

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2021-017 and should be submitted on or before January 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93857; File No. SR-FICC-2021-009]

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

December 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2021, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Government Securities Division ("GSD") Rulebook (the "GSD Rules") and the Mortgage-Backed Securities Division ("MBS") Clearing Rules (the "MBS Rules," and together with the GSD Rules, the "Rules") of FICC in order to (i) enhance FICC's capital requirements for

Members of GSD and Members of MBS (collectively, "members"), (ii) redefine FICC's Watch List and eliminate FICC's enhanced surveillance list, and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.<sup>3</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to (i) enhance FICC's capital requirements for Members of GSD and Members of MBS (collectively, "members"), (ii) redefine FICC's Watch List and eliminate FICC's enhanced surveillance list, and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii).

###### (i) Background

Central counterparties ("CCPs") play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. CCPs achieve this by providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses.

As a CCP, FICC is exposed to the credit risks of its members. The credit risks borne by FICC are mitigated, in part, by the capital maintained by members, which serves as a loss-absorbing buffer.

In accordance with Section 17A(b)(4)(B) of the Exchange Act,<sup>4</sup> a registered clearing agency such as FICC may, among other things, deny participation to, or condition the

participation of, any person on such person meeting such standards of financial responsibility prescribed by the rules of the registered clearing agency.

In furtherance of this authority, FICC requires applicants and members to meet the relevant financial responsibility standards prescribed by the Rules. These financial responsibility standards generally require members to have and maintain certain levels of capital, as more particularly described in the Rules and below.

FICC's capital requirements for its members have not been updated in nearly 20 years.<sup>5</sup> Since that time, there have been significant changes to the financial markets that warrant FICC revisiting its capital requirements. For example, the regulatory environment within which FICC and its members operate has undergone various changes. The implementation of the Basel III standards,<sup>6</sup> the designation of many banks as systemically important by the Financial Stability Board,<sup>7</sup> as well as the designation of FICC as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council,<sup>8</sup> have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CCPs. Similarly, the Covered Clearing Agency Standards ("CCAS") adopted by the Commission have raised the regulatory standards applicable to CCPs such as FICC.<sup>9</sup>

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants (e.g., via the CCIT and Sponsoring Member programs at FICC) have created a diverse FICC membership that has expanded the credit-risk profiles that FICC must manage. For example, post the 2008 financial crisis and subsequent changes in regulatory capital requirements, FICC

<sup>5</sup> Although FICC has not updated capital requirements for many of its members in nearly 20 years, during that time FICC has adopted new membership categories with corresponding capital requirements that FICC believes are still appropriate. As such, FICC is not proposing changes to capital requirements for all membership categories.

<sup>6</sup> Basel Committee on Banking Supervision, The Basel Framework, available at [https://www.bis.org/basel\\_framework/index.htm?export=pdf](https://www.bis.org/basel_framework/index.htm?export=pdf) ("Basel III Standards").

<sup>7</sup> See Financial Stability Board, 2021 list of global systemically important banks, available at <https://www.fsb.org/wp-content/uploads/P231121.pdf>.

<sup>8</sup> See U.S. Department of the Treasury, Designations, Financial Market Utility Designations, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations>.

<sup>9</sup> 17 CFR 240.17Ad-22(e).

<sup>3</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the GSD Rules and the MBS Rules, as applicable, available at <https://www.dtcc.com/legal/rules-and-procedures>.

<sup>4</sup> 15 U.S.C. 78q-1(b)(4)(B).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

has seen a shift in certain activity away from highly capitalized firms and, instead, to less capitalized, niche market participants.

Moreover, FICC clearing activity and market volatility, each of which present risk to FICC, also increased significantly over the years.<sup>10</sup> Although these factors do not directly require FICC to increase capital requirements for its membership (e.g., there is no specific regulation or formula that prescribes a set capital requirement for members of a CCP such as FICC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, FICC has a responsibility to do the same. Enhancing its capital requirements helps meet that responsibility and improve FICC's credit risk management. Enhanced capital requirements also help mitigate other risks posed directly or indirectly by members such as legal risk, operational risk and cyber risk, as better capitalized members have greater financial resources in order to mitigate the effects of these and other risks.

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (*i.e.*, there is no magic number). Instead, FICC considered several factors, including inflation and the capital requirements of other Financial Market Infrastructures, both in the U.S. and abroad, to which the proposed requirements align.<sup>11</sup>

<sup>10</sup> See, e.g., DTCC Annual Reports, available at <https://www.dtcc.com/about/annual-report>. FICC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). The DTCC Annual Reports highlight and track FICC clearing activity year-over-year. Moreover, interest rates, which are a key risk factor for FICC, experienced a rollercoaster of volatility over the past 14 years, including historic and near-historic peaks in volatility, in response to changing market dynamics (e.g., reduced overall market liquidity, a shift in market liquidity relying on less capitalized market participants, and the advent of electronic trading), the extraordinary monetary policy measures implemented by global central banks, and the multiple financial crises over the past 20 years.

<sup>11</sup> See The Options Clearing Corporation, OCC Rules, Rule 301(a), available at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules> (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, available at <https://www.cmegroup.com/rulebook/CME/I/9/9.pdf> (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, available at <https://>

In light of these and other developments described below, FICC proposes to enhance its capital requirements for members, as described in more detail below.

FICC also proposes to redefine the Watch List, which is a list of members that are deemed by FICC to pose a heightened risk to it and its members based on credit ratings and other factors. As part of the redefinition of the Watch List, FICC proposes to eliminate the separate enhanced surveillance list and implement a new Watch List that consists of a relatively smaller group of members that exhibit heightened credit risk, as described in more detail below.

Finally, FICC proposes to make certain other clarification changes in the Rules.

#### (ii) Current FICC Capital Requirements

The Rules currently specify capital requirements for members based on their membership type and type of entity. The current FICC capital requirements for Members of GSD are set forth in Section 4(b) of GSD Rule 2A (Initial Membership Requirements)<sup>12</sup> for Netting Members, Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members)<sup>13</sup> for Sponsoring Members and Section 2(a)(ii) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service)<sup>14</sup> for CCIT Members. The current FICC capital requirements for Clearing Members of MBSD are set forth in Section 2(e) of MBSD Rule 2A (Initial Membership Requirements).<sup>15</sup>

An applicant for a membership type is required to meet the qualifications, financial responsibility, operational capability and business history requirements applicable to the relevant membership type, which may vary based on the applicant's type of entity (e.g., a broker-dealer vs. a bank or trust company). In particular, financial responsibility requirements for a membership type, which generally

[www.lch.com/resources/rulebooks/lch-sa](http://www.lch.com/resources/rulebooks/lch-sa) (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = \$0.8150 as of December 31, 2020; see <https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (last visited January 14, 2021)).

<sup>12</sup> GSD Rule 2A (Initial Membership Requirements), Section 4(b) (Financial Responsibility), *supra* note 3.

<sup>13</sup> GSD Rule 3A (Sponsoring Members and Sponsored Members), Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards), *supra* note 3.

<sup>14</sup> GSD Rule 3B (Centrally Cleared Institutional Triparty Service), Section 2(a)(ii), *supra* note 3.

