unfairly discriminatory to increase the rebate provided under Tier 2 of the Market Quality Tiers table for executions of displayed liquidity in recognition of the benefits to the Exchange and market participants, particularly as the magnitude of the increase is not unreasonably high, and is reasonably related to enhanced market quality.

Adopt New Requirement for Remove Volume

The Exchange believes its proposal to adopt an additional requirement for Members to qualify for either Tier 1 or Tier 2 pricing under the Remove Volume Tiers is reasonable, equitable and not unfairly discriminatory because it is equally applicable to all Members. The Exchange believes its proposed requirement is comparable to incentives offered by at least one other exchange, and is reasonable, equitable and not unfairly discriminatory as it provides Members with an additional incentive to submit orders to the Exchange that add liquidity in order to qualify for the pricing provided for in Tier 1 and Tier 2 of the Remove Volume Tiers table. MEMX charges a fee of $0.0030 for removed volume from the MEMX Book.[27] However, MEMX members may qualify for a discounted fee of $0.0029 if the member has (1) an ADV ≥ 0.45% of the TCV and an ADAV ≥ 0.20% of the TCV; or (2) an ADV ≥ 1.00% of the TCV.[28]

The Exchange believes that the additional liquidity requirement is reasonably related to the market quality benefits that such incentive is designed to promote and that its Remove Volume Tiers incentive is comparable to that of at least one other exchange.[29] The proposed change is designed to incentivize Members to be active participants on the Exchange by both adding and removing liquidity.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [30] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal is intended to incentivize market participants to direct additional orders that add liquidity to the Exchange, thereby deepening liquidity and promoting market quality on the Exchange to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. Additionally, the Exchange's proposal to amend the column heading on the Remove Volume Tiers is non-substantive and is intended to accurately describe the information contained in that specific column.

Intramarket Competition

The Exchange does not believe that the proposal will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal would incentivize Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market

[25] *See supra* note 18.

[26] *See e.g.,* MEMX Fee Schedule on its public website, (available at *https://info.memxtrading.com/fee-schedule/*), which provides for a rebate of $0.0033 per share in Tier 1 under MEMX's Displayed Liquidity Incentive (DLI) Tiers for executions of liquidity providing displayed orders in securities priced at or above $1.00 per share for members that have an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month, and a rebate of $0.0029 per share in Tier 2 for executions of liquidity providing displayed orders in securities priced at or above $1.00 per share for members that have an NBBO Time of at least 25% in an average of at least 400 securities per trading day during the month.

[27] *See* MEMX Fee Schedule, Transaction Fees, on its public website (available at *https://info.memxtrading.com/fee-schedule/*).

[28] *See* MEMX Fee Schedule, Liquidity Removal Tier, on its public website, (available at *https://info.memxtrading.com/fee-schedule/*).

[29] *See id.*

[30] 15 U.S.C. 78f(b)(4) and (5).

participants. As described above, the opportunity to qualify for the proposed new Step-Up Added Liquidity Rebate, and thus receive the proposed rebate for qualifying executions of Added Displayed Volume, would be available to all Members that meet the associated volume requirement, and the Exchange believes the proposed rebate provided under such incentive is reasonably related to the enhanced market quality that it is designed to promote. The Exchange's proposal to increase the Tier 2 incentive provided under the Market Quality Tiers table and its proposal to add an additional requirement to the Remove Volume Tiers both serve to incentivize Members to provide additional liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants. As such the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 16% of the total market share of executed volume of equities trading.[31] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Removed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to volume-based incentives adopted by other exchanges.[32] The proposed change to increase the rebate provided for in Tier 2 of the Market Quality Tiers also serves to encourage additional order flow to the Exchange.

Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.'' [33] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[34] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[35] and Rule 19b–4(f)(2) [36] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–33 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–PEARL–2022–33. 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 (*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

[31] *See supra* note 4.

[32] *See supra* note 18.

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[34] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

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 the Exchange. 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–PEARL–2022–33 and should be submitted on or before September 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Deputy Secretary.

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[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95616; File No. SR–FICC–2021–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving of Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

August 26, 2022.

