

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100960; File Nos. FINRA–2024–002; SR–FINRA–2024–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 6, 2024.

On January 2, 2024, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² proposed rule changes to establish fees for industry members related to certain historical costs of the National Market System plan governing the Consolidated Audit Trail. The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act. ³ On February 13, 2024, the proposed rule changes were published in the **Federal Register** and the Commission temporarily suspended and instituted proceedings to determine whether to approve or disapprove the proposed rule changes. ⁴ The Commission received six comments on the proposed rule changes and one response to those comments. ⁵ On July

31, 2024, pursuant to Section 19(b)(2) of the Act, ⁶ the Commission designated a longer period within which to approve the proposed rule changes or disapprove the proposed rule changes. ⁷ On September 5, 2024, FINRA withdrew the proposed rule changes (FINRA–2024–002; SR–FINRA–2024–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ⁸

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100958; File No. SR–FICC–2024–003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning the Adoption of a Minimum Margin Amount at GSD

September 6, 2024.

On February 27, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–FICC–2024–003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder. ² The notice of filing of the proposed rule change was published for comment in the **Federal Register** on March 15, 2024. ³ On March 25, 2024, the Commission extended the review period of the proposed rule change, pursuant to section 19(b)(2) of the Act, ⁴ until June 13, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the

proposed rule change. ⁵ The Commission has received comments regarding the proposed rule change. ⁶

On April 5, 2024, FICC filed Partial Amendment No. 1 to the proposed rule change to correct errors FICC discovered regarding the impact analysis filed as Exhibit 3 and discussed in the filing narrative, as well as correct a typo in the methodology formula in Exhibit 5b. ⁷ The corrections in Partial Amendment No. 1 do not change the substance of the proposed rule change. ⁸ On May 20, 2024, the Commission published notice of Partial Amendment No. 1 and instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act, ⁹ to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1. ¹⁰

⁵ Securities Exchange Act Release No. 99769 (March 19, 2024), 89 FR 20716 (March 25, 2024) (SR–FICC–2024–003).

⁶ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-ficc-2024-003/srficc2024003.htm>.

⁷ To promote the public availability and transparency of its post-notice partial amendment, FICC submitted a copy of Partial Amendment No. 1 through the Commission’s electronic public comment letter mechanism. Accordingly, Partial Amendment No. 1 has been posted to the Commission’s website at <https://www.sec.gov/comments/sr-ficc-2024-003/srficc2024003-455611-1167714.pdf> and thus been publicly available since April 5, 2024. FICC has requested confidential treatment pursuant to 17 CFR 240.24b–2 with respect to Exhibit 3 and Exhibit 5b.

⁸ On February 27, 2024, FICC filed the proposed rule change as an 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 (“Clearing Supervision Act”) and Rule 19b–4(n)(1)(i) under the Act. 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of the advance notice was published in the **Federal Register** on March 15, 2024. Securities Exchange Act Release No. 99712 (March 11, 2024), 89 FR 18981 (March 15, 2024) (SR–FICC–2024–801). Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission extended the review period of the advance notice for an additional 60 days after finding that the Advance Notice raised novel and complex issues. On March 22, 2024, the Commission requested additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission’s review period of review of the Advance Notice. 12 U.S.C. 5465(e)(1)(D). On April 26, 2024, the Commission received FICC’s response to the Commission’s request for additional information. On April 5, 2024, FICC filed Partial Amendment No. 1 to the advance notice, which makes the same corrections as Partial Amendment No. 1 to the proposed rule change. Notice of the advance notice, as modified by Partial Amendment No. 1, was published in the **Federal Register** on March 15, 2024. Securities Exchange Act Release No. 100140 (May 14, 2024), 89 FR 43941 (May 20, 2024) (SR–FICC–2024–801).

⁹ 15 U.S.C. 78s(b)(2)(B).

¹⁰ See Securities Exchange Act Release No. 100141 (May 14, 2024), 89 FR 43915 (May 20, 2024) (File No. SR–FICC–2024–003).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ Securities Exchange Act Release Nos. 99363 (January 17, 2024), 89 FR 10850 (February 13, 2024) (SR–FINRA–2024–002); 99372 (January 17, 2024), 89 FR 11153 (February 13, 2024) (SR–FINRA–2024–003).

⁵ See letters from: Edward Weisbaum, Executing Broker CBOE Floor, dated February 6, 2024; Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated March 4, 2024; Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA; Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Commission, dated March 9, 2024; and Brandon Becker, CAT NMS Plan Operating Committee Chair,

to Vanessa Countryman, Secretary, Commission, dated June 13, 2024.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release Nos. 100628 (Jul. 31, 2024), 89 FR 64010 (Aug. 6, 2024) (SR–FINRA–2024–002); 100627 (Jul. 31, 2024), 89 FR 64024 (Aug. 6, 2024) (SR–FINRA–2024–003); The Commission designated October 10, 2024 as the date by it should approve or disapprove the proposed rule changes.

⁸ 17 CFR 200.30–3(a)(12).

⁹ 15 U.S.C. 78s(b)(1).

¹⁰ 17 CFR 240.19b–4.

¹¹ Securities Exchange Act Release No. 99711 (March 11, 2024), 89 FR 18991 (March 15, 2024) (SR–FICC–2024–003).

¹² 15 U.S.C. 78s(b)(2)(ii).

Section 19(b)(2) of the Exchange Act¹¹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹² The 180th day after publication of the Notice in the **Federal Register** is September 11, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change, as modified by Partial Amendment No. 1. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,¹³ the Commission designates November 10, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100967; File No. SR-NYSE-2024-24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Existing Note in the Connectivity Fee Schedule

September 6, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 27, 2024, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with

the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the existing note in the Connectivity Fee Schedule (“Fee Schedule”) regarding cabinet and combined waitlists. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the existing note in the Fee Schedule regarding cabinet and combined waitlists.

Background

Shortly after the onset of the Covid-19 pandemic, the Exchange began experiencing unprecedented User⁴

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSE-2018-07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC (“NYSE”), NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-49, SR-

demand for cabinets and power at the Mahwah, New Jersey data center (“MDC”).⁵ In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders (“Cabinet Waitlist”).⁶ In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.⁷

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.*, Hall 4). ICE is currently expanding the amount of colocation space and power available at the MDC through a new colocation hall (*i.e.*, Hall 5).

The Exchange subsequently amended the Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day “Ordering Window.”⁸ The Ordering Window procedure was designed with the goal of addressing both (a) whether customer demand would support additional expansion projects to provide further power, and (b) the fact that previous procedures in the Fee Schedule were not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens.⁹ Orders received during an Ordering Window are not considered finalized until the Exchange has received the User’s signed order form and a deposit equal to two months’ worth of the monthly recurring costs of the amount of new power ordered.

The Exchange had a power and cabinet waitlist (“Combined Waitlist”) in place before the Ordering Window.

NYSEAMER-2024-52, SR-NYSEARCA-2024-71, and SR-NYSECHX-2024-27.

⁵ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEARCA-2020-66, SR-NYSEARCA-2020-82, SR-NYSECHX-2020-26, and SR-NYSE-2020-28) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

⁷ See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSEARCA-2021-11, SR-NYSECHX-2021-02, and SR-NYSE-2021-03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

⁸ See Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80795 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEARCA-2023-53, SR-NYSECHX-2023-16, and SR-NYSE-2023-18) (“Ordering Window Approval Order”).

⁹ *Id.*, at 80794.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2)(B)(ii)(III).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.