<sup>15</sup> MBSD Rule 2A (Initial Membership Requirements), Section 2(e) (Financial Responsibility), *supra* note 3.

require the applicant to maintain a certain level of capital, may vary based on an applicant's type of entity and the relevant capital measure for such type of entity.

As relevant to FICC's proposal to enhance its capital requirements for members:

#### GSD Netting Members

Section 4(b) of GSD Rule 2A requires applicants to become Netting Members to satisfy the following minimum financial requirements:

(A) For applicants whose Financial Statements are prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"):

(1) If the applicant is applying to become a Bank Netting Member, it must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million, and its capital levels and ratios must meet the applicable minimum levels for such as required by its Appropriate Regulatory Agency (or, if the applicant's Appropriate Regulatory Agency does not specify any such minimum levels, such minimum levels as would be required if the Member were a member bank of the Federal Reserve System and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);

(2) if the applicant is registered with the SEC pursuant to Section 15 of the Exchange Act and is applying to become a Dealer Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (i) Net Worth of at least \$25 million and (ii) Excess Net Capital of at least \$10 million;

(3) if the applicant is registered with the SEC pursuant to Section 15C of the Exchange Act and is applying to become a Dealer Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (i) Net Worth of at least \$25 million and (ii) Excess Liquid Capital of at least \$10 million;

(4) if the applicant is applying to become a Futures Commission Merchant Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, \$25 million in Net Worth and \$10 million in Excess Adjusted Net Capital;

(5) if the applicant is registered with the SEC pursuant to Section 15 of the Exchange Act and is applying to become an Inter-Dealer Broker Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (i) Net Worth of at least \$25 million and (ii) Excess Net Capital of at least \$10 million;

(6) if the applicant is registered with the SEC pursuant to Section 15C of the Exchange Act and is applying to become an Inter-Dealer Broker Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (i) Net Worth of at least \$25 million and (ii) Excess Liquid Capital of at least \$10 million;

(7) if the applicant is a Foreign Person that is applying to become a Foreign Netting

Member, it must satisfy the minimum financial requirements (defined by reference to regulatory capital as defined by the applicant's home country regulator) that are applicable to the Netting System membership category that FICC determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other political subdivision thereof subject to subsections (B), (C) and (D) below if the entity's financial statements are not prepared in accordance with U.S. GAAP;

(8) if the applicant is applying to become an Insurance Company Netting Member, it must have, as of the end of the month prior to the effective date of its membership: (i) An A.M. Best ("Best") rating of "A-" or better, (ii) a rating by at least one of the other three major rating agencies (Standard & Poor's ("S&P"), Moody's, and Fitch Ratings ("Fitch")) of at least "A-" or "A3," as applicable, (iii) no rating by S&P, Moody's, and Fitch of less than "A-" or "A," as applicable, (iv) a risk-based capital ratio, as applicable to Insurance Companies, of at least 200 percent, and (v) statutory capital (consisting of adjusted policyholders' surplus plus the company's asset valuation reserve) of no less than \$500 million; and

(9) if the applicant is applying to become a Registered Investment Company Netting Member, it must have minimum Net Assets of \$100 million.

(B) For applicants whose Financial Statements are prepared in accordance with International Financial Reporting Standards ("IFRS"), the U.K. Companies Act of 1985 ("U.K. GAAP"), or Canadian generally accepted accounting principles, the minimum financial requirements shall be one and one-half times the applicable requirements set forth in subsection (A) above.

(C) For applicants whose Financial Statements are prepared in accordance with the generally accepted accounting principles of a European Union country other than U.K. GAAP, the minimum financial requirements shall be five times the applicable requirements set forth in subsection (A) above.

(D) For applicants whose financial statements are prepared in accordance with any other type of generally accepted accounting principles, the minimum financial requirements shall be seven times the requirements set forth in subsection (A) above.

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 4(b) of GSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with

U.S. GAAP to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

#### GSD Sponsoring Members

Section 2(a) of GSD Rule 3A requires a Bank Netting Member applying to become a Category 1 Sponsoring Member to (i) have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$5 billion, (ii) be "well-capitalized" as defined by the Federal Deposit Insurance Corporation's applicable regulations, and (iii) if it has a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, have a bank holding company that is also "well-capitalized" as defined by the applicable regulations of the Board of Governors of the Federal Reserve System.

Section 2(b)(ii) of GSD Rule 3A provides that FICC may impose financial requirements on a Netting Member applying to become a Category 2 Sponsoring Member that are greater than financial requirements applicable to the applicant in its capacity as a Netting Member under Section 4(b) of GSD Rule 2A, based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant.

#### GSD CCIT Members

Section 2(a)(ii) of GSD Rule 3B requires an applicant to become a CCIT Member to satisfy the following minimum financial requirements:

(A) Except as otherwise provided in subsection (B), (C) or (D) below, the applicant must have minimum Net Assets of \$100 million. FICC, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC and the overall financial condition of the applicant, may impose greater standards.

(B) For applicants whose financial statements are prepared in accordance with IFRS, U.K. GAAP or Canadian generally accepted accounting principles, the minimum financial requirements shall be one and one-half times the applicable requirements set forth in subsection (A) above.

(C) For applicants whose financial statements are prepared in accordance with the generally accepted accounting principles of a European Union country other than U.K. GAAP, the minimum financial requirements shall be five times the applicable

requirements set forth in subsection (A) above.

(D) For applicants whose financial statements are prepared in accordance with any other type of generally accepted accounting principles, the minimum financial requirements shall be seven times the applicable requirements set forth in subsection (A) above.

#### MBSD Clearing Members

Section 2(e) of MBSD Rule 2A requires applicants to become Clearing Members to satisfy the following minimum financial requirements:

(A) For applicants whose Financial Statements are prepared in accordance with U.S. GAAP:

(1) If the applicant is applying to become a Bank Clearing Member, it must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million, and its capital levels and ratios must meet the applicable minimum levels for such as required by its Appropriate Regulatory Agency (or, if the applicant's Appropriate Regulatory Agency does not specify any such minimum levels, such minimum levels as would be required if the Member were a member bank of the Federal Reserve System and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);

(2) if the applicant is registered with the SEC pursuant to Section 15 or Section 15C of the Exchange Act and is applying to become a Dealer Clearing Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (i) Net Worth of at least \$25 million and (ii) Excess Net Capital of at least \$10 million;

(3) if the applicant is registered with the SEC pursuant to Section 15 or Section 15C of the Exchange Act and is applying to become an Inter-Dealer Broker Clearing Member, it must have, as of the end of the calendar month prior to the effective date of its membership, Excess Net Capital of at least \$10 million;

(4) if the applicant is applying to become an Unregistered Investment Pool Clearing Member, it must have an investment advisor domiciled in the United States. The Unregistered Investment Pool applicant must have at least \$250 million in Net Assets. An Unregistered Investment Pool that does not meet the \$250 million Net Asset requirement, but has Net Assets of at least \$100 million, shall be eligible for membership if the Unregistered Investment Pool's investment advisor advises an existing Member and has assets under management of at least \$1.5 billion. An Unregistered Investment Pool must have an investment advisor registered with the SEC;

(5) if the applicant is applying to become a Government Securities Issuer Clearing Member, it must have at least \$100 million in equity capital;

(6) if the applicant is applying to become a Registered Investment Company Clearing Member, it must have minimum Net Assets of \$100 million;

(7) if the applicant is applying to become an Insured Credit Union Clearing Member, it

must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million and achieve the “well capitalized” statutory net worth category classification as defined by the NCUA under 12 CFR part 702; and

(8) for all other applicants, they must have sufficient net worth, liquid capital, regulatory capital, or Net Assets, as applicable to the particular type of entity as determined by FICC, and subject to approval of such minimum membership standards by the SEC.

