A proposed rule change filed under Rule 19b–4(f)(6)[46] under the Act does not normally become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[47] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing of options on iShares Bitcoin Trust.[48] The Exchange has provided information regarding the underlying iShares Bitcoin Trust, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the iShares Bitcoin Trust. The proposal also establishes position and exercise limits for options on the iShares Bitcoin Trust and provides information regarding the surveillance procedures that will apply to iShares Bitcoin Trust options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading iShares Bitcoin Trust options. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[49]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–SAPPHIRE–2024–36 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–SAPPHIRE–2024–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available 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–SAPPHIRE–2024–36 and should be submitted on or before December 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–27744 Filed 11–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101695; File No. SR–FICC–2024–007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3–3a

November 21, 2024.

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

as designated by the Commission. The Exchange has satisfied this requirement.

[46] 17 CFR 240.19b–4(f)(6).

[47] 17 CFR 240.19b–4(f)(6)(iii).

[48] *See* Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR–ISE–2024–03) (Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, to Permit the Listing and Trading of Options on the iShares Bitcoin Trust).

[49] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 17 CFR 200.30–3(a)(12), (59).

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

[2] 17 CFR 240.19b–4.

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

[4] Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21603 (Mar. 28, 2024) (File No. SR–FICC–2024–007) (''Notice of Filing''). FICC also filed a related Advance Notice with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was

Continued

On April 24, 2024, pursuant to Section 19(b)(2) of the Exchange Act,[5] 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.[6] On June 21, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,[7] the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.[8] On September 18, 2024, the Commission extended the time period for Commission action on the proceedings to determine whether to disapprove the Proposed Rule Change.[9] On October 25, 2024, FICC filed Partial Amendment No. 1 to the Proposed Rule Change.[10] The Proposed Rule Change, as modified by Partial Amendment No. 1, is referred to herein as the ''Proposed Rule Change.''

The Commission has received comments regarding the substance of the Proposed Rule Change.[11] The Commission also received a letter from FICC responding to the comments.[12]

For the reasons discussed below, the Commission is approving the Proposed Rule Change.

I. Description of the Proposed Rule Change

A. Background and Terminology

FICC, through its GSD, is a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. As a central counterparty in the U.S. government securities markets, FICC novates transactions between two counterparties, effectively becoming the buyer to every seller and the seller to every buyer, and guarantees the settlement of the novated transactions. This means that FICC is exposed to a number of risks arising from such transactions, including counterparty credit risk. FICC seeks to maintain sufficient resources (*i.e.,* margin) to cover its credit exposures to its participants fully with a high degree of confidence and mitigate potential losses from a default of a direct GSD participant, which is generally referred to as a Netting Member under the GSD Rules [13] (and in this Order).

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies that clear transactions in U.S. Treasury securities (''Treasury CCAs''), such as FICC.[14] These amendments require Treasury CCAs to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, calculate, collect, and hold margin for direct participants' proprietary positions separately and independently from margin calculated, collected, and held for indirect participants that rely on the services provided by the direct participant to access the Treasury CCA's payment, clearing, or settlement facilities.[15] The Commission also amended its broker-dealer customer protection rule (''Rule 15c3–3'') [16] and the customer and proprietary accounts of broker-dealer (''PAB'' reserve formulas thereunder (''Rule 15c3–3a'') [17] to permit margin required and on deposit with Treasury CCAs to be included under certain conditions as a debit in the reserve formulas.[18]

The GSD Rules describe how FICC provides clearance and settlement services to both direct participants and indirect participants, the latter of which rely on the services provided by direct participants to access FICC's clearance and settlement facilities. Currently, the GSD Rules allow indirect participants to access GSD's clearing services through a Netting Member (that is, a direct participant) via two models: the correspondent clearing/prime broker services [19] and the Sponsored Service.[20] The primary difference between the two models is that an indirect participant who becomes a Sponsored Member via the Sponsored Service model must establish an indirect, limited purpose FICC membership, whereas the correspondent clearing/prime broker services do not require an indirect member to establish any relationship with FICC.[21]

The correspondent clearing/prime broker services allow a Netting Member to submit eligible transactions to FICC on behalf of an indirect participant (referred to as the ''Executing Firm''), record these transactions in the same account as the proprietary transactions that the Netting Member (referred to as a ''Submitting Member'') enters into for its own benefit, and net the indirect participants' transactions against the Netting Member's proprietary transactions for purposes of calculating the Netting Member's margin requirements. Unlike the Sponsored Service, FICC has no relationship with the Executing Firm, and all obligations (*i.e.,* margin and settlement) under the GSD Rules remain with the Submitting Member.[22]

published in the **Federal Register** on March 28, 2024. Securities Exchange Act Release No. 99845 (Mar. 22, 2024), 89 FR 21586 (Mar. 28, 2024) (File No. SR–FICC–2024–802). Upon publication of notice of filing of the Advance Notice, the Commission extended the review period of the advance notice for an additional 60 days because the Commission determined that the advance notice raised novel and complex issues. On April 24, 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 period of review of the Advance Notice until 120 days from the date the information requested by the Commission was received by the Commission. *See* 12 U.S.C. 5465(e)(1)(D). A memo regarding the Request for Additional Information and the tolled period of review is available at *https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802-462751-1210414.pdf.* On September 24, 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 period of review of the Advance Notice until 120 days from the date the information requested by the Commission was received by the Commission. On October 21, 2024, the Commission received FICC's response to the Commission's September 24, 2024 request for additional information. *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii). A memo regarding receipt of FICC's response to the Request for Additional Information is available at *https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802-539295-1544222.pdf.*

[5] 15 U.S.C. 78s(b)(2).

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

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 100401 (Jun. 21, 2024), 89 FR 53690 (Jun. 27, 2024) (File No. SR–FICC–2024–007).

[9] Securities Exchange Act Release No. 101082 (Sep. 18, 2024), 89 FR 77949 (Sep. 24, 2024) (File No. SR–FICC–2024–007).

[10] Securities Exchange Act Release No. 101454 (Oct. 28, 2024), 89 FR 87441 (Nov. 1, 2024) (File No. SR–FICC–2024–007) (''Notice of Partial Amendment'').

[11] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-ficc-2024-007/srficc2024007.htm.* Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-ficc-2024-802/srficc2024802.htm.* Because the proposals contained in the Proposed Rule Change and the Advance Notice are the same, the Commission considers all comments received on the proposal, regardless of whether the comments are submitted with respect to the Advance Notice or the Proposed Rule Change. The comment letters to the Proposed Rule Change and Advance Notice also contained comments on the substance of another FICC proposed rule change, FICC–2024–005. The Commission will only be addressing comments relevant to this proposal and will address the comments on the other proposed rule change in a separate order.

[12] *See* Letter from Laura Klimpel, Managing Director, Head of Fixed Income and Financing Solutions, Depository Trust & Clearing Corporation, (Aug. 1, 2024) (''FICC Letter'').

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

[14] *See supra* note 3.

[15] 17 CFR 240.17ad–22(e)(6)(i).

[16] 17 CFR 240.15c3–3.

[17] 17 CFR 240.15c3–3a.

[18] *See supra* note 3.

[19] *See* GSD Rule 8, *supra* note 13.

[20] *See generally* GSD Rule 3A, *supra* note 13.

[21] *See* Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362, at 21364 (Mar. 27, 2024) (File No. SR–FICC–2024–005).

[22] *Id.* at 21365; *see also* GSD Rule 8, *supra* note 13.

Under a proposed rule change being approved concurrently, FICC is renaming the prime broker/correspondent clearing model to be known as the Agent Clearing Service and providing further specificity around the operation of that service.[23] In that service, the Netting Member which serves as the direct participant to FICC would be referred to as the Agent Clearing Member, and the indirect participant would be referred to as an Executing Firm Customer. An Executing Firm Customer would have no direct relationship to FICC. This separate change would require that a Netting Member using the Agent Clearing Service submit transactions for Executing Firm Customers through an Agent Clearing Member Omnibus Account, to be recorded separately from its other clearing activity, including its proprietary activity. It would also add a definition for transactions eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm Customers (''Agent Clearing Transactions'').

In addition, in the Sponsored Service, both currently and in a concurrently approved proposed rule change,[24] Netting Members that are approved to be Sponsoring Members are able to sponsor certain indirect participants, referred to as Sponsored Members, into GSD membership and submit transactions on behalf of those Sponsored Members. A Sponsored Member is the legal counterparty to FICC for any submitted transactions.[25] However, the Sponsoring Member unconditionally guarantees to FICC the Sponsored Member's performance under a Sponsoring Member Guaranty, which guarantees to FICC the payment and performance of a Sponsored Member's obligations to FICC.[26] Therefore, reliance upon the Sponsoring Member Guaranty necessarily involves FICC's reliance upon the financial resources of the Sponsoring Member.

Unlike the correspondent clearing/prime broker services, transactions by the Sponsoring Member's Sponsored Members (''Sponsored Member Trades'') are not netted, for margining purposes, against transactions of the Sponsoring Member or another Sponsored Member. Instead, FICC records Sponsored Member Trades in a Sponsored Member Omnibus Account, and calculates margin requirements for each Sponsored Member individually on a gross basis (*i.e.,* without netting their transactions against transactions of the Sponsoring Member or another Sponsored Member).[27]

B. Proposed Changes

In the Proposed Rule Change, FICC seeks to address the Commission's new margin and account separation requirements and the conditions for including margin in the broker-dealer reserve formulas discussed in part I.A above.[28] As described in greater detail below, the Proposed Rule Change would (1) provide for the separate and independent calculation, collection, and holding of margin for proprietary transactions of a Netting Member from margin submitted to FICC by a Netting Member to support the transactions of an indirect participant (*i.e.,* either an Executing Firm Customer or a Sponsored Member); (2) establish segregated accounts for direct and indirect participants, including establishing a minimum $1 million cash margin requirement for each Segregated Indirect Participant; (3) consolidate the methodology for calculating the margin requirements, including definitions of relevant terms and components for calculating margin requirements from various sections of the current GSD Rules into a single margin component schedule (''Margin Component Schedule''), specify how the various components relate to different types of margin, and make certain changes to the margin methodology, including revising the Margin Liquidity Adjustment (''MLA Charge'')[29] definition, providing a method for allocating net unsettled positions to individual indirect participants for calculating margin requirements, and revising and clarifying the calculation of the Excess Capital Premium (''ECP'') component[30] of the Clearing Fund; and (4) modify the terms relating to transactions submitted by Inter-Dealer Broker Netting Members[31] to FICC for clearance and settlement (''Brokered Transactions'').

1. Separate Calculation, Collection, and Holding of Margin

The Proposed Rule Change would provide for the separate and independent calculation, collection, and holding of (i) margin deposited by a Netting Member to support its proprietary transactions, and (ii) margin deposited by a Netting Member to support the transactions of an indirect participant, that is, either an Executing Firm Customer or a Sponsored Member. To facilitate the separate and independent calculation, collection, and holding proprietary and indirect participant margin, FICC would establish proprietary accounts to record the proprietary transactions that the Netting Member enters into for its own benefit and separate indirect participant accounts to record transactions that the Netting Member submits on behalf of an indirect participant, which could be either a Sponsored Member or an Executing Firm Customer.

For proprietary transactions, the accounts would include Dealer Accounts, which would be available for all Netting Members, and Cash Broker Accounts and Repo Broker Accounts, which would only be available for Inter-Dealer Broker Netting Members.[32] Cash

[23] *See* Order, FICC–2024–005, *available at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/ficc.*

[24] *See id.*

[25] *See* GSD Rule 3A, section 7 (describing novation of Sponsored Member Trades) and 2 (identifying membership types), *supra* note 13.

[26] *See* GSD Rules 3A (describing the operation of the Sponsoring Member Guaranty) and 1 (defining the Sponsoring Member Guaranty), *supra* note 13.

[27] *See* GSD Rule 3A, Section 10(c), *supra* note 13.

[28] *See supra* note 3.