I. Introduction

On December 13, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2021–009 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021.[3] On January 26, 2022, pursuant to Section 19(b)(2) of the Act,[4] 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.[5] On March 23, 2022, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On June 23, 2022, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] The Commission has received comments regarding the substance of the Proposed Rule Change.[8] For the reasons discussed below, the Commission is approving the Proposed Rule Change.[9]

II. Description of the Proposed Rule Change

FICC proposes to amend the Government Securities Division (''GSD'') Rulebook (the ''GSD Rules'') and the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''MBSD Rules,'' and together with the GSD Rules, the ''Rules'') of FICC in order to (A) revise FICC's capital requirements for GSD members and MBSD members (collectively, ''members''),[10] (B) streamline FICC's Watch List and enhanced surveillance list, and (C) make certain other clarifying, technical, and supplementary changes to implement items (A) and (B).

A. Changes to FICC's Capital Requirements for Members

i. GSD Netting Members and MBSD Clearing Members

U.S. Broker-Dealer or Future Commission Merchant Members: For certain GSD Netting Members [11] and MBSD Clearing Members,[12] FICC proposes not to change the applicable capital requirements, but to (i) provide expressly for equivalence among measures of Excess Net Capital, Excess Liquid Capital,[13] and Excess Adjusted Net Capital,[14] depending on what such members are required to report on their regulatory filings [15] and (ii) make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect. FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

U.S. Bank and Trust Company Members: For GSD Bank Netting Members and MBSD Bank Clearing Members, FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to common equity tier 1 capital (''CET1 Capital''),[16] (2) raise the minimum capital requirements for banks and trust companies from $100 million to $500 million, and (3) require

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93857 (December 22, 2021), 86 FR 74130 (December 29, 2021) (File No. SR–FICC–2021–009) (''Notice of Filing'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 94066 (January 26, 2022), 87 FR 5523 (February 1, 2022) (SR–FICC–2021–009).

[6] Securities Exchange Act Release No. 94497 (March 23, 2022), 87 FR 18409 (March 30, 2022) (SR–FICC–2021–009).

[7] Securities Exchange Act Release No. 95144 (June 23, 2022), 87 FR 38807 (June 29, 2022) (SR–FICC–2021–009).

[8] The Commission received one comment letter that does not bear on the Proposed Rule Change. The comment is available at *https://www.sec.gov/comments/sr-ficc-2021-009/srficc2021009.htm.* Since the proposed changes contained in this Proposed Rule Change are similar to changes proposed simultaneously by FICC's affiliates, National Securities Clearing Corporation and The Depository Trust Company, the Commission has considered all public comments received on the proposals regardless of whether the comments are submitted to the Proposed Rule Change or to the proposals filed by FICC's affiliates.

[9] Capitalized terms not defined herein are defined in FICC's Rules, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[10] FICC states that these capital requirements have not been updated for nearly 20 years. *See* Notice of Filing, *supra* note 3, at 74130. Although FICC has not updated capital requirements for many of its members in nearly 20 years, during that time FICC has adopted new membership categories with corresponding capital requirements that FICC believes are still appropriate. As such, FICC is not proposing changes to capital requirements for all membership categories. *See id.*

[11] The GSD Netting Members include Dealer Netting Members, Futures Commission Merchant Netting Members, and Inter-Dealer Broker Netting Members.

[12] The MBSD Clearing Members include Dealer Clearing Members and Inter-Dealer Broker Clearing Members.

[13] FICC proposes to define, in both the GSD and MBSD Rules, Excess Liquid Capital as the difference between the Liquid Capital of a Government Securities Broker or Government Securities Dealer and the minimum Liquid Capital that such Government Securities Broker or Government Securities Dealer must have to comply with the requirements of 17 CFR Section 402.2(a), (b) and (c), or any successor rule or regulation thereto.

[14] FICC proposes to define, in both the GSD and MBSD Rules, Excess Adjusted Net Capital as the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 CFR Section 1.17(a)(1) or (a)(2), or any successor rule or regulation thereto.

[15] In addition to these requirements, FICC is proposing that MBSD Inter-Dealer Clearing Members have a Net Worth of $25 million.

[16] Under the proposal, CET1 Capital would be defined as an entity's common equity tier 1 capital, calculated in accordance with such entity's regulatory and/or statutory requirements.