If the applicant in sections (1) through (8) above is a Foreign Person that is applying to become a Foreign Clearing Member, it must satisfy the minimum financial requirements: (i) Defined by reference to regulatory capital as defined by the applicant’s home country regulator, or (ii) in the case of unregulated entities, as defined by FICC in its discretion, that are applicable to the Clearing System membership category that FICC determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other political subdivision thereof, subject to subsections (B), (C) and (D) below if the entity’s financial statements are not prepared in accordance with U.S. GAAP. For Unregistered Investment Pools, subsections (B), (C) and (D) shall apply to the following figures cited in subsection (A)(4) above: the \$250 million in Net Assets and the \$100 million in Net Assets.

(B) For applicants whose Financial Statements are prepared in accordance with IFRS, U.K. GAAP, or Canadian generally accepted accounting principles, the minimum financial requirements shall be one and one-half times the applicable requirements set forth in subsection (A) above.

(C) For applicants whose Financial Statements are prepared in accordance with the generally accepted accounting principles of a European Union country other than U.K. GAAP, the minimum financial requirements shall be five times the applicable requirements set forth in subsection (A) above.

(D) For applicants whose financial statements are prepared in accordance with any other type of generally accepted accounting principles, the minimum financial requirements shall be seven times the requirements set forth in subsection (A) above.

As was the case for GSD Netting Members, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally

require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 2(e) of MBSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

(iii) Current FICC Watch List and Enhanced Surveillance List

FICC’s Watch List is a list of members that are deemed by FICC to pose a heightened risk to it and its members based on credit ratings and other factors.<sup>16</sup>

Specifically, the Watch List is the list of members with credit ratings derived from FICC’s Credit Risk Rating Matrix (“CRRM”) <sup>17</sup> of 5, 6 or 7, as well as members that, based on FICC’s consideration of relevant factors, including those set forth in Section 12(d) of GSD Rule 3 (Ongoing Membership Requirements)<sup>18</sup> and Section 11(d) of MBSD Rule 3 (Ongoing Membership Requirements),<sup>19</sup> are deemed by FICC to pose a heightened risk to it and its members.

In addition to the Watch List, FICC also maintains a separate list of members subject to enhanced surveillance in accordance with the provisions of GSD Rule 3 and MBSD Rule 3, as discussed below. The enhanced surveillance list is a list of members for which FICC has heightened credit concerns, which may include members that are already, or may soon be, on the Watch List. As described below, a member is subject to the same potential consequences from being subject to enhanced surveillance or being placed on the Watch List.

GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements)

GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3

<sup>16</sup> See GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions), *supra* note 3.

<sup>17</sup> FICC’s CRRM is a matrix of credit ratings of members specified in Section 12 of GSD Rule 3 and Section 11 of MBSD Rule 3. The CRRM is developed by FICC to evaluate the credit risk members pose to FICC and its members and is based on factors determined to be relevant by FICC from time to time, which factors are designed to collectively reflect the financial and operational condition of a member. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. See GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions), *supra* note 3.

<sup>18</sup> GSD Rule 3 (Ongoing Membership Requirements), Section 12(d), *supra* note 3.

<sup>19</sup> MBSD Rule 3 (Ongoing Membership Requirements), Section 11(d), *supra* note 3.

(Ongoing Membership Requirements) specify the ongoing membership requirements and monitoring applicable to members.<sup>20</sup>

Section 7 of GSD Rule 3 and Section 6 of MBSD Rule 3 provide that FICC may review the financial responsibility and operational capability of a member and otherwise require from the member additional reporting of its financial or operational condition in order to make a determination as to whether such member should be placed on the Watch List and/or be subject to enhanced surveillance by FICC consistent with the provisions of Section 12 of GSD Rule 3 and Section 11 of MBSD Rule 3.

Section 12(b) of GSD Rule 3 and Section 11(b) of MBSD Rule 3 provide that a member that is (1) a U.S. bank or trust company that files the Consolidated Report of Condition and Income (“Call Report”), (2) a U.S. broker-dealer that files the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent with its regulator, or (3) a non-U.S. bank or trust company that has audited financial data that is publicly available, will be assigned a credit rating by FICC in accordance with the CRRM. A member’s credit rating is reassessed each time the member provides FICC with requested information pursuant to Section 7 of GSD Rule 3, Section 6 of MBSD Rule 3 or as may be otherwise required under the Rules.

Section 12(b) of GSD Rule 3 and Section 11(b) of MBSD Rule 3 further provide that because the factors used as part of the CRRM may not identify all risks that a member assigned a credit rating by FICC may present to FICC, FICC may, in its discretion, override such member’s credit rating derived from the CRRM to downgrade the member. This downgrading may result in the member being placed on the Watch List and/or it may subject the member to enhanced surveillance based on relevant factors.

Section 12(c) of GSD Rule 3 and Section 11(c) of MBSD Rule 3 provide that members other than those specified in Section 12(b) of GSD Rule 3 and Section 11(b) of MBSD Rule 3 will not be assigned a credit rating by the CRRM but may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors.

Section 12(d) of GSD Rule 3 and Section 11(d) of MBSD Rule 3 provide that the factors to be considered by FICC in determining whether a member is

<sup>20</sup> GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements), *supra* note 3.

placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the member, (ii) reasonable concerns around the member's liquidity arrangements, (iii) material changes to the member's organizational structure, (iv) reasonable concerns about the member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the member to demonstrate satisfactory financial condition or operational capability or if FICC has a reasonable concern regarding the member's ability to maintain applicable membership standards, and (vi) failure of the member to provide information required by FICC to assess risk exposure posed by the member's activity.

Section 12(e) of GSD Rule 3 and Section 11(e) of MBSD Rule 3 provide that FICC may require a member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with GSD Rule 4 or MBSD Rule 4, as applicable (which additional deposit shall constitute a portion of the member's Required Fund Deposit) or such higher amount as FICC may deem necessary for the protection of it or other members.

Section 12(f) of GSD Rule 3 and Section 11(f) of MBSD Rule 3 provide that a member being subject to enhanced surveillance or being placed on the Watch List (1) will result in a more thorough monitoring of the member's financial condition and/or operational capability, including on-site visits or additional due diligence information requests, and (2) may be required make more frequent financial disclosures to FICC. Members that are placed on the Watch List or subject to enhanced surveillance are also reported to FICC's management committees and regularly reviewed by FICC senior management.

#### (iv) Proposed Rule Changes

##### A. Changes To Enhance FICC's Capital Requirements

As noted earlier, as a CCP, FICC is exposed to the credit risks of its members. The credit risks borne by FICC are mitigated, in part, by the capital maintained by members, which serves as a loss-absorbing buffer.

FICC's financial responsibility standards for members generally require members to have and maintain certain levels of capital.