[29] The MLA Charge is a margin component designed to address the market impact costs of liquidating a defaulted Netting Member's portfolio that may increase when that portfolio includes large net unsettled positions in a particular group of securities with a similar risk profile or in a particular asset type, thereby causing those costs to be higher than the amount collected for the Netting Member's volatility charge, which is designed to capture the market price risk associated with liquidating each Netting Member's portfolio at a 99th percentile level of confidence. *See* GSD Rule 1 (defining Margin Liquidity Adjustment Charge), *supra* note 13; *see also* Securities Exchange Act Release No. 89560 (Aug. 14, 2020), 85 FR 51503 (Aug. 20, 2020) (File No. SR–FICC–2020–09) (approving the MLA charge as a new component of the margin methodology); Securities Exchange Act Release No. 98558 (Sep. 27, 2023), 88 FR 68179 (Oct. 3, 2023) (File No. SR–FICC–2023–012) (approving revisions to ECP charge).

[30] The ECP is a margin component that allows FICC to collect additional margin if a member's exposure to FICC, based on its clearing activity, is out of proportion to its capital levels. It is designed to mitigate the heightened default risk a member could pose to FICC if it operates with lower capital levels relative to its margin requirements. *See* Margin Component Schedule (defining Excess Capital Premium), *supra* note 13; *see also* Securities Exchange Act Release No. 54457 (Sep. 15, 2006), 71 FR 55239 (Sep. 21, 2006) (File Nos. SR–FICC–2006–03 and SR–NSCC–2006–03) (approving the ECP charge as a new component of the margin methodology); Securities Exchange Act Release No. 96786 (Feb. 7, 2023), 88 FR 8013 (Feb. 7, 2023) (File No. SR–NSCC–2022–005) (approving revisions to ECP charge).

[31] An Inter-Dealer Broker is defined as a Person which is in the business of buying and selling securities as agent on behalf of dealers and is registered under Section 15 or Section 15C of the Exchange Act. GSD Rule 1 (defining Inter-Dealer Broker), *supra* note 13. An Inter-Dealer Broker Netting Member must meet that definition and certain applicable membership requirements. *See id.* and Rule 2A (setting forth membership requirements).

[32] Under the proposed changes, ''Cash Broker Account'' would be a proprietary account maintained by FICC for an Inter-Dealer Broker Netting Member to record Brokered Transactions, other than Brokered Repo Transactions, submitted to the Corporation by the Inter-Dealer Broker

Continued

Broker Accounts would be available for recording an Inter-Dealer Broker Netting Member's Brokered Transactions (other than Brokered Repo Transactions), and Repo Broker Accounts would be for purposes of recording an Inter-Dealer Broker Netting Member's Brokered Repo Transactions.

For indirect participant transactions, FICC would establish Indirect Participants Accounts to record transactions that a Netting Member submits to FICC on behalf of Sponsored Members and Executing Firm Customers. These Indirect Participants Accounts would include Sponsoring Member Omnibus Accounts for recording Sponsored Member Trades and Agent Clearing Member Omnibus Accounts for recording Agent Clearing Transactions submitted on behalf of Executing Firm Customers. In addition, the proposal would permit a Sponsoring Member or Agent Clearing Member to designate any of its Indirect Participants Accounts as a segregated customer account (a "Segregated Indirect Participants Account"). Such designation, as further described in part I.B.2 below, would give Netting Members a mechanism to direct FICC to calculate and segregate margin deposited in connection with the relevant Segregated Indirect Participants Account in accordance with the conditions described in Note H to Rule 15c3–3a.[33]

The proposal would require each Netting Member to deposit two forms of margin: the Required Fund Deposit and the Segregated Customer Margin Requirement. The Required Fund Deposit, which would be deposited to the Clearing Fund, would be the sum of each Netting Member's proprietary accounts (*e.g.,* Dealer Accounts and Broker Accounts) and indirect participant accounts (*e.g.,* Agent Clearing Omnibus Accounts and Sponsoring Member Omnibus Accounts) not designated as Segregated Indirect Participants Accounts. The Segregated Customer Margin Requirement, which would be excluded from the Clearing Fund, would be the sum of the Netting Member's Sponsoring Member Omnibus Accounts designated as Segregated Indirect Participants Accounts and Agent Clearing Member Omnibus Accounts designated as Segregated Indirect Participants Accounts.

FICC's proposal would also provide that a Netting Member's Margin Portfolio, which is utilized to determine a Netting Member's margin requirement, cannot include both proprietary and indirect participant accounts. As a result, the transactions a Netting Member submits to FICC on behalf of an indirect participant either as a Sponsoring Member or an Agent Clearing Member would no longer be netted against a Netting Member's proprietary transactions for calculating a Netting Member's margin requirements.[34] Since proprietary transactions and transactions submitted for indirect participants would not be recorded in the same type of account, these changes would result in margin for a Netting Member's proprietary transactions being calculated separately and independently from margin calculated for the transactions that the Netting Member submits on behalf of indirect participants.

To help ensure that margin for proprietary transactions is calculated, collected, and held separately and independently of margin for indirect participant transactions, FICC would require each Netting Member, at the time it submits a transaction to FICC for clearance and settlement, to designate the account in which the particular transaction should be recorded using a separate Deposit ID, which is an existing operational mechanism used by Netting Members to identify the type of account for which a margin deposit is being made. The use of these separate Deposit IDs would result in margin for each type of account being separately transferred to FICC and recorded on FICC's books as separate margin amounts for each account type. The proposal would also require FICC to report a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement twice daily and specify the amount of margin attributable to each Required Fund Deposit Portion or Segregated Indirect Participants Account so that the Netting Member can transfer the different margin amounts separately.

In addition, the proposal would eliminate the concept of a Permitted Margin Affiliate, which allows a Netting Member to include accounts of an affiliate that is also a Netting Member in the same Margin Portfolio as its accounts and net their transactions for margin calculation purposes. FICC states that no Netting Member currently has a Permitted Margin Affiliate, so keeping this option in the rules in conjunction with the proposed changes to establish separate and independent calculation, collection, and holding of margin would introduce unnecessary complexity in FICC's rules.[35]

2. Segregation of Customer Margin

FICC is proposing several changes to allow for the segregation of customer margin in a manner that satisfies the conditions for recording a debit in the customer reserve formula under Note H to Exchange Act Rule 15c3–3a.[36] First, to satisfy Section (b)(2)(i) of Note H to Rule 15c3–3a,[37] FICC would calculate the margin requirements applicable to any segregated account on a gross basis (*i.e.,* FICC would treat each indirect participant as if it were a separate Netting Member for margin calculations and would not net the transactions of one indirect participant against the transactions of another indirect participant). Second, to satisfy Section (b)(2)(iii) of Note H to Rule 15c3–3a,[38] FICC would establish Segregated Customer Margin Custody Accounts for eligible customers on its books and records. These accounts would segregate the margin deposited for transactions in that account from any margin for a Netting Member's proprietary positions, both on FICC's own books and records and at FICC's custodians. FICC would only be able to use such segregated margin to secure or satisfy the obligations of the customer for whom such margin is held, and it would not be considered part of the mutualized Clearing Fund. FICC would not be able to apply such margin to the proprietary obligations of the Netting Member that deposited it with FICC, to the obligations of any other Netting Member or indirect participant, or to any lien or claim against FICC.[39] FICC would

Netting Member. "Repo Broker Account" would be a proprietary account maintained by the FICC for an Inter-Dealer Broker Netting Member in its capacity as a Repo Broker to record Brokered Repo Transactions submitted to the Corporation by the Inter-Dealer Broker Netting Member.

[33] 17 CFR 240.15c3–3a.

[34] The Proposed Rule Change would also specify the types of accounts in which Netting Members may record transactions to identify the purpose and use of these accounts. FICC's "Accounts" are not custodial accounts in which FICC holds assets, but rather a mechanism for FICC to record and group transactions. These records are utilized by FICC in its calculation of a Netting Member's margining, settlement, and other obligations. Proprietary Accounts would include "Dealer Accounts," which would be available for all Netting Members, and "Cash Broker Accounts" and "Repo Broker Accounts," which would only be available for Inter-Dealer Broker Netting Members. Non-Proprietary Accounts would include, in the case of a Sponsoring Member, Sponsoring Member Omnibus Accounts for purposes of recording Sponsored Member Trades, and, in the case of an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers.

[35] *See* Notice of Filing, *supra* note 4, at 21608.

[36] *See id.,* at 21608 (citing 17 CFR 240.15c3–3a).

[37] *Id.* at 21608–09.

[38] *Id.* at 21609.

[39] *See* FICC Letter at 35 (describing this as "an express prohibition on FICC using Segregated Customer Margin held in respect of one Segregated Indirect Participant for the obligations of any other

provide written notice to any Netting Member that is a broker-dealer that any Segregated Customer Margin Custody Account is being held for the exclusive benefit of the customers and is being kept separate from any other accounts maintained by the broker-dealer or any other Netting Member at FICC, as required by Section (b)(2)(iii)(C) of Note H.[40]

Further, as amended, the proposal would clarify that any interest earned on Segregated Customer Margin consisting of cash must be paid to the Netting Member on behalf of, and as agent for, its Segregated Indirect Participant.[41]

Moreover, to comply with the custody requirements of (b)(2)(iv) of Note H,[42] FICC would require segregated margin accounts to be held at either a bank within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation and is a qualified custodian under the 1940 Act, or the Federal Reserve Bank of New York.[43] FICC would require these accounts to be segregated from any other account of FICC and used exclusively to hold Segregated Customer Margin, in accordance with Section (b)(2)(iv)(A) of Note H. Moreover, each of these accounts would be subject to (i) a written notice of the bank or Federal Reserve Bank that the account is being held by the bank or Federal Reserve Bank pursuant to Rule 15c3–3 and is being kept separate from and not commingled with any other accounts maintained by FICC or any other person at the bank or Federal Reserve Bank and (ii) a written contract between FICC and the bank or Federal Reserve Bank which would provide that the Segregated Customer Margin in the account is subject to no right, charge, security interest, lien, or claim in favor of the bank or Federal Reserve Bank or any person claiming through the bank or Federal Reserve Bank, in accordance with Sections (b)(2)(iv)(B) and (C) of Note H.[44] FICC would also only allow Segregated Customer Margin consisting of cash to be invested in U.S. Treasury securities with a maturity of one year or less, in accordance with Section (b)(2)(ii) of Note H.[45]

Finally, to satisfy Section (b)(2)(v) of Note H,[46] FICC would provide specific procedures to allow Netting Members to request the return of excess segregated margin. FICC notes that these changes would allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, the ability to segregate margin they deposit.[47] FICC would have the ability to retain some or all of the excess segregated customer margin if the Netting Member had an outstanding payment or margin obligation to FICC for transactions of any Segregated Indirect Participant. FICC could not retain the excess segregated customer margin for a Segregated Indirect Participant when FICC has determined, in its sole discretion, that such outstanding payment or margin obligation is unrelated to the transactions of that Segregated Indirect Participant.[48] FICC states that these aspects of the Proposed Rule Change would allow for the segregation of certain customer margin in a manner that satisfies the conditions for a broker-dealer to record a debit in the customer reserve formula under Note H to Rule 15c3–3a.[49]

a. $1 Million Minimum Cash Margin Requirement

FICC is also proposing a minimum $1 million cash margin requirement for each Segregated Indirect Participant Account, similar to the $1 million minimum cash margin requirement currently applicable to each Netting Member.[50] FICC conducts daily backtesting to evaluate whether each Netting Member's margin is sufficient to cover FICC's credit exposures to that member based on a simulated liquidation of the member's portfolio on that day. FICC's daily backtesting of the sufficiency of Clearing Fund deposits has shown a heightened risk of backtesting deficiencies (*i.e.,* the projected liquidation losses to FICC due to a Netting Member's default would be greater than the member's margin) for members with lower deposits.[51] Because FICC is required to calculate the margin requirements for Segregated Indirect Participants on a gross basis, as if each Segregated Indirect Participant were a separate Margin Portfolio, and Segregated Customer Margin would not be available to address losses from other direct or indirect participants, FICC believes it is also appropriate to apply the same minimum cash requirement to each Segregated Indirect Participant that it applies to each Margin Portfolio.[52] Moreover, FICC believes that the $1 million cash requirement is the appropriate minimum amount to optimize the balance between financial impact of the requirement to participants and FICC's ability to continue to meet its regulatory obligation to maintain a backtesting performance coverage ratio above its 99 percent coverage target.[53] FICC states that the $1 million minimum is supported by its prior analyses of the appropriate minimum margin requirement for Netting Members.[54] FICC further describes this minimum requirement as critical to ensuring that the account segregation does not expose FICC and its participants to undue loss. FICC explains that the Segregated Customer Margin posted by an individual Segregated Indirect Participant needs to be enough, on its own, to address losses arising from the Segregated Indirect Participant's positions, and that, otherwise, such losses may be mutualized.[55]

However, FICC, in its sole discretion, would have the ability to adjust the amount of the minimum $1 million margin requirement if FICC determines that a different minimum charge would be appropriate and consistent with achieving its backtesting coverage target.[56] FICC would notify Netting Members of any such adjustment to the minimum margin requirement through an Important Notice.[57] In discussing this proposed ability, FICC states that it will review the $1 million floor for Segregated Customer Margin as part of ongoing internal surveillance and risk management monitoring procedures.[58] FICC further states that it would be prudent to have the ability to adjust the $1 million floor proactively to the extent that FICC identifies as part of these reviews that activity levels, margin performance observed through backtesting, and other measures indicate that FICC would be able to continue to

person'' and stating that, as a result, the default of one Segregated Indirect Participant should not generally cause another segregated Indirect participant to lose its margin).

