(Offshore), L.P., OHA European Strategic Credit Master Fund (Euro), L.P., OHA KC Customized Credit Master Fund, L.P., OHA CLO Enhanced Equity Master Fund II, L.P., OHA CLO Enhanced Equity Master A Fund, L.P., OHA AD Dislocation Credit Fund II, L.P., OHA AD Customized Credit Fund (Europe), L.P., OHA AD Customized Credit Fund (International), L.P., OHA Real Asset Opportunities Master Fund I, L.P., OHA SA Customized Credit Fund, L.P., OHA Strategic Credit Master Fund II, L.P., OHA Strategic Credit Master Fund III, L.P., OHA Strategic Credit Fund III, L.P., OHA Strategic Credit Mini-Master Fund III (Offshore), L.P., OHA Structured Products Master Fund C, L.P., OHA Structured Products Master Fund D, L.P., OHA Structured Products Fund E, L.P., OHA Structured Products Master Fund II, L.P., OHA Tactical Investment Master Fund, L.P., OHA Tactical Investment Fund, L.P., OHA Tactical Investment Mini-Master Fund (Offshore), L.P., OHA TKY Customized Credit Fund, L.P., OHA TKY Customized Credit Fund II, L.P., OHA TKY Customized Credit Fund III, L.P., Aloha European Credit Fund, L.P., OHA Diversified Credit Strategies Fund (Parallel), L.P., OHA MD Opportunistic Credit Master Fund, L.P., OHA Enhanced Credit Strategies Master Fund, L.P., OHA Enhanced Credit Strategies Fund, L.P., OHA Enhanced Credit Strategies Mini-Master Fund, L.P., OHA Diversified Credit Strategies Tractor Master Fund, L.P., OHA LDN Customised Credit Master, L.P., OHA Diversified Credit Strategies Master Fund (Parallel II), L.P., OHA Centre Street Partnership, L.P., OHA CLO Strategies Master Fund, L.P., OHA Diversified Credit Strategies Fund Master, L.P., OHA Diversified Credit Strategies Fund, L.P., OHA Diversified Credit Strategies Fund Mini-Master, L.P., OHA UK Customized RMBS Master Fund, L.P., OHAT Credit Fund, L.P., OHA Delaware Customized Credit Fund-F, L.P., OHA Delaware Customized Credit Fund, L.P., OHA Dynamic Credit Orca Fund, L.P., OHA S.C.A., SICAV–SIF, OHA Finlandia Credit Fund, L.P., OHA Custom Multi-Sector Credit Master Fund, L.P., OHA AD Co-Investment Fund, L.P., OHA FD Custom Credit Fund, L.P., OHA HT Lev Loan Fund, L.P., OHA Credit Funding 1, Ltd., OHA Credit Funding 2, Ltd., OHA Credit Funding 3, Ltd., OHA Credit Funding 4, Ltd., OHA Credit Funding 5, Ltd., OHA Credit Funding 6, Ltd., OHA Credit Funding 7, Ltd., OHA Credit Funding 8, Ltd., OHA Credit Funding 9, Ltd., OHA Credit Funding 10, Ltd., OHA Credit Funding 11, Ltd., OHA Credit Funding 12, Ltd., OHA Credit Partners VII, Ltd., OHA Credit Partners IX, Ltd., OHA Credit Partners X–R, Ltd., OHA Credit Partners XI, Ltd., OHA Credit Partners XII, Ltd., OHA Credit Partners XIII, Ltd., OHA Credit Partners XIV, Ltd., OHA Credit Partners XV, Ltd., OHA Credit Partners XVI, Ltd., OHA Loan Funding 2013–1, Ltd., OHA Loan Funding 2013–2, Ltd., OHA Loan Funding 2015–1, Ltd., OHA Loan Funding 2016–1, Ltd., Oak Hill European Credit Partners III DAC, Oak Hill European Credit Partners IV, DAC, Oak Hill European Credit Partners V, DAC, Oak Hill European Credit Partners VI, DAC, Oak Hill European Credit Partners VII, DAC, Oak Hill European Credit Partners VIII, DAC, OHA Credit Solutions II Master Fund A SPV, L.P., OHA Credit Solutions II Master Fund B SPV, L.P., OHA Credit Solutions Master Fund I SPV, L.P., OHA Credit Solutions Master Fund II SPV, L.P., OHA Madison Loan Fund, L.P., OHA Falcon Fund, L.P., OHA KC Customized Credit Master Fund II, L.P., OHA TKY Customized Credit Fund IV, L.P., OHA Highlands, L.P., OHA Credit Funding 13, Ltd., OHA Credit Funding 14, Ltd., and OHA Credit Funding 15, Ltd.

FILING DATES: The application was filed on May 2, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Gregory S. Rubin, Esq., *GRubin@oakhilladvisors.com;* Richard Horowitz, Esq., *richard.horowitz@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Lisa Reid Ragen, Branch Chief, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated May 2, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

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

Dated: July 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15988 Filed 7–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97969; File No. SR–FICC–2023–010]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend and Restate the Cross-Margining Agreement between FICC and CM

July 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by FICC. 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 a proposed Amended and Restated Cross-Margining Agreement (the ''Restated Agreement'') between FICC and the Chicago Mercantile Exchange

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

[2] 17 CFR 240.19b–4.