As described in more detail below, FICC proposes to enhance its capital requirements for members as follows:

##### GSD Netting Members

##### Bank Netting Members

FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to common equity tier 1 capital ("CET1 Capital"),<sup>21</sup> (2) raise the minimum capital requirements for banks and trust companies, and (3) require U.S. banks and trust companies to be well capitalized ("Well Capitalized") as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation ("FDIC").<sup>22</sup>

FICC proposes to change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital and raise the minimum capital requirements for banks and trust companies in order to align FICC's capital requirements with banking regulators' changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.<sup>23</sup> Consistent with these changes by banking regulators, FICC believes that the appropriate capital measure for members that are banks and trust companies should be CET1 Capital and that FICC's capital requirements for members should be enhanced in light of these increased regulatory capital requirements.

In addition, requiring U.S. banks and trust companies to be Well Capitalized ensures that members are well capitalized while also allowing adjusted capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company. FICC proposes to have the definition of Well Capitalized expressly tied to the FDIC's definition of "well capitalized" to ensure that the proposed requirement that U.S. banks and trust companies be

<sup>21</sup> Under the proposal, CET1 Capital would be defined as an entity's common equity tier 1 capital, calculated in accordance with such entity's regulatory and/or statutory requirements.

<sup>22</sup> See 12 CFR 324.403(b)(1).

<sup>23</sup> Compare, e.g., 12 CFR 324.20(b) (FDIC's definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 26, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575> (European Union's definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, *supra* note 6 (Basel III Standards' definition of CET1 Capital).

Well Capitalized will keep pace with future changes to banking regulators' regulatory capital requirements.

Under the proposal, a Bank Netting Member that is a U.S. bank or trust company must have and maintain at least \$500 million in CET1 Capital and be Well Capitalized. Under the proposal, a Bank Netting Member that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and applying through its U.S. branch or agency must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any Domestic Systemically Important Banks ("D-SIB") or Global Systemically Important Bank ("G-SIB") buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

##### Dealer Netting Members

FICC proposes to leave the capital requirements applicable to Dealer Netting Members unchanged, however FICC proposes to (i) consolidate into a single paragraph the capital requirements applicable to Dealer Netting Members, (ii) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital and Excess Adjusted Net Capital, depending on what the Dealer Netting Member is required to report on its regulatory filings, and (iii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

### Futures Commission Merchant Netting Members

FICC proposes to leave the capital requirements applicable to Futures Commission Merchant Netting Members unchanged, however FICC proposes to (i) expressly provide for equivalence among measures of Excess Adjusted Net Capital, Excess Net Capital and Excess Liquid Capital, depending on what the Futures Commission Merchant Netting Member is required to report on its regulatory filings, and (ii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

### Inter-Dealer Broker Netting Members

FICC proposes to leave the capital requirements applicable to Inter-Dealer Broker Netting Members unchanged, however FICC proposes to (i) consolidate into a single paragraph the capital requirements applicable to Inter-Dealer Broker Netting Members, (ii) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital and Excess Adjusted Net Capital, depending on what the Inter-Dealer Broker Netting Member is required to report on its regulatory filings, and (iii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

### Foreign Netting Members

Under the proposal, a Foreign Person that is a Foreign Netting Member must, at a minimum, satisfy its home country regulator's minimum financial requirements in addition to the following:

(1) In the case of a Foreign Person that is a broker or dealer, it must have total equity capital of at least \$25 million; and

(2) in the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Netting Member through a U.S. branch or agency), it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

FICC may, based on information provided by or concerning an applicant applying to become a Foreign Netting Member, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles another existing category of Netting Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

As described above, under Section 4(b) of GSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).<sup>24</sup> As such, FICC

<sup>24</sup> The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement (available at <https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf>). Under that agreement, the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board ("IASB") signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum ("ASAF") to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (See <https://www.ifrs.org/groups/accounting-standards-advisory-forum/>.) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the

believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

Accordingly, FICC proposes to delete the language in Section 4(b) of GSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

As described above, FICC also proposes that non-U.S. banks and trust companies be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums for various jurisdictions, these members would be required to provide FICC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction, as described in greater detail below.

In GSD Rule 3, FICC proposes to add a paragraph providing that a Netting Member that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and a Bank Netting Member that is a U.S. branch or agency must (i) provide, no less than annually and upon request by FICC, an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (ii) notify FICC: (a) Within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-base payments. (Available at <https://www.journalofaccountancy.com/issues/2013/feb/20126984.html>.) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, FICC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

FICC also proposes to require Bank Netting Members that are U.S. branches or agencies of non-U.S. banks or trust companies, in addition to Foreign Netting Members, to provide FICC copies of any regulatory notifications required to be made when an entity does not comply with the financial reporting and responsibility standards set by their home country regulator and to notify FICC in writing within 2 Business Days of becoming subject to a disciplinary action by their home country regulator.

#### Government Securities Issuer Netting Members

FICC proposes to require that a Government Securities Issuer Netting Member or an applicant to become a Government Securities Issuer Netting Member must have equity capital of at least \$100 million. FICC does not currently have a capital requirement for Government Securities Issuer Netting Members or applicants to become a Government Securities Issuer Netting Member.

#### Insurance Company Netting Members

FICC proposes to leave the capital requirements applicable to Insurance Company Netting Members unchanged, however FICC proposes to (i) specify the calculation of the existing risk-based capital ratio and (ii) correct typographical errors and make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.<sup>25</sup>

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

#### Registered Investment Company Netting Members

FICC proposes to leave the capital requirements applicable to Registered Investment Company Netting Members unchanged, however FICC proposes to make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital

requirements, without substantive effect.

#### Other Netting Members

For Netting Members not otherwise addressed in Section 4(b)(ii) of GSD Rule 2A, FICC proposes that such Netting Members be in compliance with their regulator's minimum financial requirements. FICC may, based on information provided by or concerning an applicant applying to become a Netting Member, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles an existing category of Netting Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

#### GSD Rule 1

In connection with its proposal to enhance capital requirements for members, FICC proposes to add to GSD Rule 1 new defined terms of "CET1 Capital," "Tier 1 RBC Ratio" and "Well Capitalized," as described above.

#### Other Proposed Changes to GSD Rule 2A

##### Section 1

FICC proposes to revise, without substantive effect, language in Section 1 of GSD Rule 2A to improve readability and accessibility.

##### Sections 2 and 3

FICC proposes to renumber existing Section 3 of GSD Rule 2A as Section 2 and renumber existing Section 2 of GSD Rule 2A as Section 3 in order for the eligibility requirements for Comparison-Only Members set forth in Section 1 of GSD Rule 2A to be immediately followed by the membership qualifications and standards for Comparison-Only Members. In connection therewith, FICC proposes to revise the heading of the newly renumbered Section 2 to clarify that such section specifies the membership qualifications and standards for Comparison-Only Members.

FICC proposes to revise newly renumbered Section 3 to clarify that such section sets forth the eligibility requirements for each category of Netting Member. FICC also proposes to add a heading to the eligibility requirements for each category of Netting Member to improve readability and accessibility.

In Section 3(a)(v), FICC proposes to correct an incorrect reference to a Foreign Netting Member and incorrect references to GSD's rules and procedures.