[40] *Id.* at 21610.

[41] *See* Notice of Partial Amendment, *supra* note 10, at 87443.

[42] *See* Notice of Filing, *supra* note 4, at 21607.

[43] *See* Notice of Partial Amendment, *supra* note 10, at 87443.

[44] *See* Notice of Filing, *supra* note 4, at 21607.

[45] *Id.*

[46] *Id.*

[47] *Id.* at 21606.

[48] *See* Notice of Partial Amendment, *supra* note 10, at 87443.

[49] *See* Notice of Filing, *supra* note 4, at 21606.

[50] Like the current requirement for Netting Member Required Fund Deposits, the proposal would require that a minimum of 40 percent of the Segregated Customer Margin Requirement be satisfied with cash and/or Eligible Clearing Fund Treasury Securities.

[51] *See* Notice of Filing, *supra* note 4, at 21611.

[52] *Id.*

[53] *Id.;* FICC Letter at 28–29.

[54] *See* FICC Letter at 28–29.

[55] *Id.* at 29.

[56] *See* Notice of Partial Amendment, *supra* note 10, at 87443.

[57] *Id.*

[58] *See* FICC Letter at 30.

manage the risks presented to it and meet its regulatory risk management obligations (including, for example, its 99% backtesting coverage target) with a lower minimum Segregated Customer Margin Requirement (that is, an amount below $1 million).[59]

3. Margin Component Schedule

To improve the clarity and transparency of its margin components and Clearing Fund calculation methodology,[60] FICC would move the margin calculation methodology, including the relevant defined terms, into a new Margin Component Schedule. Currently, the terms and information concerning the margin calculation methodology, as well as the relevant definitions, appear in several different locations.[61] FICC states that its methodology and the included components would continue to be substantively the same as the methodology under the current Rules.[62]

The new Margin Component Schedule would set out the methodology for calculating margin amounts. That Margin Component Schedule would provide for FICC to perform substantially the same calculation it currently performs when determining a Netting Member's Required Fund Deposit, except that (i) the calculation would be performed on a Segregated Indirect Participant-by-Segregated Indirect Participant basis as though each Segregated Indirect Participant represented a separate Margin Portfolio and (ii) FICC would not impose an ECP on Segregated Indirect Participant Accounts. Specifically, for Required Fund Deposit calculations, the margin amount shall equal the VaR Charge, plus or minus the Blackout Period Exposure Adjustment (as applicable), plus the Portfolio Differential Charge, with the following potential additional charges, as applicable: the Backtesting Charge, the Holiday Charge, the MLA Charge, the ECP, and the Intraday Supplemental Fund Deposit.[63] For Segregated Customer Margin Requirement calculations, the margin amount shall equal the VaR Charge, plus or minus the Blackout Period Exposure Adjustment (as applicable), plus the Portfolio Differential Charge, with the following potential additional charges, as applicable: the Backtesting Charge, the Holiday Charge, the MLA Charge, and the Intraday Supplemental Fund Deposit.

For both types of calculations, the Margin Component Schedule addresses the applicable minimum cash margin requirements ($1 million for each Netting Member and Segregated Indirect Participant)[64] and FICC's authority to require increased deposits as appropriate, including the use of a special charge. FICC would not add Segregated Customer Margin to Section 4 of the Margin Component Schedule, which describes FICC's ability to impose increased Required Fund Deposits under certain circumstances.[65] However, when determining whether to increase the Required Fund Deposit of a Netting Member under the circumstances described in Section 4, FICC would consider the risk presented by a Netting Member from the activity it submits to FICC, including activity of indirect participants.[66]

a. MLA Charge

FICC would amend the definition of the MLA Charge to account for the use of Segregated Indirect Participant Accounts. Specifically, the definition would provide that, if a Segregated Indirect Participant clears through multiple Accounts[67] (including Accounts of different Netting Members), then the MLA Charge for transactions in a Segregated Indirect Participants Account would be the greater of (i) an amount calculated for only the transactions maintained in that Account (*i.e.,* excluding the other Accounts where the Segregated Indirect Participant's transactions are recorded) and (ii) an amount calculated on a consolidated portfolio basis (*i.e.,* taking into account the transactions in each of the Accounts). This would be the same methodology currently used for Sponsored Members clearing through multiple Accounts.[68]

b. Allocation of Net Unsettled Positions

The Proposed Rule Change would also provide a method for allocating net unsettled positions to individual indirect participants for calculating margin requirements. Specifically, as amended, FICC would modify the definition of Current Net Settlement Positions in Rule 1 to provide that, for calculating margin requirements and not for purposes of calculating the Net Settlement Position under GSD Rule 11, positions that are not clearly allocable to an individual Sponsored Member or Segregated Indirect Participant (other than Sponsored GC Trades), because one or more transactions recorded for indirect participants did not settle on the original Scheduled Settlement Date, would be allocated *pro rata* to Sponsored Members or Segregated Indirect Participants that had positions in the same direction and CUSIP as the un-allocable Current Net Unsettled Positions at the end of the preceding business day. FICC states that this situation could arise if a transaction recorded in a Sponsoring Member Omnibus Account or Segregated Indirect Participants Account fails to settle and that such failure to settle would not occur with Sponsored GC Trades.[69] FICC believes this methodology facilitates a reasonable and fair allocation for purposes of calculating gross margin requirements.[70]

c. Calculation of Excess Capital Premium

In addition, the Proposed Rule Change would amend the terms related to the ECP component of the Clearing Fund, which is used to collect additional margin if a Netting Member's exposure to FICC through its clearing activity is out of proportion to its capital. Currently, the ECP applicable to a Netting Member equals the Netting Member's ''Excess Capital Ratio'' (*i.e.,* its VaR Charge divided by its Netting Member Capital) multiplied by its ''Excess Capital Differential'' (*i.e.,* the amount by which a Netting Member's VaR Charge exceeds its Netting Member Capital). However, FICC currently reserves the right to collect less than

[59] *Id.* at 31.

[60] *See* Notice of Filing, *supra* note 4, at 21612.

[61] FICC would move the calculation methodology from Rule 4, Sections 1b, and 2a, Rule 3, Section 14, and Rule 3A, Section 10 to the new Margin Component Schedule. FICC would move the definitions from Rule 1 to Section 5 of the Margin Component Schedule.

[62] *See* Notice of Filing, *supra* note 4, at 21612.

[63] This method does not represent a change from the current method of calculating Required Fund Deposits, but merely moves the description from current Rule 4 to the new Margin Component Schedule.

[64] *See supra* Section I.B.2.a for a description of the proposed $1 million minimum cash margin requirement for each Segregated Indirect Participant Account.

[65] *See* Notice of Filing, *supra* note 4, at 21609.

[66] *Id.*

[67] FICC proposed to amend the definition of Account to be an account maintained by FICC for a Member to record transactions submitted by the member. FICC states that this change would clarify that Accounts are recordkeeping mechanisms for FICC to determine which transactions should be netted against each other, but are not custodial accounts through which FICC holds assets for a Netting Member. *See* Notice of Filing, *supra* note 4, at 21608.

[68] *See* GSD Rule 1 (defining MLA Charge, including for Sponsored Members sponsored by multiple Sponsoring Members), *supra* note 13; Securities Exchange Act Release No. 98558 (Sep. 27, 2024), 89 FR 68179 (Oct. 3, 2023) (File No. SR–FICC–2023–012).

[69] *See* Notice of Filing, *supra* note 4, at 21612–13; Notice of Partial Amendment, *supra* note 10, at 87443.

[70] *See* Notice of Filing, *supra* note 4, at 21613.

this amount or to return some or all of this amount.[71]

The changes would seek to make the calculation of the ECP component clearer and more predictable by (i) capping the amount of the ECP at two times the amount by which a Netting Member's VaR Charge exceeds its Netting Capital,[72] (ii) specifying the Netting Member Capital amounts used to calculate the ECP (that is, the Net Capital amount from each Netting Member's most recent Form X–17–A–5 (Financial and Operational Combined Uniform Single Report (''FOCUS Report'')) or the Equity Capital amount on its most recent Consolidated Report of Condition and Income (''Call Report'')), (iii) providing that FICC may calculate the premium based on updated available information, and (iv) permitting FICC, in its discretion, to waive the amount of the ECP and setting forth a specific procedure for doing so. Regarding the waiver procedure, only a Managing Director in FICC's Group Chief Risk Office would be able to grant a waiver of an ECP in certain situations. These situations would be limited to exigent circumstances or other unexpected events. When deciding whether to grant a waiver, FICC would consider the degree to which a Netting Member's capital position and trading activity compare or correlate to the exigent circumstances and whether FICC can effectively manage the risk exposure from the Netting Member without collecting the ECP.[73] Any waiver would be documented in a written report made available to the Netting Member. FICC states that these changes are substantially similar to changes recently adopted by the National Securities Clearing Corporation (''NSCC'') and they would enhance the ability of Netting Members to identify what their ECP will be and to ensure such amount is accurately calibrated.[74]

In addition, the Proposed Rule Change would revise the definitions of Excess Capital Ratio and Excess Capital Differential to exclude the VaR Charge for Segregated Indirect Participants. FICC is proposing this change because each indirect participant would be responsible for satisfying its own respective VaR Charge, not the Netting Member, and the Excess Margin Charge is designed to address the risk that a Netting Member with low capital relative to value-at-risk is not able to perform its obligations.[75] FICC states that including the VaR Charge that is calculated for an indirect participant and is satisfied by the capital of that indirect participant in the calculation of the Netting Member's ECP could result in assessing an ECP for that Netting Member that is greater than the amount required to mitigate the risk this margin component is designed to address.[76] FICC also states that this change is designed to ensure that the ECP does not result in differential treatment of Netting Members that act as intermediaries for Segregated Indirect Participants.

4. Modification of Terms for Brokered Transactions

The Proposed Rule Change would modify the terms relating to Brokered Transactions. FICC's rules currently cap the amount of loss allocation that may be applied to Inter-Dealer Broker Netting Members and Non-IDB Repo Brokers submitting Brokered Transactions. FICC would revise the definition of Brokered Transactions to include only the side of the transactions submitted to FICC for novation by an Inter-Dealer Broker Netting Member and entered into on the Inter-Dealer Broker Netting Member's own trading platform.[77] As a result, the favorable loss allocation treatment for Brokered Transactions would apply only to the transactions that present limited risk since an Inter-Dealer Broker is standing between two counterparties in those transactions and is therefore completely flat (that is, subject to offsetting exposures).[78] Since FICC believes the favorable loss allocation treatment is appropriate only for Inter-Dealer Broker Netting Members submitting Brokered Transactions, it would delete the term ''Non-IDB Repo Broker'' from its rules.[79] FICC states that these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.[80]

In addition, the proposed changes would provide that transactions entered into on inter-dealer brokers and similar platforms may be cleared using the Sponsored Service or the Agent Clearing Service.[81]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act[82] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) and (b)(3)(I) of the Exchange Act[83] and Rules 17ad–22(e)(4)(i), (e)(6)(i), (e)(6)(iii), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii) thereunder.[84]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act[85] requires the rules of a clearing agency to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and 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 protect investors and promote the public interest.

