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

Sherry R. Haywood,
Assistant Secretary.

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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”)¹ and Rule 19b–4 thereunder,² 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.³ 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.

¹⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 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.

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.⁴

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.⁵ 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.⁶ The

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

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

⁶ 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).

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”).⁷ 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.⁸ FICC compares the Required Fund Deposit⁹ 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

⁷ 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.

⁸ 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).

⁹ 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.

the backtesting results. Backtesting deficiencies highlight exposure that could subject FICC to potential losses in the event that a Member defaults.

FICC investigates the cause(s) of any backtesting deficiencies and determines if there is an identifiable cause of repeat backtesting deficiencies. FICC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

Pursuant to the GSD Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by FICC, as identified within the GSD Rules.¹⁰ These components include the VaR Charge, Blackout Period Exposure Adjustment, Backtesting Charge, Holiday Charge, Margin Liquidity Adjustment Charge, and special charge.¹¹ The VaR Charge generally comprises the largest portion of a Member's Required Fund Deposit amount.

The VaR Charge is based on the potential price volatility of unsettled positions using a sensitivity-based Value-at-Risk (VaR) methodology. The VaR methodology provides an estimate of the possible losses for a given portfolio based on: (1) confidence level, (2) a time horizon and (3) historical market volatility. The VaR methodology is intended to capture the risks related to market price that is associated with the Net Unsettled Positions in a Member's Margin Portfolios. This risk-based margin methodology is designed to project the potential losses that could occur in connection with the liquidation of a defaulting Member's Margin Portfolio, assuming a Margin Portfolio would take three days to liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge to each Margin Portfolio, which is calculated to capture the market price risk¹² associated with each Member's Margin Portfolio(s) at a 99% confidence level. The start-of-day VaR component of the Required Fund Deposit addresses the risk presented by a Member's start-of-day positions. GSD also calculates VaR for intraday collection, which reflects the changes in a Member's positions and risk profile due to the submission of new trades and

completed settlement activity from the start-of-day to noon.

The proposed change to include the PD Charge in the calculation of Required Fund Deposit to the GSD Clearing Fund is the result of FICC's regular review of the effectiveness of its margin methodology.

Proposed Change

The PD Charge is designed to capture variability in the VaR Charge collected from the Member over the look back period. FICC believes the proposed PD Charge would help mitigate the risks posed to FICC by the variability of clearing activity submitted to GSD throughout the day by measuring the historical period-over-period increases in the VaR Charge of a Member over a given time period.

A Member's Margin Portfolio(s) may fluctuate significantly intraday as the Member executes trades throughout the day. Given that the trades are generally novated and guaranteed by FICC upon comparison,¹³ they may result in a coverage gap due to large un-margined intraday portfolio fluctuations that may not be mitigated until the collection of the Required Fund Deposit occurs intraday, or on the next Business Day. This exposure may result in backtesting deficiencies, and the PD Charge is designed to mitigate such exposure.

The proposed PD Charge would increase Members' Required Fund Deposits by an amount designed to address the variability of clearing activity submitted to GSD throughout the day, based upon the Member's historical trading activity. The PD Charge would be calculated twice a day and, if applicable, charged as a part of each Member's Required Fund Deposit. Specifically, the PD Charge would look at historical period-over-period increases between the (i) start-of-day and the intraday VaR components and (ii) the intraday and the end-of-day VaR components, respectively, of a Member's Required Fund Deposit over a look-back period of no less than 100 days¹⁴ with a decay factor of no greater

than 1 and would be calculated to equal the exponentially weighted moving average ("EWMA") of such changes to the Member's VaR Charge during the look-back period, times a multiplier that is no less than 1 and no greater than 3, as determined by FICC from time to time based on backtesting results.¹⁵ The array of VaR Charge increases would be exponentially weighted to emphasize more recent observations in determining the PD Charge. By addressing the period-over-period changes to each Member's VaR Charge, the PD Charge would help mitigate the risks posed to FICC by un-margined period-over-period fluctuations to a Member's portfolio resulting from trading activity that would be guaranteed during the coverage gap.

Accordingly, FICC is proposing to add a definition of "Portfolio Differential Charge" to GSD Rule 1 (Definitions) that would provide that the terms "Portfolio Differential Charge" or "PD Charge" mean, with respect to each Margin Portfolio, an additional charge to be included in each Member's Required Fund Deposit. The proposed definition would also provide that the PD Charge shall be calculated twice each Business Day as the exponentially weighted moving average ("EWMA") of the historical increases in the Member's VaR Charge that occur between collections of Required Fund Deposits over a lookback period of no less than 100 days with a decay factor of no greater than 1, times a multiplier that is no less than 1 and no greater than 3, as determined by FICC from time to time based on backtesting results. Furthermore, the proposed definition would provide that FICC will provide Members with at a minimum 10 Business Days advance notice of any change to the lookback period, the decay factor, and/or the multiplier via an Important Notice.