In Section 3(a)(vi), FICC proposes to clarify that a Government Securities Issuer Netting Member is a Government Securities Issuer or Government Sponsored Enterprise whose membership in the Netting System has not been terminated. As described below, FICC proposes to add a new defined term of Government Sponsored Enterprise to GSD Rule 1 as this term was inadvertently not included in the definition of a Government Securities Issuer Netting Member in Section 3(a)(vi) of GSD Rule 2A or in the defined terms in GSD Rule 1.

FICC proposes to add a new Section 3(a)(vii) describing the eligibility requirements for an Insurance Company Netting Member based on the definition of such category of Netting Member in GSD Rule 1, which has been inadvertently omitted from the list of categories of Netting Members in Section 3. FICC also proposes to renumber the remaining paragraphs of Section 3, as well as any affected cross-references, accordingly.

In Section 3(b), FICC proposes to clarify that a Person may be only one category of Netting Member at a time and that if a Person qualifies for more than one category of Netting Member, FICC, in its sole discretion, may determine the category of Netting Member for which that Person will be considered.

#### Section 4

FICC proposes to revise Section 4(a) of GSD Rule 2A to provide that an applicant to be a Netting Member that is already a Comparison-Only Member is required to continue to meet the requirements for becoming a Comparison-Only Member set forth in GSD Rule 2A, and to delete language regarding such requirements that is to be superseded by the proposed revisions to the Netting Member capital requirements set forth in Section 4(b).

At the end of Section 4(b), FICC proposes to clarify its existing policy that the Netting Member financial responsibility standards set forth in Section 4(b) are only the minimum requirements and make explicit that the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC, and the overall financial condition of the applicant, may, in its sole discretion, impose heightened or different financial responsibility standards on any applicant.

FICC also proposes to clarify its existing practice that if an applicant

<sup>25</sup> As described below, FICC proposes to add a new Section 3(a)(vii) to GSD Rule 2A describing the eligibility requirements for an Insurance Company Netting Member, which was inadvertently omitted from the list of categories of Netting Members in Section 3.

does not itself satisfy the required minimum financial responsibility standards, the Board may include for such purposes the financial resources of the parent company of the applicant (including, in the case of an applicant that is a U.S. branch or agency, its parent bank) if the parent company has delivered to FICC a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to FICC.

FICC proposes to make Section 4(c) the very end of Section 4 to improve readability and accessibility by not separating the Netting Member financial responsibility standards set forth in Section 4(b) with the above-described statements regarding the Board's existing authority to impose heightened or different financial responsibility standards or to consider the financial resources of a parent company.

#### GSD Funds-Only Settling Bank Members

FICC proposes to require that any Funds-Only Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio<sup>26</sup> equal to or greater than the Tier 1 RBC Ratio that would be required for such Funds-Only Settling Bank to be Well Capitalized. FICC does not currently have a capital requirement for Funds-Only Settling Banks.

#### GSD Sponsoring Members

FICC proposes to leave the required equity capital for a Bank Netting Member applying to become a Category 1 Sponsoring Member unchanged, however FICC proposes to (i) replace the previous references to such Bank Netting Member or its bank holding company being "well-capitalized" with the new defined term Well Capitalized and (ii) make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

<sup>26</sup> Under the proposal, Tier 1 RBC Ratio is the ratio of an entity's tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

#### GSD CCIT Members

FICC proposes to leave the capital requirements for a CCIT Member unchanged, but delete the language in Section 2(a)(ii) of GSD Rule 3B providing that the minimum capital requirements for a CCIT Member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such CCIT Member to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

As described above, the multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).<sup>27</sup> As such, FICC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

FICC also proposes to revise the heading and introductory sentence of Section 2 of GSD Rule 3B to clarify that, in addition to the eligibility requirements for becoming a CCIT Member, such section also includes qualifications and standards requirements for CCIT Members. FICC also proposes to add a heading of "Minimum Financial Requirements" to Section 2(a)(ii) for consistency with the other subsections in Section 2(a).

In Section 5 of GSD Rule 3B, FICC proposes to fix a typographical error in the heading and clarify existing language that the eligibility, qualifications and standards set forth in respect of an applicant shall continue to be met upon an applicant's admission as a CCIT Member and at all times while a CCIT Member.

#### MBSD Clearing Members

##### Bank Clearing Members

FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital,<sup>28</sup> (2) raise the minimum capital requirements for banks and trust companies, and (3) require U.S. banks and trust companies to be Well Capitalized as defined in the capital adequacy rules and regulations of the FDIC.<sup>29</sup>

FICC proposes to change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital and raise the minimum

<sup>27</sup> *Supra* note 24.

<sup>28</sup> Under the proposal, CET1 Capital would be defined as an entity's common equity tier 1 capital, calculated in accordance with such entity's regulatory and/or statutory requirements.

<sup>29</sup> See 12 CFR 324.403(b)(1).

capital requirements for banks and trust companies in order to align FICC's capital requirements with banking regulators' changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.<sup>30</sup> Consistent with these changes by banking regulators, FICC believes that the appropriate capital measure for members that are banks and trust companies should be CET1 Capital and that FICC's capital requirements for members should be enhanced in light of these increased regulatory capital requirements.

In addition, requiring U.S. banks and trust companies to be Well Capitalized ensures that members are well capitalized while also allowing adjusted capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company. FICC proposes to have the definition of Well Capitalized expressly tied to the FDIC's definition of "well capitalized" to ensure that the proposed requirement that U.S. banks and trust companies be Well Capitalized will keep pace with future changes to banking regulators' regulatory capital requirements.

Under the proposal, a Bank Clearing Member that is a U.S. bank or trust company must have and maintain at least \$500 million in CET1 Capital and be Well Capitalized. Under the proposal, a Bank Clearing Member that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and applying through its U.S. branch or agency must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

<sup>30</sup> See *supra* note 23.

### Dealer Clearing Members

FICC proposes to leave the capital requirements applicable to Dealer Clearing Members unchanged, however FICC proposes to (i) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital<sup>31</sup> and Excess Adjusted Net Capital,<sup>32</sup> depending on what the Dealer Clearing Member is required to report on its regulatory filings, and (ii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

### Inter-Dealer Broker Clearing Members

FICC proposes to leave the Excess Net Capital requirement applicable to Inter-Dealer Broker Clearing Members unchanged, however FICC proposes to (i) require Inter-Dealer Broker Clearing Members to have Net Worth of \$25 million, (ii) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital and Excess Adjusted Net Capital, depending on what the Inter-Dealer Broker Clearing Member is required to report on its regulatory filings, and (iii) make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect.

<sup>31</sup> Under the proposal, Excess Liquid Capital would be defined as the difference between the Liquid Capital of a Government Securities Broker or Government Securities Dealer and the minimum Liquid Capital that such Government Securities Broker or Government Securities Dealer must have to comply with the requirements of 17 CFR Section 402.2(a), (b) and (c), or any successor rule or regulation thereto. FICC also proposes to add to MBSD Rule 1 related defined terms of Liquid Capital, Government Securities Broker and Government Securities Dealer, in each case identical to the definitions of such terms in the GSD Rules.