1. Separate Calculation and Collection of Margin for Proprietary and Customer Accounts

The proposed changes to require the separate and independent calculation and collection of margin for Netting Members' proprietary transactions and indirect participants' transactions, as described in Section I.B.1., should allow FICC to better identify and measure the unique risk profiles of each Netting

[71] *See* GSD Rule 1 (defining Excess Capital Ratio and Excess Capital Differential) and Rule 3, Section 14 (describing the Excess Capital Premium), *supra* note 13.

[72] In addition, FICC would amend the definition of Netting Member Capital to refer to a Netting Member's Net Capital, Net Assets, or Equity Capital to link the calculation to the appropriate regulatory framework for each Netting Member and add the term Equity Capital to clarify that a Netting Member's most recent Call Report, or financial statements or equivalent reporting if a Netting Member is not required to file a Call Report, will be used for the calculation of the Excess Capital Premium.

[73] *See* Notice of Filing, *supra* note 4, at 21613.

[74] *See* Securities Exchange Act Release No. 96786 (Feb. 1, 2023), 88 FR 8013 (Feb. 7, 2023) (SR–NSCC–2022–005).

[75] *Id.*

[76] *Id.*

[77] *See* Notice of Partial Amendment, *supra* note 10, at 87444.

[78] *See* Notice of Filing, *supra* note 4, at 21614.

[79] *Id.*

[80] *See* Notice of Filing, *supra* note 4, 21604.

[81] Notice of Partial Amendment, *supra* note 10, at 87444; *see also* FICC Letter at 22–23.

[82] 15 U.S.C. 78s(b)(2)(C).

[83] 15 U.S.C. 78q–1(b)(3)(F) and 15 U.S.C. 78q–1(b)(3)(I).

[84] 17 CFR 240.17ad–22(e)(4)(i), (e)(6)(i), (e)(6)(iii), (e)(18)(ii), (e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

[85] 15 U.S.C. 78q–1(b)(3)(F).

Member and indirect participant. This proposed change would ensure that an indirect participant's positions are no longer netted against a Netting Member's positions, that margin is collected with respect to the indirect participant's positions specific to those transactions, and that interest on an indirect participant's cash margin would be paid to the Netting Member for the benefit of, and as agent for, the indirect participant. As discussed in more detail in Section II.C.1 below, this should enhance FICC's ability to calculate and collect the appropriate margin from each direct and indirect participant and, therefore, meet its settlement obligations in the event of a Netting Member or indirect participant default. By doing so, the Proposed Rule Change should better ensure that, in the event of a default, FICC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources and, therefore, it would be able to continue providing prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).[86]

The separate and independent calculation and collection of margin for proprietary and indirect participants' transactions should allow FICC to better identify and measure the unique risk profiles of each Netting Member and indirect participant, enhancing FICC's ability to calculate and collect sufficient margin from each Netting Member and indirect participant to cover potential losses from a Netting Member or indirect participant default, thereby reducing the likelihood that FICC, Netting Members, or indirect participants would incur losses resulting from a default. As a result, the proposed changes should limit FICC's risk to a Netting Member or indirect participant default and thereby enhance its ability to safeguard securities and funds in its control and for which it is responsible.

2. $1 Million Minimum Cash Margin Requirement

For the reasons discussed below in more detail in Section II.C.2., the proposed $1 million minimum cash margin requirement for Segregated Indirect Participants, which could be adjusted by FICC if it determines that a different minimum amount would be appropriate and consistent with achieving its backtesting coverage target, should help ensure that each indirect participant provides sufficient margin to cover its potential obligations to FICC, thereby helping to allow FICC to meet its settlement obligations in the event of a default and to protect FICC, non-defaulting Netting Members, indirect participants, and the market from losses from an indirect participant default. Accordingly, the proposed $1 million minimum cash margin requirement should assure the safeguarding of securities and funds which are in the custody or control of FICC.

In addition, as indicated by FICC's backtesting results, and discussed further in Section II.C.2 below, the $1 million minimum margin requirement should enhance FICC's ability to collect the appropriate margin from each indirect participant and, therefore, meet its settlement obligations in the event of a default. FICC's flexibility to adjust the minimum margin amount if it determines that a different amount would be appropriate and consistent with achieving its backtesting coverage target is also consistent with ensuring that each indirect participant provides sufficient margin to cover its obligations to FICC. Achieving backtesting coverage targets is essential to ensuring that the margin collected would be sufficient for FICC to cover its credit exposures to its Netting Members and indirect participants fully with a high degree of confidence, as required for a covered clearing agency such as FICC.[87] As defined in the Covered Clearing Agency Standards, backtesting is an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models,[88] and it is a key analytical mechanism for a CCP to consider the effectiveness of its margin model. FICC's ability to adjust the minimum margin amount would apply only where it would be appropriate and consistent with achieving its backtesting coverage target. This ability would, therefore, be limited to circumstances where its backtesting coverage target requirements are not being met or the amount of margin being collected exceeds the amount needed to cover the indirect participant's exposure to FICC.

Based on FICC's representations, the Commission understands that FICC generally intends to use this ability to adjust the minimum margin requirement below $1 million if a lower minimum would suffice to reduce backtesting deficiencies comparably to the $1 million.[89] As part of its ongoing supervision of FICC, the Commission will continue to monitor the performance of the $1 million minimum margin requirement, including as its performance compares to backtesting, and will engage with FICC regarding any changes to that requirement and the supporting analysis for such changes, to help ensure that FICC is appropriately exercising that discretion consistent with the requirements imposed upon it by the rule (*i.e.,* that it determines that any such adjustments would be appropriate and consistent with achieving its backtesting coverage target).[90] For example, not meeting backtesting coverage requirements would be an indication that the minimum margin amount is insufficient to cover FICC's credit exposure to its Netting Members and indirect participants, whereas, on the contrary, higher backtesting performance could indicate that the margin collected exceeds the exposure to FICC.

Therefore, the $1 million minimum margin requirement should help ensure that, in the event of a Segregated Indirect Participant default, FICC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources and it can continue providing prompt and accurate clearance and settlement of securities transactions.

3. Margin Component Schedule

The proposed changes in section I.B.3 regarding the calculation of margin for segregated and non-segregated accounts should help ensure that FICC collects margin sufficient to cover its exposures with respect to both direct and indirect participants. Requiring that the margin requirement for a Segregated Indirect Participant Account be calculated in generally the same manner as a Netting Member's requirement, which the Commission generally has reviewed and approved as part of FICC's rules,[91]

[86] *Id.*

[87] 17 CFR 240.17ad–22(e)(6).

[88] 17 CFR 240.17ad–22(a).

[89] *See* FICC Letter at 3, 30–31.

[90] In addition, the requirements applicable to FICC as a self-regulatory organization under Section 19(b) of the Exchange Act and as a designated financial market utility under Title VIII of the Payment, Clearing, and Supervision Act (12 U.S.C. 5465(e)) would continue to apply. Thus, for example, if FICC were to amend the $1 million minimum margin requirement to an amount that would materially alter the level or nature of risk presented, FICC would be obligated to submit an advance notice of such change with the Commission.

[91] *See, e.g.,* Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Implement Changes to the Required Fund Deposit Calculation in the Government Securities Division Rulebook, Exchange Act Release No. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (approving changes to how FICC calculates the Value at Risk component of its margin methodology, addition of the new ''Blackout Period Exposure adjustment'' component to the margin methodology, eliminating certain existing components, and revising additional components).

should help ensure that FICC collects margin sufficient to cover its exposures with respect to both direct and indirect participants, as discussed further in Sections II.C.3 and II.D.3 below. In addition, by doing so, these proposed changes should help ensure that, in the event of such a default, FICC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources and, therefore, it could continue providing prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).[92] For the same reasons, these proposed changes should also help ensure that FICC is able to continue to meet its obligation in the event of a default, without accessing non-defaulting Netting Members' or indirect participants' margin deposits, thereby helping FICC ensure that it can safeguard the funds and securities within its custody or control, consistent with Section 17A(b)(3)(F).[93]

In addition, the proposed changes described in Section I.B.4 to consolidate the terms relating to margin calculation into a single location and refine the description of FICC's margin methodology should help FICC's Netting Members and indirect participants better understand and anticipate their margin requirements. This improved understanding of the potential margin requirements should, in turn, facilitate prompt and accurate clearance and settlement by removing potential ambiguity or confusion about market participants' obligations to FICC. Similarly, the improved transparency provided by the proposed centralized margin component schedule and enhanced descriptions of FICC's margin components, such as the MLA Charge, should provide Netting Members, indirect participants, and the public with more clarity about the calculation and application of FICC's margin components and resolve potential ambiguity about when certain components would or would not apply, which is consistent with promoting the public interest.

4. Allocation of Net Unsettled Positions

The proposed changes described in Section I.B.3.b. to adopt a method for allocating net unsettled positions to individual indirect participants for calculating margin requirements should reduce the potential exposure to FICC arising from indirect participant transactions that fail to settle by ensuring that FICC has a mechanism to collect margin for such transactions. Further, these proposed changes should make clear that such obligations are allocated only to participants that are outside the Sponsored GC service, since such fails to deliver do not occur in that service. By accounting for risks arising from net unsettled positions, the proposed changes should enhance FICC's risk management and its ability to assure the safe return of funds and securities, consistent with Section 17A(b)(3)(F).[94]

5. Calculation of Excess Capital Premium

The proposed changes to the calculation of the ECP described in Section I.B.3.c. above are consistent with promoting robust risk management, because the changes should help ensure that FICC continues to collect margin sufficient to address the heightened default risk presented by a Netting Member operating with lower capital levels relative to its margin requirements. Based on its review of the Proposed Rule Change, including the detailed impact analysis submitted as a confidential exhibit, FICC's margin coverage would not be impacted by this change and FICC would continue to collect sufficient margin to manage its potential exposure to its Netting Members.

In addition, the proposed changes to the calculation of the ECP should result in a simplified and more straightforward method for calculating the ECP, based on understandable metrics with which FICC's Netting Members are familiar. Using a clearly defined source for determining Netting Member Capital in the calculation of the ECP would result in a more consistent calculation across different types of Netting Members. Moreover, capping the Excess Capital Ratio at 2.0 would provide transparency to Netting Members so they can understand how the ECP will be calculated, and it also would align FICC's cap with the recently approved changes to the ECP calculation at NSCC.[95] By improving the consistency and predictability of the ECP, the proposed enhancements would also improve FICC's ability to collect margin amounts that reflect the risks posed by its Netting Members such that, in the event of Netting Member default, FICC's operations would not be disrupted, and non-defaulting Netting Members and indirect participants would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Exchange Act.[96]

The proposed changes set forth in section I.B.3.c should improve transparency and understanding of the FICC's governance and application of the ECP. For example, FICC's proposal would describe the exigent circumstances in which FICC may waive the ECP, describe what information FICC would consider when determining whether to waive the charge, and specify the approval necessary to waive the charge. Moreover, using commonly understood inputs as the determinants of the ECP (*i.e.,* the FOCUS or Call Report) and capping the Excess Capital Ratio at 2.0 should help Netting Members better anticipate and plan for a potential ECP. These proposed changes should help FICC's members better anticipate their required margin because of the use of simplified inputs to the calculation of the ECP and the imposition of a cap on the applicable Excess Capital Ratio. This improved understanding of the potential margin requirements should, in turn, facilitate prompt and accurate clearance and settlement by removing potential ambiguity or confusion about a member's obligations to FICC.

Similarly, the improved transparency provided by this Proposed Rule Change both with respect to a Netting Member's margin obligations and the process by which FICC would consider waiver of an ECP should provide Netting Members and the public with more clarity about the nature and application of the ECP and resolve potential ambiguity about when the ECP would or would not apply, which is consistent with promoting the public interest.

6. Modification of Terms for Brokered Transactions

The proposed changes described in Section I.B.4. to revise the definition of Brokered Transactions to include only the side of the transactions submitted to FICC for novation by an Inter-Dealer Broker Netting Member and entered into on the Inter-Dealer Broker Netting Member's own trading platform should enhance FICC's risk management by providing favorable loss allocation

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] *Id.*

[94] 15 U.S.C. 78q–1(b)(3)(F).