In addition, FICC is proposing to amend Section 1b of GSD Rule 4 (Clearing Fund and Loss Allocation) to include the PD Charge as an additional component in the calculation of each Member's Required Fund Deposit.

¹³ With respect to trades submitted in FICC's Sponsored GC service, novation of a trade occurs when all of the requirements set forth in GSD Rule 3A (Sponsoring Members and Sponsored Members), Section 7(b)(ii) are met. *Supra* note 4.

¹⁴ Upon implementation, FICC would use a 100-day look-back period in conjunction with a decay factor of 0.97. FICC has determined that a 100-day look-back period with a decay factor of 0.97 would provide it with a sufficient time series to reflect the current market conditions. As market conditions shifts, FICC may modify the look-back period and/or the decay factor from time to time; however, any change in the look-back period and/or the decay factor would be subject to FICC's model governance process and announced by FICC via an Important Notice posted to its website.

¹⁵ The uncertainty of the market condition and/or changes in Members' business model may lead to changes in Member activity pattern that would require a multiplier greater than 1 be invoked from time to time. FICC would determine whether to modify the multiplier based on the backtesting results to evaluate the effectiveness of PD Charge as a mitigant of the position change risk and may change the multiplier from time to time to maintain the effectiveness of the PD Charge in generating sufficient backtest coverage. Changes to the multiplier shall be approved through FICC's model governance process and would be announced by FICC via an Important Notice posted to its website.

¹⁰ *Supra* note 4.

¹¹ See GSD Rule 4 (Clearing Fund and Loss Allocation), Section 1b. *Supra* note 4.

¹² Market price risk refers to the risk that volatility in the market causes the price of a security to change between the execution of a trade and settlement of that trade. This risk is sometimes also referred to as volatility risk.

Impact Study

FICC has conducted an impact study for the period from November 2021 to March 2023 (“Impact Study”).¹⁶ The results of the Impact Study indicate that, if the proposed PD Charge had been in place during the Impact Study period, the change would have resulted in an average daily PD Charge of approximately \$660 million for the start-of-day margin calculation (approximately 2.2% of the start-of-day average daily Clearing Fund deposit) and approximately \$839 million for the noon margin calculation (approximately 2.9% of the noon average daily Clearing Fund deposit).

The rolling 12-month Clearing Fund requirement backtesting coverage ratio (from April 2022 through March 2023) would have improved by approximately 25 bps (from 98.37% to 98.62%). Specifically, if the proposed PD Charge had been in place during this 12-month period, the number of backtesting deficiencies would have been reduced by 77 (from 498 to 421 or approximately 15%) and the backtesting coverage for 44 Members (approximately 34% of the GSD membership) would have improved, with 14 Members who were below 99% coverage brought back to above 99%.

The average daily PD Charge in dollars per Member would be approximately \$5.4 million (approximately 2.2% of the average daily Clearing Fund deposit per Member) for the start-of-day margin calculation and approximately \$6.9 million (approximately 2.9% of the average daily Clearing Fund deposit per Member) for the noon margin calculation.

The three largest average daily PD Charge in dollars for Members would be \$41.09 million (approximately 3.22% of its average daily Clearing Fund deposit), \$31.50 million (approximately 8.14% of its average daily Clearing Fund deposit), and \$26.40 million (approximately 5.90% of its average daily Clearing Fund deposit) for the start-of-day margin calculation and \$104.06 million (approximately 4.55% of its average daily Clearing Fund deposit), \$62.47 million (approximately 7.46% of its average daily Clearing Fund deposit), and \$52.15 million (approximately 6.38% of its average daily Clearing Fund

deposit) for the noon margin calculation.

The three largest average daily PD Charge for Members as percentages of the relevant Member’s average daily Clearing Fund deposit would be 16.74% (PD Charge of \$1.42 million), 15.76% (PD Charge of \$3.64 million), and 13.87% (PD Charge of \$7.74 million) for the start-of-day margin calculation and 39.76% (PD Charge \$15.55 million), 26.16% (PD Charge of \$0.43 million), and 22.47% (PD Charge of \$21.42 million) for the noon margin calculation.

Implementation Timeframe

Subject to approval by the Commission, FICC expects to implement this proposal by no later than 60 Business Days after such approval and would announce the effective date of the proposed change by an Important Notice posted to FICC’s website.