<sup>32</sup> Under the proposal, Excess Adjusted Net Capital would be defined as the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 CFR Section 1.17(a)(1) or (a)(2), or any successor rule or regulation thereto. FICC also proposes to add to MBSD Rule 1 a related defined term of Futures Commission Merchant identical to the definition of such term in the GSD Rules.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

### Unregistered Investment Pool Clearing Members

FICC proposes to leave the requirements applicable to Unregistered Investment Pool Clearing Members unchanged, however FICC proposes to (i) consolidate under one heading the requirements applicable to Unregistered Investment Pool Clearing Members and (ii) make some clarifying and conforming language changes to improve the accessibility and transparency of the requirements, without substantive effect.

### Government Securities Issuer Clearing Members

FICC proposes to leave the capital requirements applicable to Government Securities Issuer Clearing Members unchanged, however FICC proposes to make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

### Insured Credit Union Clearing Members

FICC proposes to leave the capital requirements applicable to Insured Credit Union Clearing Members unchanged, however FICC proposes to make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

### Registered Investment Company Clearing Members

FICC proposes to leave the capital requirements applicable to Registered Investment Company Clearing Members unchanged, however FICC proposes to make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

### Foreign Members

Under the proposal, a Foreign Person that is a Clearing Member must, at a minimum, satisfy its home country regulator's minimum financial

requirements in addition to the following:

(1) In the case of a Foreign Person that is a broker or dealer (and not applying to become a Dealer Clearing Member or Inter-Dealer Broker Clearing Member), it must have total equity capital of at least \$25 million; and

(2) In the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Clearing Member through a U.S. branch or agency), it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

FICC may, based on information provided by or concerning an applicant that is a Foreign Person, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles another existing category of Clearing Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

As described above, under Section 2(e)(ii) of MBSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).<sup>33</sup> As such, FICC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

Accordingly, FICC proposes to delete the language in Section 2(e)(ii) of MBSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1½ to

<sup>33</sup> *Supra* note 24.

7 times the otherwise-applicable capital requirement.

As described above, FICC also proposes that non-U.S. banks and trust companies be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums for various jurisdictions, these members would be required to provide FICC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction, as described in greater detail below.

In MBSD Rule 3, FICC proposes to add a paragraph providing that a Clearing Member that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and a Bank Clearing Member that is a U.S. branch or agency must (i) provide, no less than annually and upon request by FICC, an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (ii) notify FICC: (a) Within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

FICC also proposes to require Foreign Members that are regulated by their home country regulator and Bank Clearing Members that are U.S. branches or agencies of non-U.S. banks or trust companies to provide FICC copies of any regulatory notifications required to be made when an entity does not comply with the financial reporting and responsibility standards set by their home country regulator and to notify FICC in writing within 2 Business Days of becoming subject to a disciplinary action by their home country regulator.

#### Other Clearing Members

For Clearing Members not otherwise addressed in Section 2(e)(ii) of MBSD Rule 2A, FICC proposes that such Clearing Members be in compliance with their regulator's minimum financial requirements. FICC may, based on information provided by or concerning an applicant applying to become a Clearing Member, also assign

minimum financial requirements for the applicant based on (i) how closely the applicant resembles an existing category of Clearing Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

#### Other Proposed Changes to MBSD Rule 2A

##### Section 1

FICC proposes to revise Section 1 of MBSD Rule 2A to clarify that such section sets forth the eligibility requirements for each category of Clearing Member. FICC also proposes to add a heading to each of the eligibility requirements for each category of Clearing Member to improve readability and accessibility.

In paragraph (d), FICC proposes to clarify that a Person is eligible to apply to become an Unregistered Investment Pool Clearing Member if it is an Unregistered Investment Pool and that an Unregistered Investment Pool Clearing Member is an Unregistered Investment Pool whose membership in the Clearing System has not been terminated.

In paragraph (f), FICC proposes to clarify that a Person is eligible to apply to become an Insurance Company Clearing Member if it is an Insurance Company in good standing with its primary regulator.

In paragraph (g), FICC proposes to clarify that a Person is eligible to apply to become a Registered Clearing Agency Member if it is a Registered Clearing Agency in good standing with its primary regulator.

In the next to last paragraph of Section 1, FICC proposes to correct an incorrect pluralization of the word "category" and a potentially confusing consolidation of two defined terms.

In the last paragraph of Section 1, FICC proposes to correct an incorrect reference to a Clearing Member that is a Foreign Person and incorrect references to MBSD's rules and procedures.

##### Section 2

FICC proposes to revise the introductory sentence to Section 2 of MBSD Rule 2A to clarify that the Board's approval of an application to become a Clearing Member is subject to the limitations set forth in MBSD Rule 2A.

At the end of Section 2(e), FICC proposes to clarify its existing policy that the Clearing Member financial responsibility standards set forth in Section 2(e) are only the minimum

requirements and make explicit that the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC, and the overall financial condition of the applicant, may, in its sole discretion, impose heightened or different financial responsibility standards on any applicant.

FICC also proposes to clarify its existing practice that if an applicant does not itself satisfy the required minimum financial responsibility standards, the Board may include for such purposes the financial resources of the parent company of the applicant (including, in the case of an applicant that is a U.S. branch or agency, its parent bank) if the parent company has delivered to FICC a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to FICC.

FICC proposes to make Section 2(e) the very end of Section 2 to improve readability and accessibility by not separating the Clearing Member financial responsibility standards set forth in Section 2(e) with the above-described statements regarding the Board's existing authority to impose heightened or different financial responsibility standards or to consider the financial resources of a parent company.

#### MBSD Cash Settling Bank Members

FICC proposes to require that any Cash Settling Bank Member that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio<sup>34</sup> equal to or greater than the Tier 1 RBC Ratio that would be required for such Cash Settling Bank Member to be Well Capitalized. FICC does not currently have a capital requirement for Cash Settling Bank Members. FICC also proposes to revise the title of MBSD Rule 3A to reflect the correct title for this membership category.

#### *B. Changes to FICC's Watch List and Enhanced Surveillance List*

FICC proposes to redefine the Watch List and eliminate the separate enhanced surveillance list and instead implement a new Watch List that consists of a relatively smaller group of members that pose heightened risk to FICC and its members.

FICC believes that the current system of having both a Watch List and an

<sup>34</sup> See *supra* note 26.

enhanced surveillance list has confused various FICC stakeholders, while the proposed approach, as FICC understands from its experience, will be more consistent with industry practices and understanding of a “Watch List.”

The new Watch List would include members with a CRRM rating of 6 or 7, as well as members that are deemed by FICC to pose a heightened risk to it and its members. The separate enhanced surveillance list would be merged into the new Watch List and references to the separate enhanced surveillance list would be deleted from the Rules.

In sum, the new Watch List would consist of members on the existing enhanced surveillance list, members with a CRRM rating of 6 or 7, and any other members that are deemed by FICC to pose a heightened risk to it and its members.

The proposed change will mean that members with a CRRM rating of 5 would no longer automatically be included on the Watch List. Members with a CRRM rating of 5 represent the largest single CRRM rating category, but FICC does not believe all such members present heightened credit concerns.<sup>35</sup> Nevertheless, FICC would continue to have the authority to place a member on the new Watch List if it is deemed to pose a heightened risk to FICC and its members and/or to downgrade the CRRM rating of a member.