[95] *See* Securities Exchange Act Release No. 96786 (Feb. 1, 2023), 88 FR 8013 (Feb. 7, 2023) (SR–NSCC–2022–005); *see also id.* (discussing the view that capping the ratio at 2.0 strikes an appropriate balance between addressing the heightened default risk without imposing overly burdensome Excess Capital Premium charges).

[96] 15 U.S.C. 78q–1(b)(3)(F).

treatment only to transactions that present limited risk to FICC. As a result, these changes should help ensure that FICC has sufficient prefunded financial resources to continue meeting its obligations in the event of a default, which will facilitate the safeguarding of securities and funds which are in the custody or control of FICC, consistent with Section 17A(b)(3)(F).[97]

For these reasons, the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act.[98]

B. Consistency With Section 17A(b)(3)(I) of the Exchange Act

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency, such as FICC, do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.[99] Section 17A(b)(3)(I) does not require the Commission to make a finding that FICC chose the option that imposes the least possible burden on competition. Rather, the Exchange Act requires that the Commission find that the Proposed Rule Change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, which involves balancing the competitive effects of the proposed rule change against all other relevant considerations under the Exchange Act.[100]

The Commission received comments regarding the impacts the Proposed Rule Change may have on competition. Several commenters state that the $1 million minimum Segregated Customer Margin Requirement for each Segregated Indirect Participant could discourage small firms from using the Segregated Indirect Participant Accounts.[101] Several commenters state that the requirement would increase costs for small firms and limit execution counterparties,[102] and several additional commenters state that FICC's proposed $1 million margin requirement is arbitrarily too high.[103]

In response to concerns about increased costs to relatively small indirect participants, FICC states that the margin segregation regime under the proposal is entirely voluntary.[104] To the extent the $1 million floor is too costly for certain indirect participants, FICC states that they can choose to post margin to a Netting Member in a non-segregated account that could require them to post lower margin or no margin at all.[105] Further, FICC amended the Margin Segregation Proposal to provide that the minimum margin floor will be set at an amount of $1 million but could be adjusted by FICC if it determines that a different minimum amount would be appropriate and consistent with achieving its backtesting coverage target, and it would require that FICC's members would be notified of any such adjustment to the applicable minimum charge by an Important Notice.[106] Specifically, FICC states that it would review the $1 million floor for Segregated Customer Margin as part of ongoing internal surveillance and risk management monitoring procedures.[107] FICC also stated that it would be prudent to have the ability to adjust the $1 million floor proactively to the extent that FICC identifies, as part of these reviews, that activity levels, margin performance observed through backtesting, and other measures indicate that FICC would be able to continue to manage the risks presented to it and meet its regulatory risk management obligations (including, for example, its 99% backtesting coverage target) with a lower minimum Segregated Customer Margin Requirement.[108]

The Commission acknowledges the commenters' concerns that the $1 minimum margin requirement could result in increased costs for small firms that choose to utilize the proposed margin segregation regime, which may weaken those firms' competitive positions relative to others. In addition, the Commission acknowledges that FICC could, potentially, adjust the minimum margin requirement to an amount above $1 million; however, under the proposal, FICC would only be able to do so if it determines that a different amount would be appropriate and consistent with achieving its backtesting coverage target. As part of its ongoing supervision of FICC, the Commission will continue to monitor the performance of the $1 million minimum margin requirement, including as its performance compares to backtesting, and will engage with FICC regarding any changes to that requirement and the supporting analysis for such changes, to help ensure that FICC is appropriately exercising that discretion consistent with the requirements imposed upon it by the rule (*i.e.,* that it determines that any such adjustments would be appropriate and consistent with achieving its backtesting coverage target). In addition, the Commission acknowledges that firms are not required to use a segregated account to participate at FICC and may choose to access FICC through a different type of account. Although some firms who choose to use segregated accounts could experience a burden on competition because of these potentially higher costs, the Commission concludes that any such burden to these firms is necessary and appropriate in furtherance of the Exchange Act[109] for the following reasons.

As discussed in Section I.A above, FICC seeks to maintain sufficient resources (*i.e.,* margin) to cover its credit exposures to its Netting Members and indirect participants fully with a high degree of confidence and uses backtesting to determine when a Netting Member or indirect participant's margin

[97] *Id.*

[98] *Id.*

[99] 15 U.S.C. 78q–1(b)(3)(I).

[100] *See* Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

[101] *See* Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association (Apr. 17, 2024) (''ISDA Letter I'') at 4; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (Apr. 17, 2024) (''MFA Letter I'') at 6–7; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (Nov. 12, 2024) (''MFA Letter II'') at 7; Letter from Jiri Krol, Deputy Chief Executive Officer, Global Head of Government Affairs, Alternative Investment Management Association (Apr. 23, 2024) (''AIMA Letter'') at 6–7; Letter at 10; Letter from William C. Thum, Managing Director and Assistant General Counsel, Securities Industry and Financial Markets Association, Asset Management Group (May 24, 2024) (''SIFMA AMG Letter'') at 8; Letter from Joanna Mallers, Secretary, Futures Industry of America, Principal Traders Group (Oct. 11, 2024) (''FIA PTG Letter II'') at 2–3.

[102] *See* AIMA Letter at 6 (stating that the requirement will have myriad negative effects on customers and market liquidity generally, and that, for a customer with multiple clearing relationships and multiple segregated accounts, the need to maintain at $1 million cash in each account will increase costs for customers and prevent them from utilizing that capital in more productive ways); Letter from Joanna Mallers, Secretary, Futures Industry of America, Principal Traders Group (Apr. 17, 2024) (''FIA PTG Letter I'') at 7; FIA PTG Letter II at 2–3; SIFMA AMG Letter at 8–9. In addition, one commenter stated that, with the proposed deletion of the requirement to be a qualified institutional buyer (''QIB'') to be a Sponsored Member, these market participants may not be able to afford the $1 million cash requirement because QIBs, by definition, manage more than $100 million in securities on a discretionary basis, so it follows that the $1 million minimum could represent a sizable portion of a non-QIB's assets, potentially disincentivizing the non-QIB from pursuing indirect access to FICC. AIMA at 6–7.

[103] *See* Letter from Sarah A. Bessin, Deputy General Counsel and Nhan Nguyen, Associate General Counsel, Investment Company Institute (Jun. 20, 2024) (''ICI Letter'') at 12; MFA Letter I at 6–7; MFA Letter II at 6–7.

[104] *See* FICC Letter at 30.

[105] *Id.*

[106] *See* Notice of Partial Amendment, *supra* note 10, at 87443.

[107] *See* FICC Letter at 30.

[108] *Id.* at 31.

[109] 15 U.S.C. 78q 1(b)(3)(I). Specifically, as discussed in greater detail in Section II.C and II.H below, the Proposed Rule Change is necessary and appropriate to further the policy goals under Rule 17Ad 22(e)(4)(i) and (e)(19). 17 CFR 240.17Ad 22(e)(4)(i) and (e)(19).

would have been insufficient to cover FICC's credit exposure to that Netting Member or indirect participant. As described in Section II.C.2 below, the impact studies conducted by FICC prior to and after implementation of the $1 million Netting Member minimum margin requirement demonstrate that a $1 million margin floor has a material impact on reducing the number of backtesting deficiencies experienced by FICC's Netting Members, thereby increasing the number of Netting Members for which FICC maintained sufficient coverage at a confidence level of at least 99 percent. Since FICC would only be able to use Segregated Customer Margin posted by an individual Segregated Indirect Participant to satisfy that customer's obligations, the Segregated Customer Margin posted by each individual Segregated Indirect Participant would need to be sufficient on its own to address losses arising from the Segregated Indirect Participant's position. Therefore, adding the proposed $1 million floor for Segregated Customer Margin should enable FICC to better manage its credit exposure to a Segregated Indirect Participant by ensuring FICC holds sufficient collateral to cover that exposure, reducing the likelihood that FICC or non-defaulting parties would incur losses resulting from a Segregated Indirect Participant default. Moreover, if the $1 million floor is cost prohibitive for certain indirect participants, they can continue to access FICC's services by submitting activity through a Sponsoring Member Omnibus Account or Agent Clearing Member Omnibus Account that is not segregated, since the proposed margin segregation regime is entirely voluntary.

Therefore, the Commission concludes that any competitive burden imposed by the Proposed Rule Change is necessary and appropriate in furtherance of the Exchange Act. Accordingly, the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(I) of the Exchange Act.[110]

A. Consistency With Rule 17ad–22(e)(4)(i)

Rule 17ad–22(e)(4)(i) requires 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.[111]

1. Separate Calculation and Collection of Margin for Proprietary and Customer Accounts

The proposed changes to require the separate and independent calculation and collection of margin for Netting Members' proprietary transactions and indirect participants' transactions, as described in Section I.B.1., are consistent with Rule 17ad–22(e)(4)(i).[112] The separate calculation and collection of margin from Netting Members and indirect participants should allow FICC to better identify and measure the unique risk profile of each participant, enhancing FICC's ability to calculate and collect the appropriate margin from each direct and indirect participant. As a result, the proposed changes should help ensure that FICC has sufficient margin to cover potential losses from a Netting Member or indirect participant default, thereby reducing the probability that FICC, non-defaulting Netting Members, or non-defaulting indirect participants would incur losses resulting from a default.

2. $1 Million Minimum Cash Margin Requirement

The proposed minimum $1 million cash margin requirement for each Segregated Indirect Participant Account, as described in Section I.B.2.a, is consistent with Rule 17ad–22(e)(4)(i). Several commenters state that FICC lacks a sufficient basis or justification for the required $1 million minimum margin amount.[113] Specifically, one commenter stated that using the amount applicable to Netting Members is not an appropriate basis for establishing a minimum for indirect participants, and also stated that the requirement lacks any support or analysis as to the level of margin attributable to a typical fund's positions in cleared Treasury repo, which is data FICC should have readily available.[114] An additional commenter stated the requirement seems arbitrary, and not practical or necessary, especially in the current done-with model, to force every segregated customer to be subject to the same minimum requirement as a Netting Member.[115]

In addition, commenters state that FICC should adopt a lower minimum requirement ($100,000 to $250,000), a dynamic minimum based on average exposure subject to a $250,000 cap, or a minimum set by the relevant Netting Member.[116] Commenters also state that FICC should determine a minimum deposit based on the individual client and the risk that such client presents to FICC and other market participants.[117]

In response, FICC states that the $1 million floor for Segregated Indirect Participants is the same floor FICC already has in place for its Netting Members.[118] FICC states that its impact study, conducted in 2022 when adopting the rule applicable to Netting Members, demonstrated that a $1 million floor would protect FICC and its participants from incurring a loss in the event of a Netting Member failure because the study indicated that a $1 million floor would provide an adequate buffer for additional repo activity due to increases in repo interest rates and would have mitigated 65 out of 396 backtesting deficiencies (16%) during the period from July 1, 2021 to June 30, 2022.[119] FICC further states that it analyzed alternative minimum margin amounts, such as $500,000, and, based on the results of its analysis, the $1 million floor provided the appropriate balance of improving backtesting performance and margin coverage while minimizing the impact on Netting Members.[120]

FICC also states that the backtesting data from the period after the $1 million minimum floor was implemented indicated a ''material reduction of backtesting deficiencies at FICC.'' [121] From December 5, 2022 to June 30, 2024, FICC states that the $1 million floor eliminated 24 backtesting deficiencies, a 12% reduction.[122] Further, during a period of 12-month period of moderate market volatility from July 1, 2023 to June 30, 2024, FICC states that the $1 million floor

[110] 15 U.S.C. 78q–1(b)(3)(I).

[111] 17 CFR 240.17ad–22(e)(4)(i).

[112] *See id.*

[113] *See* ISDA Letter I at 4; ICI Letter at 12; AIMA Letter at 6–7; MFA Letter II at 6.

[114] ICI Letter at 12.

[115] AIMA Letter at 6. *See also* MFA Letter II at 7.

[116] AIMA Letter at 7; MFA Letter I at 7; SIFMA AMG Letter at 9.

[117] ISDA I at 4; *see also* MFA Letter II at 7 (stating that the requirement should be determined based on a participant's particular risk profile, including its planned and historical clearing activity).