2. Statutory Basis

FICC believes the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule change is consistent with section 17A(b)(3)(F) of the Act,¹⁷ and Rules 17Ad–22(e)(4)(i), (e)(6)(i), (e)(6)(iii), and (e)(23)(ii), each promulgated under the Act,¹⁸ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁹ FICC believes the proposed change to implement a PD Charge is designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because it is designed to mitigate risks to FICC by un-margined period-over-period fluctuations to a Member’s portfolio that could increase the risks to FICC related to liquidating a Member’s portfolio following that Member’s default. Specifically, the proposed PD Charge would allow FICC to collect financial resources to cover exposures that it may face due to fluctuations in

a Member’s portfolio that occur between collections of Required Fund Deposits.

The Clearing Fund is a key tool that FICC uses to mitigate potential losses to FICC associated with liquidating a Member’s portfolio in the event of Member default. Therefore, the proposed change to include a PD Charge among the GSD Clearing Fund components would enable FICC to better address period-over-period changes in a Member’s portfolio that occur between collections of Required Fund Deposits, such that, in the event of Member default, FICC’s operations would not be disrupted and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed change to implement the PD Charge is designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.²⁰

Rule 17Ad–22(e)(4)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²¹ As described above, FICC believes the proposed change to adopt a PD Charge would enable it to better identify, measure, monitor, and, through the collection of Members’ Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, FICC believes that the proposed PD Charge would effectively mitigate the risks to FICC by un-margined period-over-period fluctuations to a Member’s portfolio and would address the increased risks FICC may face related to liquidating a Member’s portfolio following that Member’s default. Therefore, FICC believes the proposal would enhance FICC’s ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, FICC believes the proposed change to adopt a PD

¹⁶ GSD increased the minimum Required Fund Deposit for Members to \$1 million on Dec. 5, 2022 (see Securities Exchange Act Release No. 96136 (Oct. 24, 2022) 87 FR 65268 (Oct. 28, 2022) (SR–FICC–2022–006)); however, for the purpose of this Impact Study, the \$1 million minimum Requirement Fund Deposit is assumed to be in effect for the entirety of the Impact Study period.

¹⁷ 15 U.S.C. 78q–1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(6)(iii), and (e)(23)(ii).

¹⁹ 15 U.S.C. 78q–1(b)(3)(F).

²⁰ *Id.*

²¹ 17 CFR 240.17Ad–22(e)(4)(i).

Charge is consistent with Rule 17Ad-22(e)(4)(i) under the Act.²²

Rule 17Ad-22(e)(6)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.²³ The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members. FICC's proposed change to introduce a PD Charge is designed to more effectively address the risks presented by un-margined period-over-period fluctuations to a Member's portfolio. FICC believes the addition of the PD Charge would enable FICC to assess a more appropriate level of margin that accounts for increases in these risks that may occur between collections of Required Fund Deposits. This proposed change is designed to assist FICC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant portfolio. Therefore, FICC believes the proposed change to adopt a PD Charge is consistent with Rule 17Ad-22(e)(6)(i) under the Act.²⁴

Rule 17Ad-22(e)(6)(iii) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.²⁵ The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members. FICC's proposed change to introduce a PD Charge is designed to more effectively address the risks presented by un-margined period-over-period fluctuations to a Member's portfolio.

FICC believes the addition of the PD Charge would enable FICC to assess a more appropriate level of margin that accounts for increases in these risks that may occur between collections of Required Fund Deposits. This proposed change is designed to assist FICC in maintaining a risk-based margin system that produces margin levels sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Therefore, FICC believes the proposed change to adopt a PD Charge is consistent with Rule 17Ad-22(e)(6)(iii) under the Act.²⁶

Rule 17Ad-22(e)(23)(ii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.²⁷ FICC is proposing to amend the GSD Rules to include a description of the PD Charge, including the method by which FICC would calculate that charge. Through these proposed amendments to the GSD Rules, the proposal would assist FICC in providing its Members with sufficient information to identify and evaluate the risks and costs, in the form of Required Fund Deposits to the GSD Clearing Fund, that they incur by participating in FICC. In this way, FICC believes the proposed change is consistent with Rule 17Ad-22(e)(23)(ii) under the Act.²⁸

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

FICC believes that the proposed change to adopt a PD Charge could have an impact on competition. Specifically, FICC believes the proposed charge could burden competition because it could result in Members being assessed a higher Required Fund Deposit than they would have been assessed under the current GSD Clearing Fund formula.

The impact of this proposal on a particular Member would depend on the period-over-period change in the size and composition of the Member's portfolio. The proposed change is not designed in a way that is intended to or expected to impact Members of a certain legal entity type or size or who employ

a particular business model. FICC expects that Members that present similar pattern in portfolio changes, regardless of the type or size of the Member or a Member's particular business practices, would have similar impact on their Required Fund Deposit amounts as a result of the proposal.