In GSD Rule 1, FICC proposes to update a reference to “members” in the definition of the Watch List to be a reference to the defined term “Members.” In Section 12 of GSD Rule 3, FICC proposes to update references to “members” with the defined term “Members.” FICC also proposes to clarify in Section 12(f) of GSD Rule 3 and Section 11(f) of MBSD Rule 3 that members on the Watch List are reported to FICC’s management committees and regularly reviewed by FICC’s senior management.

### C. Certain Other Clarification Changes

In connection with the above-described changes to the Rules to enhance FICC’s capital requirements for members and redefine the Watch List and eliminate the enhanced surveillance list, FICC proposes to make certain other

clarification changes in order to improve the accessibility and transparency of the Rules including the following:

#### GSD Rules

In GSD Rule 1, FICC proposes to update cross-references in the definitions of “Bank Netting Member,” “Dealer Netting Member,” “Foreign Netting Member,” “Futures Commission Merchant Netting Member,” “Government Securities Issuer Netting Member,” “Insurance Company Netting Member,” “Inter-Dealer Broker Netting Member,” “Registered Clearing Agency Netting Member” and “Registered Investment Company Netting Member” to reflect the renumbering of Section 2 of GSD Rule 2A as Section 3.

FICC proposes to add a new defined term of “Government Sponsored Enterprise” in GSD Rule 1 which would be used in the revised definition of “Government Securities Issuer Netting Member” in Section 3 of GSD Rule 2A, from which such term was inadvertently omitted. The proposed definition of “Government Sponsored Enterprise” in GSD Rule 1 is the same as the definition of such term in MBSD Rule 1.<sup>36</sup>

FICC also proposes to revise the definition of “Excess Capital Differential” in GSD Rule 1 to replace the reference to “Excess Capital” with a reference to “Netting Member Capital.” FICC previously deleted the defined term “Excess Capital” from GSD Rule 1 and replaced it with the defined term “Netting Member Capital”<sup>37</sup> but inadvertently did not update the reference to “Excess Capital” in the defined term “Excess Capital Differential” with a reference to “Netting Member Capital.”

In GSD Rule 2, FICC proposes to clarify that FICC would make its services available to applicants that meet the eligibility, qualifications and standards specified in the GSD Rules. FICC also proposes to separate a sentence specifying the GSD Rules governing Sponsored Members and Sponsoring Members, CCIT Members and Funds-Only Settling Bank Members into three separate sentences to improve accessibility and transparency.

In GSD Rule 3, FICC proposes to clarify existing language that the eligibility, qualifications and standards set forth in GSD Rule 2A in respect of an applicant shall continue to be met upon an applicant’s admission as a Member and at all times while a

Member. FICC also proposes to fix incorrect usages of certain defined terms, incorrect references to certain Exchange Act Rules, a reference to a “domestic” bank or trust company rather than a “U.S.” bank or trust company, as well as make other typographical and clarifying changes.

FICC proposes to revise the existing requirements in Sections 2(e) and (f) of GSD Rule 3 for Members established in the United Kingdom to provide FICC certain financial information and reports submitted to their regulators by expanding such requirement to include Members established in any non-U.S. jurisdiction, any financial information requested by FICC and any reports submitted to such Member’s home country regulator.

FICC proposes to revise Sections 2(g) and 8 of GSD Rule 3 to clarify the circumstances when a Member is out of compliance with certain membership standards, and to move a sentence regarding when FICC begins to assess a premium to the Required Fund Deposit of a Member that falls below its minimum financial requirements.

FICC proposes to revise Section 2(h) of GSD Rule 3 to clarify that a parent company that has guaranteed the obligations of its subsidiary to FICC also includes, in the case of a Member that is a U.S. branch or agency, its parent bank.

In Section 7 of GSD Rule 2A, FICC proposes to update a reference to Section 3 of GSD Rule 2A with a reference to Section 2 to reflect the renumbering of such sections.

#### MBSD Rules

In MBSD Rule 1, FICC proposes to add a defined term for “Registered Clearing Agency Member,” which was inadvertently not included in the list of defined terms in MBSD Rule 1.

In MBSD Rule 2, FICC proposes to clarify that FICC will make its services available to applicants that meet the eligibility, qualifications and standards specified in the MBSD Rules, and to reflect that FICC, in addition to the Board, has the existing authority to approve certain membership applications.

In MBSD Rule 3, FICC proposes to clarify existing language that the eligibility, qualifications and standards set forth in MBSD Rule 2A in respect of an applicant shall continue to be met upon an applicant’s admission as a Member and at all times while a Member. FICC also proposes to fix incorrect usages of certain defined terms, incorrect references to certain Exchange Act Rules, a reference to a “domestic” bank or trust company

<sup>35</sup> The majority of members with a CRRM rating of 5 are either rated “investment grade” by external rating agencies or, in the absence of external ratings, FICC believes are equivalent to investment grade, as many of these members are primary dealers and large foreign banks. A firm with a rating of “investment grade” is understood to be better able to make its payment obligations compared to a firm with a lesser rating, such as a rating of “speculative.” As such, among the total population, firms with investment grade ratings are generally considered good credit risk along a credit risk scale.

<sup>36</sup> MBSD Rule 1 (Definitions), *supra* note 3.

<sup>37</sup> See Securities Exchange Act Release Nos. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR-FICC-2018-001) and 83223 (May 11, 2018), 83 FR 23020 (May 17, 2018) (SR-FICC-2018-801).

rather than a “U.S.” bank or trust company, as well as make other typographical and clarifying changes.

FICC proposes to revise the existing requirements in Sections 2(d) and (e) of MBS Rule 3 for Members established in the United Kingdom to provide FICC certain financial information and reports submitted to their regulators by expanding such requirement to include Members established in any non-U.S. jurisdiction, any financial information requested by FICC and any reports submitted to such Member’s home country regulator.

FICC proposes to revise Section 2(g) of MBS Rule 3 to clarify the circumstances when a Member is out of compliance with certain membership standards and how often a Member is required to provide unaudited financial information to FICC.

FICC proposes to revise Section 2(h) of MBS Rule 3 to clarify that a parent company that has guaranteed the obligations of its subsidiary to FICC also includes, in the case of a Member that is a U.S. branch or agency, its parent bank, and to correct a grammatical error.

#### Member Outreach

Beginning in June 2019, FICC has conducted outreach to various members in order to provide them with advance notice of the proposed enhancements to FICC’s capital requirements for members, the proposed redefinition of the Watch List, and the proposed elimination of the enhanced surveillance list. FICC has not conducted outreach to members providing them with advance notice of the proposed clarification changes to the Rules. FICC has not received any written feedback from members on the proposal. The Commission will be notified of any written comments received.

#### Implementation Timeframe

Pending Commission approval, FICC would implement the proposed changes to enhance its capital requirements for members, as well as the clarification changes to the Rules, one year after the Commission’s approval of this proposed rule change. During that one-year period, FICC would periodically provide members with estimates of their capital requirements, based on the approved changes, with more outreach expected for members impacted by the changes. The deferred implementation for all members and the estimated capital requirements for members are designed to give members the opportunity to assess the impact of their enhanced capital requirements on their business profile. All members would be

advised of the implementation date of these proposed changes through issuance of an FICC Important Notice, posted to its website. FICC also would inform firms applying for membership of the new capital requirements. Members and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

FICC expects to implement the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list within 90 days of Commission approval. All members would be advised of such implementation through issuance of an FICC Important Notice, posted to its website.