[118] *See* FICC Letter at 28; Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR–FICC–2022–006) (''FICC–2022–006 Order''). The impact study contains an analysis of backtesting results on a member-by-member basis over a twelve-month period ending June 30, 2022, and it includes, for both the then-current rule and the proposed $1 million minimum rule, the number of backtesting deficiencies and the level of coverage obtained. It contains the same analysis for a $500,000 minimum as well, including the same data points on a member-by-member basis.

[119] *See* FICC Letter at 28.

[120] *Id.*

[121] *See* FICC Letter at 29.

[122] *Id.*

eliminated 15 backtesting deficiencies, a 22% reduction.[123]

FICC further states that the $1 million floor is appropriate because the Segregated Customer Margin posted by each individual Segregated Indirect Participant needs to be sufficient on its own to address losses arising from the Segregated Indirect Participant's positions.[124] This is because Segregated Customer Margin is not subject to loss mutualization under the proposal, so FICC can only use Segregated Customer Margin posted by an individual Segregated Indirect Participant to satisfy that customer's obligations. As a result, each Segregated Indirect Participant's portfolio would present a risk to FICC that is equivalent to the risk of a proprietary portfolio of an individual Netting Member.[125] If the Segregated Customer Margin is insufficient, losses would need to be mutualized, with harm to FICC, its non-defaulting Netting Members, and, potentially, the market as a whole.[126]

In addition, FICC stated that the risk cited by the Commission of inconsistent activity giving rise to dramatic changes in risk exposure, discussed by the Commission in the FICC–2022–006 Order,[127] is arguably more pronounced for indirect participants than for Netting Members.[128] First, indirect participants may clear through multiple Netting Members and shift their activity through different Netting Members, which can present risks to FICC since FICC cannot use the Segregated Customer Margin posted by the Segregated Indirect Participant through one Netting Member to address the Segregated Indirect Participant's transactions cleared by another Netting Member.[129] As a result, FICC states that, even if the Segregated Indirect Participant's overall activity remains steady, FICC could see dramatic shifts in its risk simply because the Segregated Indirect Participant shifts the Netting Members it uses as its intermediary at FICC.[130] Second, FICC states that it does not have the same general understanding of indirect participants' business that it has for its Netting Members, since it does not collect the same information on individual customers' business or finances that it does for its Netting Members.[131] As a result, FICC states that it is less likely to know when there may be significant swings in indirect participant risk exposures as it would for its Netting Members and, since indirect participants are likely to have a far more diverse array of business models and interest rate considerations than FICC's Netting Members, they could engage in inconsistent activity that could increase risk exposure to FICC.[132] According to FICC, the possibility of inconsistent activity among indirect participants is potentially greater.[133]

The Commission disagrees with commenters who stated that using the same minimum as Netting Members is not appropriate for Segregated Indirect Participants. As stated in Section I.A. above, FICC and non-defaulting Netting Members and indirect participants may be subject to losses should the Segregated Customer Margin of an indirect participant be insufficient to satisfy losses caused by the liquidation of that indirect participant's portfolio. This potential exposure both to FICC and non-defaulting Netting Members and indirect participants makes it essential that FICC determine margin amounts for Segregated Indirect Participant Accounts that are reasonably designed to ensure that FICC has sufficient margin to cover the losses of a defaulting Segregated Indirect Participant.

The analyses conducted by FICC both in connection with the 2022 change to the required minimum margin amount for Netting Members and after the implementation of that requirement, which the Commission has reviewed and analyzed, support the use of the $1 million margin requirement for Segregated Indirect Participant Accounts. The Commission agrees that these studies demonstrate that a $1 million margin floor has a material impact on reducing the number of backtesting deficiencies experienced by FICC's Netting Members, which would likely help FICC better manage its credit exposure to its Netting Members and indirect participants and credit exposures arising from its payment, clearing, and settlement processes.

Consideration of the appropriate Netting Member minimum is directly relevant to what is appropriate for Segregated Indirect Participant Accounts because FICC would treat such accounts the same as Netting Member accounts in the event of a default of that individual customer.[134] Even though a Segregated Indirect Participant would be the customer of a Sponsoring Member or an Agent Clearing Member, each Segregated Indirect Participant Account would need to provide sufficient margin to independently cover its losses in the event of a default. FICC will determine the appropriate margin for each Segregated Indirect Participant Account as if it were a separate Netting Member. As discussed above, indirect participants may increase risk by clearing through different Netting Members, which would provide FICC with less insight into their overall portfolio. Accordingly, it is appropriate for the minimum amount to be the same for both Netting Members and indirect participants.

In response to commenters who proposed an alternative amount or approach, the Commission also has reviewed and analyzed the analysis of alternative minimum amounts that FICC conducted, which show that there would still be potential for higher amounts of backtesting deficiencies using a $500,000 alternative minimum, making the alternatives proposed by commenters ($100,000, $250,000 or a dynamic minimum with a $250,000 cap) not reasonably designed to allow FICC to collect sufficient margin to cover its exposures. As discussed above, FICC's backtesting data from December 5, 2022 to June 30, 2024 indicates that increasing the minimum margin amount from $100,000 to $1 million eliminated 24 Netting Member backtesting deficiencies, a 12% reduction.[135] Further, during a 12-month period of moderate market volatility from July 1, 2023 to June 30, 2024, the $1 million floor eliminated 15 backtesting deficiencies, a 22% reduction.[136]

Because FICC is not able to predict how many indirect participants may elect to submit activity to FICC through a Segregated Indirect Participants Account or the size or volume of that activity, margin requirements for each Segregated Indirect Participant would be calculated in the same manner as for Netting Members.[137] FICC's impact studies of Netting Members provide a reasonable approximation of the risks FICC may face if the minimum margin amount is set below $1 million.

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] FICC–2022–006 Order, *supra* note 118, at 65270.

[128] *See* FICC Letter at 30.

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] This also makes the 2022 impact study relevant to this determination because FICC would calculate margin requirements for each Segregated Indirect Participant in the same manner as margin requirements for each Netting Member. The Commission reviewed and analyzed that impact study when approving the current minimum applicable to Netting Members, and the same analysis should apply here as well.

[135] *See* FICC Letter at 29.

[136] *Id.*

[137] *See* Notice of Filing, *supra* note 4, at 21595.

Therefore, the proposed $1 million floor is appropriate to increase the probability that the margin amount collected by FICC is sufficient to cover FICC's credit exposure to Segregated Indirect Participants and protect non-defaulting parties from experiencing losses. However, as described above in Section I.B.2.a., if FICC determines that a different minimum charge would be appropriate and consistent with achieving its backtesting coverage target, FICC would have the ability to adjust the minimum charge of $1 million margin requirement. This added flexibility should allow FICC to continue to collect the appropriate amount of margin to cover its credit exposure to each participant fully with a high degree of confidence, as demonstrated by FICC's meeting its backtesting coverage targets, while minimizing the burden on indirect participants.

Moreover, the Commission disagrees that allowing the Netting Member to determine a minimum would be appropriate. It is unclear what basis a Netting Member would use to determine such a minimum in a way that would ensure that the amount is sufficient to meet FICC's regulatory obligations and minimize backtesting deficiencies because a Netting Member would not be able to replicate FICC's backtesting or calculate FICC's regulatory obligations.

The Commission disagrees that determining a minimum deposit on a case-by-case basis would be feasible for every Segregated Indirect Participant. FICC has stated that it does not know how many Segregated Indirect Participants will participate in FICC. At this time, there are over 2500 Sponsored Members at FICC,[138] and it is likely that additional indirect participants will want to access clearing going forward in light of the Treasury Clearing rules. Determining a minimum for even half the current Sponsored Members on a case-by-case basis would be extremely burdensome for FICC and would require the submission of detailed financial information by each Sponsored Member to inform FICC of its planned business activities, and it is unclear how or on what basis such a minimum would be adjusted over time. Establishment of a minimum requirement is appropriate to ensure that FICC can meet its obligations under Rule 17ad–22(e)(4)(i), and reliance upon the minimum for Netting Members is appropriate because, as discussed above, FICC has to treat each Segregated Indirect Participant as a stand-alone account for risk management purposes to segregate its margin appropriately.

For these reasons, the $1 million minimum margin requirement should help ensure that FICC has sufficient margin to cover potential losses from a Segregated Indirect Participant default, thereby reducing the probability that FICC, non-defaulting Netting Members, and non-defaulting indirect participants would incur losses resulting from a default. Moreover, as described above in Section I.B.2.a., FICC would have the ability to adjust the amount of the minimum $1 million margin requirement if FICC determines that a different minimum charge would be appropriate and consistent with achieving its backtesting coverage target. The Commission agrees with FICC that it should continue to assess the performance of this minimum requirement with respect to FICC's backtesting coverage requirements, as it provided in the Amendment to this filing, to ensure that FICC is not collecting more margin than is necessary to meet its regulatory obligations to cover its exposure to its participants.[139] Although the Commission recognizes that FICC could use this ability to increase the $1 million minimum to some greater amount, it would only be able to do so if determines that a different minimum charge would be appropriate and consistent with achieving its backtesting coverage target.

3. Margin Component Schedule

The proposed changes in section I.B.3 regarding the calculation of margin for segregated and non-segregated accounts should ensure that FICC collects margin sufficient to cover its exposures with respect to both direct and indirect participants. Requiring that the margin requirement for a Segregated Indirect Participant Account be calculated in generally the same manner as a Netting Member's requirement, which the Commission has reviewed and approved as part of FICC's rules, should help ensure that FICC collects margin sufficient to cover its exposures with respect to both direct and indirect participants. By doing so, this portion of the Advance Notice should better ensure that, in the event of a Netting Member's or indirect participant's default, FICC has sufficient margin to cover potential losses from the default, thereby reducing the probability that FICC, non-defaulting Netting Members, and non-defaulting indirect participants would incur losses resulting from a default. Collecting the same margin components for a Segregated Indirect Participant Account as those used for a Netting Member Account is appropriate because FICC has to risk-manage each Segregated Indirect Participant Account individually, and application of the existing margin methodology would help ensure that FICC collects sufficient margin to cover its exposures to participants for all Accounts. FICC has, however, taken into account how the ECP should apply differently when determining a Segregated Customer Margin Requirement, which is appropriate for the reasons discussed in Section II.C.3 below, and the changes related to the ECP Charge would ensure that Segregated Indirect Participants are not required to post additional margin to account for the capital position of its Netting Member.

Accordingly, for the reasons discussed above, the Proposed Rule Change is reasonably designed to enable FICC to effectively identify, measure, monitor, and manage its credit exposure to Netting Members and indirect participants, consistent with Rule 17ad–22(e)(4)(i).[140]

B. Consistency With Rule 17ad–22(e)(6)(i)

Rule 17ad–22(e)(6)(i) requires FICC to 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, and, if the covered clearing agency provides central counterparty services for U.S. Treasury securities, calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's

[138] *See* GSD Member Directories, *available at https://www.dtcc.com/client-center/ficc-gov-directories.*

[139] One commenter states that FICC should not delay recalibration of the minimum margin requirement to a later date. MFA Letter II at 6–7. However, as the Commission discussed above, the minimum margin requirement is appropriate, based on the data available at this time. The Commission will continue to monitor implementation of this requirement going forward once more data regarding the use of segregated accounts is available.