When the proposal results in a larger Required Fund Deposit, the proposed change could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. However, the increase in Required Fund Deposit would be in direct relation to the specific risks presented by each Member's portfolio, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, because the impact of the proposal on a Member is relative to the specific risks presented by that Member's clearing activity and not on the type or size of a Member, FICC believes that any burden on competition imposed by the proposed change would be both necessary and appropriate, as permitted by section 17A(b)(3)(I) of the Act for the reasons described in this filing and further below.²⁹

FICC believes the above described burden on competition that may be created by the proposed PD Charge would be necessary in furtherance of the Act, specifically section 17A(b)(3)(F) of the Act.³⁰ As stated above, the proposed PD Charge is designed to address the risks to FICC by un-margined period-over-period fluctuations to a Member's portfolio that could increase the costs to FICC of liquidating a Member portfolio in the event of the Member's default. Specifically, the proposed PD Charge would allow FICC to collect sufficient financial resources to cover exposure that it may face due to fluctuations in Members' portfolios that occur between collections of margin. Therefore, FICC believes this proposed change is necessary and appropriate in furtherance of the requirements of section 17A(b)(3)(F) of the Act, which requires that the GSD Rules be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or which it is responsible.³¹

²² *Id.*

²³ 17 CFR 240.17Ad-22(e)(6)(i).

²⁴ *Id.*

²⁵ 17 CFR 240.17Ad-22(e)(6)(iii).

²⁶ *Id.*

²⁷ 17 CFR 240.17Ad-22(e)(23)(ii).

²⁸ *Id.*

²⁹ 15 U.S.C. 78q-1(b)(3)(I).

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ *Id.*

FICC believes the proposed change would also support FICC's compliance with Rules 17Ad-22(e)(4)(i), (e)(6)(i), and (e)(6)(iii) under the Act, which require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence; (y) cover its credit exposures to its participants by establishing a risk based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; and (z) cover its credit exposures to its participants by establishing a risk based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.³²

As described above, FICC believes the introduction of the PD Charge would allow FICC to employ a risk-based methodology that would address the increased risks to FICC by period-over-period fluctuations to a Member's portfolio that may occur between collections of the Required Fund Deposits. Therefore, the proposed change would better limit FICC's credit exposures to Members, necessary in furtherance of the requirements of Rules 17Ad-22(e)(4)(i), (e)(6)(i) and (e)(6)(iii) under the Act.³³

FICC believes that the above-described burden on competition that could be created by the proposed change would be appropriate in furtherance of the Act because, as described above, such change has been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as required by section 17A(b)(3)(F) of the Act.³⁴ Specifically, the proposed change would improve the risk-based margining methodology that FICC employs to set margin requirements and better limit FICC's credit exposures to its Members. As described above, the proposed PD Charge would enable FICC to produce margin levels more commensurate with

the risks and particular attributes of each Member's portfolio. The proposed PD Charge would do this by measuring the historical period-over-period increases in the VaR Charge of the Member. Therefore, because the proposed PD Charge is designed to provide FICC with an appropriate measure of the risk presented by Members' portfolios, FICC believes the proposed change is appropriately designed to meet its risk management goals and regulatory obligations.

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

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

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

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

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

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

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

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-FICC-2023-011 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FICC-2023-011. 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 Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://www.dtcc.com/legal/sec-rule-filings.aspx>). 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-2023-011 and should be submitted on or before September 13, 2023.

³² 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(i), and (e)(6)(iii).

³³ *Id.*

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98156; File No. SR–CboeBZX–2023–058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

August 17, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 4, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Global X Bitcoin Trust (the “Trust”),³ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, 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 Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁴ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁵ Global X Digital Assets is the sponsor of the Trust (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S–1 (the “Registration Statement”).⁶ A third-party U.S.-based trust company and qualified custodian will be responsible for custody of the Trust’s bitcoin (the “Custodian”).

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.⁷ Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity

Futures Trading Commission (the “CFTC”) regulated futures market.⁸

⁸ See *streetTRACKS Gold Shares*, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the “First Gold Approval Order”); *iShares COMEX Gold Trust*, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); *iShares Silver Trust*, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); *ETFS Gold Trust*, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); *ETFS Silver Trust*, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); *ETFS Palladium Trust*, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); *ETFS Platinum Trust*, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); *Sprott Physical Gold Trust*, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca’s representation that the COMEX is one of the “major world gold markets,” that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); *Sprott Physical Silver Trust*, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); *ETFS Precious Metals Basket Trust*, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca’s representation that “the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); *ETFS White Metals Basket Trust*, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca’s representation that “the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); *ETFS Asian Gold Trust*, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE

⁴ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

⁵ All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

⁶ See Form S–1 Registration Statement submitted to the Commission on July 21, 2021. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

⁷ See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”).

³⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Trust was formed as a Delaware statutory trust on July 13, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.