#### 2. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>38</sup> and Rules 17Ad–22(b)(7), (e)(4)(i) and (e)(18),<sup>39</sup> each as promulgated under the Exchange Act, for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>40</sup> As described above, the proposed rule changes would (1) enhance FICC’s capital requirements for members, (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. FICC believes that enhancing its capital requirements for members, including continuing to recognize and account for varying members and memberships, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, and would help FICC more effectively manage and mitigate the credit risks posed by its members, which would in turn help FICC be better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. Similarly, FICC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help FICC better allocate its resources for

monitoring the credit risks posed by its members, which would in turn help FICC more effectively manage and mitigate such credit risks so that FICC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. FICC believes that making clarification changes to the Rules, including through the use of new defined terms, would help ensure that the Rules remain clear and accurate, which would in turn help facilitate members’ understanding of the Rules and provide members with increased predictability and certainty regarding their rights and obligations with respect to FICC’s clearance and settlement activities. Therefore, FICC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Rule 17Ad–22(b)(7) under the Exchange Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership at FICC, provided that FICC may provide for a higher net capital requirement as a condition for membership if it demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures.<sup>41</sup> As described above, FICC proposes to enhance its capital requirements for members. FICC believes that these proposed rule changes, while referencing capital measures other than net capital, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, and would help FICC more effectively manage and mitigate the credit risks posed by its members while providing fair and open access to membership at FICC. FICC believes that the proposed changes would utilize capital measures that are appropriately matched to the regulatory and other capital requirements applicable to the types of entities that apply for and have membership at FICC, which would in turn help facilitate members’ understanding of and compliance with FICC’s enhanced capital requirements. FICC also believes that these other capital measures are more appropriate measures of the capital available to members to absorb losses arising out of

<sup>38</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>39</sup> 17 CFR 240.17Ad–22(b)(7), (e)(4)(i) and (e)(18).

<sup>40</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>41</sup> 17 CFR 240.17Ad–22(b)(7).

their clearance and settlement activities at FICC than simply net capital because a member's net capital alone may not be available to absorb losses arising out of such activities. Thus, relying on measures beyond net capital would help members more effectively understand and manage the resources available to mitigate the credit risks they pose to FICC. In the case of those proposed rule changes that may require members such as U.S. banks and trust companies or non-U.S. banks and trust companies to maintain capital greater than \$50 million, FICC believes that enhanced capital requirements for such members are necessary and appropriate in light of the regulatory and other capital requirements that such members face and the credit risks they pose to FICC, which would help FICC more effectively manage and mitigate such credit risks. Therefore, FICC believes that the enhanced capital requirements for members are necessary to mitigate risks that could not otherwise be effectively managed by other measures, consistent with Rule 17Ad-22(b)(7) under the Exchange Act.

Rule 17Ad-22(e)(4)(i) under the Exchange Act 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.<sup>42</sup> As described above, FICC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. FICC believes that enhancing its capital requirements for members would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, which would in turn help FICC more effectively manage and mitigate its credit exposures to its members and thereby help enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. FICC believes that redefining the Watch List and eliminating the enhanced surveillance list would help FICC better allocate its resources for monitoring its credit exposures to members. By helping to better allocate resources, the proposal would in turn help FICC more effectively manage and mitigate its

credit exposures to its members, thereby helping to enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. Therefore, FICC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

Rule 17Ad-22(e)(18) under the Exchange Act 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 permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.<sup>43</sup> As described above, FICC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. FICC's proposed capital requirements would utilize objective measurements of member capital that would be fully disclosed in the Rules. The proposed capital requirements also would be risk-based and allow for fair and open access in that they would be based on the credit risks imposed by the member, such as its membership type and type of entity (including whether it is a non-U.S. entity). Accordingly, FICC's proposed capital requirements would establish objective, risk-based and publicly disclosed criteria for membership, which would permit fair and open access by members. The proposed capital requirements also would ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, which would help ensure that they have sufficient financial resources to meet the obligations arising from their membership at FICC. FICC's proposed redefinition of the Watch List and the elimination of the enhanced surveillance list would help FICC better allocate its resources for monitoring the credit risks posed by its members, including their ongoing compliance with FICC's proposed enhancements to its capital requirements. Therefore, FICC believes that its proposal to enhance its capital requirements for members,

redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(18) under the Exchange Act.

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

FICC does not believe the proposed changes to enhance its capital requirements for members would have an impact on competition because all of its members already meet, and in most cases exceed, the proposed capital requirements.

Additionally, FICC does not believe that the proposed changes to (i) redefine the Watch List and eliminate the enhanced surveillance list and (ii) make clarification changes to the Rules would impact competition. Redefining the Watch List and eliminating the enhanced surveillance list are simply intended to streamline and clarify these monitoring practices. If anything, by no longer automatically including members with a CRRM rating of 5 on the Watch List, as proposed, the change could promote competition for such members, as such members would no longer automatically be subject to increased scrutiny by FICC, including the possibility of increased financial and reporting obligations. Meanwhile, making clarification changes to the Rules to ensure that they remain accessible and transparent would help facilitate members' understanding of the Rules and provide members with increased predictability and certainty regarding their rights and obligations with respect to FICC's clearance and settlement activities.

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

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

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

All prospective commenters should follow the SEC's instructions on *How to Submit Comments*, available at <https://>

<sup>42</sup> 17 CFR 240.17Ad-22(e)(4)(i).

<sup>43</sup> 17 CFR 240.17Ad-22(e)(18).

[www.sec.gov/regulatory-actions/how-to-submit-comments](http://www.sec.gov/regulatory-actions/how-to-submit-comments). General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

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

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

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

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2021-009 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-FICC-2021-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2021-009 and should be submitted on or before January 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-28251 Filed 12-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93864; File No. SR-ICEEU-2021-025]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

December 23, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 16, 2021, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> such that the proposed rule change was immediately effective upon filing with the

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Delivery Procedures ("Delivery Procedures" or "Procedures") to add a new Part HH thereto ("Part HH") to address new ICE Endex French PEG Natural Gas Futures and ICE Endex French PEG Natural Gas Daily Futures (each a "Contract" and together the "Contracts"), natural gas futures contracts that will be traded on ICE Endex and cleared by ICE Clear Europe. The proposed updates would also make certain conforming changes elsewhere in the Delivery Procedures.<sup>5</sup>

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is proposing to add a new Part HH as well as make certain conforming changes elsewhere in the Delivery Procedures. Part HH would apply to the Contracts, which are to be traded on ICE Endex and cleared at ICE Clear Europe. The amended Delivery Procedures would provide the delivery specifications and processes related to delivery under such Contracts.

Delivery under the Contracts would be settled by the transfer of rights to Natural Gas at the PEG (the title transfer point in the Transmission System where the Licensed Shipper would exchange daily quantities of energy with other shippers or with one of the operators of the Transmission System in France) from a Transferor nominated by the Seller to the Clearing House and the

<sup>44</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>5</sup> Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.