[140] *See id.*

payment, clearing, or settlement facilities.[141]

1. Separation of Proprietary and Customer Margin

The proposed changes to separate proprietary and customer margin are consistent with Rule 17ad–22(e)(6)(i). First, to help ensure that proprietary transactions and transactions submitted to FICC on behalf of indirect participants are margined separately, FICC would require that each margin portfolio contain only transactions from the same account type and that Netting Members use separate Deposit IDs for different transaction types. Second, FICC would calculate each Segregated Indirect Participant's margin requirement separately on a gross basis as though each Segregated Indirect Participant were a separate Netting Member. Finally, FICC would create a separate ''Segregated Customer Margin Custody Account'' for each Netting Member that contains deposits of Segregated Customer Margin for indirect participants, with interest earned on cash margin paid to each Segregated Indirect Participant's Netting Member for the benefit of, and as an agent for, the Segregated Indirect Participant. Collectively, these proposed changes should ensure that a Netting Member's proprietary transactions are not netted with indirect participant transactions for margin calculations and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member's proprietary transactions. Moreover, by calculating each Segregated Indirect Participant's margin requirement separately from Netting Members and other Segregated Indirect Participants, the proposed changes should allow FICC to better isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant's risk exposures.[142]

One commenter expressed concern that the proposal would not fully eliminate fellow customer risk because it would allow for the *pro rata* allocation of Current Net Settlement positions among Segregated Indirect Participant positions held in the same Segregated Indirect Participants Account.[143] In response, FICC explained that, due to the requirement in the Treasury Clearing Rules that margin for customer positions be calculated separately from margin for a Netting Member's proprietary positions, FICC would not be able to allocate the margin obligations from Current Net Settlement Positions to a Netting Member's portfolio.[144] As a result, such margin must be allocated to customer positions and FICC states that, when it is not aware of the allocation of Current Net Settlement Positions among customers, it is most equitable to allocate such positions *pro rata* to customers who were long or short the relevant securities.[145] The Commission agrees that allocating the positions to the Netting Member's account would be inconsistent with Rule 17ad–22(e)(6)(i) because it would impermissibly net proprietary transactions against indirect participant transactions. The Commission further agrees that the positions must be allocated to ensure that FICC is able to appropriately risk-manage those positions (that is, to collect appropriate margin). The Commission further agrees with FICC's approach of limiting such *pro rata* allocations only to customers engaging in non-Sponsored GC Trades because settlement failures do not occur with respect to Sponsored GC Trades. Therefore, in the event that the positions are not allocated, a *pro rata* allocation among customers is appropriate.

Accordingly, the proposed changes in the Proposed Rule Change would be consistent with Rule 17ad–22(e)(6)(i) because they should help ensure that FICC calculates, collects, and holds margin for a Netting Member's proprietary positions separately from the margin for positions the member clears for customers.[146]

5. Margin Component Schedule

The proposed changes to establish a Margin Component Schedule, which would consolidate the terms and information relating to margin calculation throughout the Rules into a single schedule, are consistent with Rule 17ad–22(e)(6)(i). Under the proposed Margin Component Schedule, FICC would perform substantially the same calculation it currently performs when determining a Netting Member's Required Fund Deposit and include the methodology for calculating a Netting Member's Segregated Customer Margin Requirement. By including a methodology to calculate each Segregated Indirect Participant's margin requirement separately from Netting Members and other Segregated Indirect Participants, the proposed changes should help ensure that FICC calculates, collects, and holds margin for a Netting Member's proprietary positions separately from the margin for positions the member clears for customers. Moreover, calculating margin requirements for each Segregated Indirect Participant should allow FICC to better isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant's risk exposures and thereby collect margin commensurate with the risks of each Netting Member and indirect participant portfolio.

A commenter states that FICC should confirm that segregation of margin for indirect participants does not magnify risk for Netting Members. Specifically, the commenter states that it is not clear whether the Required Fund Deposit to be posted by Netting Members incorporates any exposure associated with Segregated Indirect Participant Accounts and expresses concern as to whether FICC's rules allow FICC to collect additional margin to cover any enhanced risk that may arise relating to the Netting Member's obligations to FICC for its clients who are indirect participants generally or who choose segregation specifically.[147] However, FICC's proposed rules establish that the calculation of a Netting Member's Required Fund Deposit excludes the exposure of its Segregated Indirect Participants.[148] FICC's rules do permit FICC to collect increased Required Fund Deposits from Netting Members if ''necessary to protect [FICC] and its Members from Legal Risk,'' which, FICC states, would include the consideration

[141] 17 CFR 240.17ad–22(e)(6)(i).

[142] Commenters requested clarification that FICC's funds-only settlement amounts are settlement payments rather than margin. *See* ISDA Letter at 6; Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association (July 18, 2024) (''ISDA Letter II'') at 6; SIFMA Letter at 4; Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry of America (Apr. 18, 2024) (''FIA Letter'') at 11. The Proposed Rule Change does not make any amendments to the funds-only settlement process at FICC. *See* GSD Rule 13. This aspect of FICC's rules is, therefore, not relevant to this Proposed Rule Change. However, FICC clarified that it views such payments as constituting settlements that discharge outstanding payment obligations, rather than as margin or collateral. FICC Letter at 43. The Commission agrees with this clarification, based upon its knowledge of FICC's margin and payment flows and the applicable GSD Rules.

[143] *See* SIFMA AMG Letter at 10.

[144] *See* FICC Letter at 36.

[145] *Id.*

[146] 17 CFR 240.17ad–22(e)(6)(i).

[147] ISDA Letter I at 7; ISDA Letter II at 6.

[148] *Compare* proposed Margin Component Schedule section 2 (regarding Required Fund Deposits) *with* section 3 (regarding Segregated Customer Margin).

of the Netting Members' indirect participants.[149]

This commenter also states the fact that the ability to prefund margin for a customer is only temporary puts pressure on the Netting Member's own Required Fund Deposits, which ''it seems would still cover the obligations of all its clients'' and also on the Netting Member and the broader FICC membership, in the event of a failure by any Segregated Indirect Participant.[150] However, the Netting Member's Required Fund Deposits would not be calculated based on the obligations of its clients, and, in the event of the default of an indirect participant, FICC would use the Segregated Customer Margin for only that indirect participant. Therefore, the Commission disagrees that the inability to permanently prefund the customer's margin requirement puts additional pressure on the Netting Member's own Required Fund Deposits.

Another commenter states that FICC should explain why it is appropriate to calculate a segregated customer's margin requirement as if it were a Netting Member, even though the margin calculation for FICC Netting Members covers both initial margin and guaranty fund contributions (and customers are not expected to be contributing to the guaranty fund).[151] However, FICC does not maintain a separate guaranty fund into which a Netting Member contributes for its customers. The Segregated Customer Margin Requirement must be sufficient to cover the exposures to FICC arising from that particular customer's activity because, under the segregation system proposed by the Proposed Rule Change which would allow broker-dealers participating in FICC to comply with the conditions of Note H to Rule 15c3–3, FICC would not be able to use the margin collected from a Segregated Indirect Participant for any reason unrelated to the Segregated Indirect Participant. Therefore, calculating each Segregated Customer Margin Requirement in this manner is appropriate to ensure that FICC has appropriate resources to cover each customer's exposures. Therefore, this aspect of the Proposed Rule Change is consistent with Rule 17ad–22(e)(6)(i) under the Exchange Act.

6. Excess Capital Premium

The proposed changes to the calculation of the ECP charge are consistent with Rule 17ad–22(e)(6)(i). FICC's margin deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's exposures to Netting Members. FICC's proposed changes to use clearly defined sources in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to Netting Members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to FICC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow FICC to appropriately address the risks it faces without imposing an overly burdensome ECP and would reduce the circumstances in which FICC may waive the charge, resulting in a more transparent margining methodology. Finally, the proposed rule change would clarify the exigent circumstances under which FICC may determine that it is appropriate to waive the ECP charge. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP and, therefore, allow FICC to more effectively address the increased default risks presented by Netting Members that operate with lower capital levels relative to their margin requirements.

In addition, FICC proposes to exclude VaR Charges for Segregated Indirect Participants Accounts when determining a Netting Member's Excess Capital Differential, in order to take into account the fact that each indirect participant would be responsible for satisfying its own respective VaR Charge. Not including these Segregated Indirect Participants Accounts when determining the Excess Capital Differential, and, therefore, the ECP Charge, is consistent with the purpose of the Excess Premium Charge. This charge is designed to address the risk that a Netting Member with low capital relative to its value-at-risk to FICC is not able to perform its obligations. Because the Netting Member's capital is not used to meet the indirect participant's obligation to FICC, excluding the indirect participant VaR Charges from the determination of the ECP should result in FICC collecting margin commensurate with the risks and particular attributes of each relevant portfolio.

Taken together, the proposed changes enhance the ability of the ECP to produce margin levels commensurate with the risks FICC faces related to its Netting Members' operating capital levels. Therefore, this aspect of the Proposed Rule Change is consistent with Rule 17ad–22(e)(6)(i) under the Exchange Act.

C. Consistency With Rule 17ad–22(e)(6)(iii)

Rule 17ad–22(e)(6)(iii) requires 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 members in the interval between the last margin collection and the close out of positions following a member default.[152]

As summarized in Section I.B.3 above, FICC employs daily backtesting to determine the adequacy of each Netting Member's Required Fund Deposit, paying particular attention to members that have backtesting deficiencies below the 99% confidence target. Such backtesting deficiencies highlight exposure that could subject FICC to potential losses if a Netting Member defaults. As discussed in Section II.C.2, FICC's impact study during the period from July 1, 2021 to June 30, 2022 demonstrated that a $1 million floor would have protected FICC and its participants by reducing the possibility of incurring a loss in the event of a Netting Member failure by mitigating 16% of backtesting deficiencies.[153] Moreover, after the $1 million floor was implemented for Netting Members, FICC states that it eliminated 22% of backtesting deficiencies during a 12-month period of moderate market volatility from July 1, 2023 to June 30, 2024.[154]

Therefore, adding the proposed $1 million minimum requirement for Segregated Customer Margin, and the ability to adjust the minimum million margin requirement to achieve FICC's backtesting coverage target, should better ensure that FICC maintains sufficient margin to cover its potential future exposure to its indirect participants in the interval between the last margin collection and the close out of positions following an indirect participant default. This should, thereby, reduce the likelihood FICC or non-defaulting Netting Members or indirect participants would incur losses as a result. Accordingly, FICC's proposed $1 million minimum requirement for Segregated Customer

[149] *See* proposed Margin Component Schedule section 4; *see also* Notice of Filing, *supra* note 4, at 21593.

[150] *See* ISDA Letter I at 7.

[151] *See* Letter from Joanna Mallers, Secretary, Futures Industry of America, Principal Traders Group (Apr. 17, 2024) (''FIA PTG Letter I'') at 8.

[152] 17 CFR 240.17ad–22(e)(6)(iii).

[153] *See* FICC Letter at 28.

[154] *Id.*

Margin would be consistent with Rule 17ad–22(e)(6)(iii).[155]

D. Consistency With Rule 17ad–22(e)(18)(ii)

Rule 17ad–22(e)(18)(ii) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.[156] The proposed changes to consolidate FICC's margin methodology in a single location, identify the particular Required Fund Deposit Portions and Segregated Customer Margin Requirements, and clarify the calculation of the Excess Capital Premium and circumstances in which FICC would waive the application of such premium should enhance FICC's public disclosure of the risk-based margin obligations that Netting Members and their indirect participants would have as a result of their participation in FICC's clearance and settlement services. This improved public disclosure should allow Netting Members and their indirect participants to better understand how their activity would impact margin calculations, which are designed to ensure that participants have sufficient financial resources and robust operational capacity to meet obligations to FICC. Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(18)(ii).[157]

E. Consistency With Rule 17ad–22(e)(18)(iii)

Rule 17ad–22(e)(18)(iii) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which monitor compliance with its participant requirements on an ongoing basis.[158] The proposed changes would require Netting Members to designate the specific account type when submitting transactions and to identify any Sponsored Member or Executing Firm Customer for whom the transaction is submitted. These changes should enhance FICC's ability to monitor which transactions are being entered into by which entities and assess the specific risks associated with those entities. This enhanced monitoring of participant activity should allow FICC to better monitor participants' compliance with FICC's Rules. Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(18)(iii) because they should enhance FICC's ability to monitor compliance with its participant requirements on an ongoing basis.[159]

F. Consistency With Rule 17ad–22(e)(18)(iv)(C)

Rule 17ad–22(e)(18)(iv)(C) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[160]

As discussed above in Section II.B.3, by improving the transparency of FICC's account offerings and margin calculation methodology, the proposed changes should enhance market participants' understanding of how margin is calculated and their options for posting margin, thereby facilitating access to FICC's clearance and settlement services. In addition, the proposed changes should offer greater optionality to Netting Members and indirect participants, which should allow Netting Members and indirect participants to adopt a margining arrangement that aligns with their business objectives and regulatory, operational, and practical constraints. By enhancing transparency of FICC's margin framework and account options and offering greater optionality to participants concerning the type of account they transact in and how their margin is posted, the proposal should facilitate access to FICC's clearance and settlement systems.

Several commenters proposed that FICC should require Netting Members to offer account segregation to customers.[161] One such commenter specified that this should include bank Netting Members, who would not face the same restrictions on the use of customer margin as broker-dealer customers subject to Rule 15c3–3 and therefore may not be as incentivized to provide segregated account services.[162]

FICC did not propose a requirement that its Netting Members offer segregated accounts to their customers. Therefore, the Commission is not addressing any changes related to such a requirement in this Proposed Rule Change. Nothing in the Treasury Clearing Rules or Rule 15c3–3 requires a covered clearing agency, like FICC, to require its Netting Members to provide certain services. Moreover, certain Netting Members may have regulatory or other reasons not to offer segregation, and, if required to offer such services, may choose to cease providing customer clearing services, which could, in turn, increase concentration in the market and reduce liquidity.[163] Any such requirement could constitute a burden on competition that would not be permissible under Section 17A(b)(3)(I) of the Exchange Act.

Additionally, a commenter urged FICC to allow indirect participants to post margin directly to FICC without intermediation from a Netting Member.[164] The Treasury Clearing Rules do not require FICC to provide this function, and FICC did not propose such a method for direct posting of margin.[165] Accordingly, the Commission is not addressing any changes related to such a requirement in this Proposed Rule Change.

One commenter sought clarification whether Netting Members other than broker-dealers can elect segregation for their customers.[166] Based on the Proposed Rule Change, the Commission understands, and FICC confirmed,[167] that any Sponsoring Member or Agent Clearing Member, regardless of whether registered as broker-dealers, would be able to designate an account as a Segregated Indirect Participants Account.

The same commenter also sought clarification whether a customer may segregate margin obtained through a margin financing arrangement.[168] Based

[155] 17 CFR 240.17ad–22(e)(6)(iii).

[156] 17 CFR 240.17ad–22(e)(4)(18)(ii).

[157] *Id.*

[158] 17 CFR 240.17ad–22(e)(18)(iii).

[159] 17 CFR 240.17ad–22(e)(18)(iii).

[160] 17 CFR 240.17ad–22(e)(18)(iv)(C).

[161] Specifically, one commenter stated that for indirect participants, having a ''right'' to direct their Netting Member to segregate their margin is highly desirable because it would allow an indirect participant to have certainty that margin that it posts receives the protection afforded by segregation. SIFMA AMG Letter at 6. Another such commenter stated that, despite what a customer may desire with respect to margin and segregation, there could be incentives for direct participants to finance the margin for their customers' transactions (and thereby earn extra fees for doing so) instead of the customer financing or posting that margin, and for the direct participant to accept the customer's margin without offering the option of segregation (and thereby avoid the additional operational and other costs associated with segregation), which would still be permissible if FICC were not to require its Netting Members to offer account segregation. MFA Letter I at 4.

[162] SIFMA AMG Letter at 6.

[163] FICC Letter at 33.

[164] *See* ICI Letter at 13.

[165] *See supra* note 3 at 2751.

[166] FIA–PTG Letter at 7–9.

[167] FICC Letter at 39.

[168] FIA–PTG Letter at 7–9.

on the Proposed Rule Change, the Commission understands, and FICC confirmed,[169] that such segregation would be permissible under FICC's rules.

This commenter also asked why excess margin would only be returned on request and states that an indirect participant should not have to request a return of its excess margin.[170] The Treasury Clearing Rules do not require FICC to provide this function, and FICC did not propose such a function. Accordingly, the Commission is not addressing any changes related to such a requirement in this Proposed Rule Change. Moreover, when it adopted the amendments to Rule 15c3–3, the Commission declined to adopt a requirement to ''push'' excess margin to direct participants.[171]

Another commenter suggested that FICC allow customer margin to be segregated, even when customers do not post the full amount of the margin needed to cover their positions.[172] FICC states that allowing customer margin to be segregated when customers do not post the full amount of margin would lead to disparities that would put broker-dealer Netting Members at competitive disadvantage to other Netting Members.[173] The Treasury Clearing Rules do not require FICC to provide this function, and FICC did not propose such a function. Any changes to FICC's rules to impose such a requirement would have to be filed with the Commission pursuant to Section 19(b)[174] of the Exchange Act, as well as, potentially, in an advance notice filed pursuant to Section 806(e) of the Clearing Supervision Act.[175] Therefore, the Commission is not addressing any changes related to such a requirement in this Proposed Rule Change.

Finally, one commenter urged FICC to address the cross-border implications of the proposal and provide a framework for compliance by non-U.S. Netting Members and indirect participants.[176] Specifically, this commenter was concerned that the U.S. Treasury clearing mandate will adversely impact foreign customers that are limited in their ability, or prohibited entirely, to post margin in connection with transactions involving U.S. Treasury securities.[177] However, nothing in the Proposed Rule Change would require a particular market participant to post margin in connection with transactions involving U.S. Treasury securities. Indirect participants remain able to access FICC's central clearing services through access models that do not require the direct posting of margin to FICC (*e.g.,* via the non-segregated versions of FICC's Sponsored and Agent Clearing Services), which should allow flexibility for market participants to determine the most effective way to access FICC indirectly regardless of potential regulatory or other constraints on the ability to post margin directly.

Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(18)(iv)(C).[178]

G. Consistency With Rule 17ad–22(e)(19)

Rule 17ad–22(e)(19) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in FICC rely on the services provided by direct participants to access FICC's clearance and settlement facilities.[179] The proposed changes described in Section I.B.1 would require that each margin portfolio contains only transactions from the same account type, Netting Members use separate Deposit IDs for different transaction types, each Segregated Indirect Participant's margin requirement be calculated separately on a gross basis as though each Segregated Indirect Participant were a separate Netting Member, and Segregated Customer Margin for each indirect participant be deposited into a separate interest-earning Segregated Customer Margin Custody Account. These changes should enhance FICC's ability to isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant's risk exposures. In addition, the calculation and collection of Segregated Customer Margin on a gross basis, as described in Section I.B.1 and 1.B.2, and the establishment of a $1 million cash floor for Segregated Customer Margin, as described in Section I.B.2.a, should help ensure that FICC will have sufficient margin to manage the risk to FICC during an indirect participant default.

Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(19) because they should enhance FICC's ability to identify, monitor, and manage the material risks to FICC associated with indirect participants relying on Netting Members to access FICC's clearance and settlement services.[180]

H. Consistency With Rule 17ad–22(e)(23)(ii)

Rule 17ad–22(e)(23)(ii) requires that FICC establish, implement, maintain and enforce written policies and procedures providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.[181] The proposed changes described in Section I.B.3 to consolidate and clarify FICC's margin calculation methodology in the proposed Margin Component Schedule, adopt a method for allocating net unsettled positions to individual indirect participants for purposes of calculating margin requirements and to clarify the calculation of the ECP should make it easier for both Netting Members and indirect participants to identify and price the potential margining costs

[169] FICC Letter at 40.

[170] *See* FIA PTG Letter I at 7–9.

[171] *See* Treasury Clearing Adopting Release, *supra* note 3, at 2767 (removing, in response to commenters, the requirement that the covered clearing agency have procedures to return customer position margin to the broker-dealer that is no longer needed to meet a current margin requirement resulting from positions in U.S. Treasury securities of the broker-dealer's customers no later than the close of the next business day after the day the customer position margin is no longer needed for this purpose because such a requirement may add significant operational burdens to covered clearing agencies for U.S. Treasury securities and because the debit is limited to margin required and on deposit at the covered clearing agency and therefore does not include the excess margin).

[172] *See* MFA Letter I at 6.

[173] *See* FICC Letter at 32. Specifically, FICC stated that the Treasury Clearing Rules, in particular the amendments to Exchange Act Rule 15c3–3a, provide that a broker-dealer may record a debit in the customer and PAB reserve formulas for margin it collects from customers and on-posts to FICC, but only if the broker-dealer collects from the customer the full amount of margin required for the customer's positions. Accordingly, a broker-dealer is effectively precluded from collecting from customers only a portion of the margin that their positions require and on-posting that amount to FICC. Were FICC to allow segregation of customer margin even if the customer did not fully fund its margin obligations, such segregation would effectively allow non-broker-dealer Netting Members to offer what broker-dealers cannot, *i.e.,* permitting their customers to post a portion of the margin required by FICC and on-post that margin to FICC. This ability would place such Netting Members at a competitive advantage relative to broker-dealer Netting Members.

[174] 15 U.S.C. 78s(b)(1).

[175] *See supra* note 3 at 2751.

[176] *See* SIFMA AMG Letter at 12–13.

[177] *See id.* (citing Article 15(2) of the European Union's Money Market Fund Regulation, which it describes as prohibiting European Money Market Mutual Funds from pledging any assets received under reverse repos and certain restrictions on Undertakings for Collective Investments in Transferable Securities and similar investment vehicles related to their ability to post margin that will be held on deposit at FICC).

[178] 17 CFR 240.17ad–22(e)(18)(iv)(C).

[179] 17 CFR 240.17ad–22(e)(19).

[180] 17 CFR 240.17ad–22(e)(19).

[181] 17 CFR 240.17ad–22(e)(23)(ii).

associated with how each chooses to submit transactions to FICC for clearance and settlement.

Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(23)(ii) because they should enhance the ability of Netting Members and indirect participants to identify and evaluate the costs to access FICC's clearance and settlement services.[182]

I. Other Comments Received

Commenters submitted several comments that were not related to the Proposed Rule Change. Commenters stated that FICC should publish a roadmap and/or expedite their plans with the Chicago Mercantile Exchange (''CME'') for expanding their cross-margining framework.[183] The Proposed Rule Change does not address the cross-margining agreement between FICC and CME. The current cross-margining agreement between FICC and CME is part of FICC's rulebook, and therefore any changes to the agreement would have to be filed with the Commission pursuant to Section 19(b) [184] of the Exchange Act.[185] Therefore, the Commission cannot approve or disapprove any changes related to the cross-margining agreement at this time. Cross-margining is not required by the recently adopted Treasury Clearing Rules.

However, the Commission historically has supported and approved cross-margining at clearing agencies and recognizes the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing functions, reducing clearing agency risk by centralizing asset management, and harmonizing liquidation procedures.[186] The Commission continues to believe that market participants can benefit from cross-margining arrangements and encourages U.S. Treasury CCAs to consider the potential of such benefits. FICC states, in its response letter regarding the Proposed Rule Change, that it is actively pursuing an end-user level cross-margining arrangement with CME. The Commission would consider any proposal arising from such pursuit in due course, if such a proposal were to be filed with the Commission.

Several commenters requested that FICC provide a legal analysis on the enforceability of the proposed changes, including the protection of segregated customer margin in the event of a Netting Member default.[187] In response, FICC states that it has prepared an analysis on the treatment of Segregated Customer Margin in the event of a FICC or Netting Member insolvency and that this analysis confirmed that, as long as customers and their Netting Members make clear that their relationship is a custodial one, Segregated Customer Margin would be reserved for customers and would not form part of FICC's or the Netting Member's general estate upon either institution's insolvency.[188] FICC states that it has made this analysis available to indirect participants upon request on a non-reliance basis.[189] This analysis addresses the commenters' request, and the Commission does not believe that any further action is necessary to respond to the commenters, who can use this analysis to inform their consideration whether to utilize a segregated account.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and in particular with the requirements of Section 17A of the Exchange Act [190] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act [191] that proposed rule change SR–FICC–2024–007, be, and hereby is, APPROVED.[192]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[193]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–27763 Filed 11–26–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101687; File No. SR–ISE–2024–52]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

November 21, 2024.

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 November 8, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* 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 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 fees relating to connectivity and co-location

[182] 17 CFR 240.17ad–22(e)(23)(ii).

[183] *See* AIMA Letter at 5; FIA PTG Letter I at 15; MFA Letter I at 10; MFA Letter II at 5–6; SIFMA AMG Letter at 10.

[184] 15 U.S.C. 78s(b)(1).

[185] *See supra* note 3 at 2751.

[186] Treasury Clearing Adopting Release, at 2751 at n. 362 and accompanying text.

[187] *See* AIMA Letter at 7; MFA Letter I at 8–9; SIFMA AMG Letter at 11.

[188] FICC Letter at 41.

[189] *Id.*

[190] 15 U.S.C. 78q–1.

[191] 15 U.S.C. 78s(b)(2).

[192] In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[193] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.