Inc. (''CME,'' collectively FICC and CME are referred to herein as the ''Clearing Organizations'' or ''Parties''). The proposed Restated Agreement would replace the current Cross-Margining Agreement between the Parties (the ''Existing Agreement'') [3] in its entirety and would be incorporated into the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules''). The proposed rule change does not require any changes to the text of the GSD Rules.[4] The proposed Restated Agreement was attached to this filing as Exhibit 5[sic].[5]

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

Executive Summary

Generally, the purpose of a cross-margining arrangement between two clearing organizations is to recognize the offsetting value of positions maintained by a member (or a member and its affiliate) at the two clearing organizations for margin purposes. Any resulting margin reductions create capital efficiencies for common members.

With regard to its cross-margining arrangement with CME, FICC is proposing to replace the Existing Agreement with the Restated Agreement, which would be incorporated into the GSD Rules. The purpose of the proposed Restated Agreement is to expand the scope and efficiency of the margin offsets that are available to clearing members of the two Clearing Organizations under the Existing Agreement, thus reducing their margin costs and allowing for more efficient capital usage by members. It would also streamline the default management and loss sharing processes by making clear that a joint liquidation would be the preferred method used by the Clearing Organizations in the event of a member default.

The key aspects of the proposed Restated Agreement are as follows (and are described in more detail below):

• Member participation: Participation in the cross-margining arrangement would continue to be voluntary and the criteria for participation under the proposed Restated Agreement would remain the same as it is under the Existing Agreement.[6]

• Eligible products: Additional CME products would become eligible under the proposed Restated Agreement,[7] allowing for greater potential margin offsets.

• Calculation of margin and margin reductions: The proposed Restated Agreement, would simplify the overall margin calculation process by eliminating the need for application of offset classes of securities and conversion of CME Eligible Products into equivalent GSD Treasury security products.[8] As a result, FICC believes, based on portfolio specific construction and market conditions, that these changes should generate margin savings in excess of those under the Existing Agreement. For example, based on a study comparing margin savings generated under the Existing Agreement and under the proposed Restated Agreement over the December 1, 2021 to November 30, 2022 period,[9] margin savings went from a range of 0.1% to 17.4% under the Existing Agreement, to a range of 0% to 36.6% under the proposed Restated Agreement.[10]

• Default management: Under the Existing Agreement, there is no express language requiring the Parties to attempt to conduct a joint liquidation. Whereas the proposed Restated Agreement would make clear that a joint liquidation is the preferred means of liquidation of cross-margining positions in the event of a member default. A joint liquidation is optimal because it maximizes the efficiency and effectiveness of the liquidation process by enabling each Clearing Organization to recognize reduced risk by offsetting risk positions together. The proposed Restated Agreement would also provide for the possible exchange of variation margin during the course of a joint liquidation. The exchange of variation margin during the course of a joint liquidation would be an improvement because instead of using other liquidity resources, it would enable a Party that has a mark-to-market loss arising out of cross-margining positions to use the variation margin gains on offsetting cross-margining positions held by the other Clearing Organization. The Existing Agreement has no such provisions and they would be added to improve the efficiency of the default management process.

FICC believes that the proposed expansion of the scope of CME Eligible Products (as defined below) available for cross-margining, the expansion of the scope and efficiency of the margin offsets that would be available to Cross-Margining Participants,[11] and the

[3] *See* Securities Exchange Act Release No. 49003 (Dec. 29, 2003), 69 FR 712 (Jan. 6, 2004) (SR–FICC–2003–10). For subsequent amendments to the Existing Agreement, *see* Securities Exchange Act Release Nos. 50790 (Dec. 3, 2004), 69 FR 71456 (Dec. 9, 2004) (SR–FICC–2004–16); 51178 (Feb. 9, 2005), 70 FR 7982 (Feb. 16, 2005) (SR–FICC–2005–03); 55217 (Jan. 31, 2007), 72 FR 5774 (Feb. 7, 2007) (SR–FICC–2006–16); 59498 (Mar. 4, 2009), 74 FR 10321 (Mar. 10, 2009) (SR–FICC–2009–01); 63986 (Feb. 28, 2011), 76 FR 12144 (Mar. 4, 2011) (SR–FICC–2010–09); and 72396 (June 16, 2014), 79 FR 35400 (June 20, 2014) (SR–FICC–2014–04).

[4] The Existing Agreement is incorporated in the GSD Rules *available at www.dtcc.com/legal/rules-and-procedures.aspx.* Unless otherwise specified, capitalized terms not defined herein shall have the meanings ascribed to them in the GSD Rules, which includes the Existing Agreement.

[5] Proposed Amended and Restated Cross-Margining Agreement by Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc.

[6] Currently cross-margining is only available for house (proprietary accounts) of CME clearing members that are also GSD Netting Members (either directly or through an affiliate).

[7] CME will add products to the proposed Restated Agreement as discussed in more detail below.

[8] References herein to ''offset classes'' refers to the grouping of securities by maturity for purposes of comparing those securities to CME Eligible Products whose price volatility is sufficiently correlated to determine whether long and short positions could be offset for purposes of determining margin requirements. Moving to security-level offsets would simplify the margin calculation process by removing the need to define and work with categories of securities.

[9] The study covered fifteen current Cross-Margining Participants' actual eligible FICC portfolios and simulated CME futures portfolios. FICC notes that margin savings will vary based on portfolio specific construction and market conditions.

[10] FICC notes, however, that cross-margining-related margin requirements account for only nineteen (19) percent of total margin requirements on average. FICC provided its analysis of the potential effects on margin requirements to the Commission in a confidential Exhibit 3 to File No. SR–FICC–2023–010. FICC provided responses to specific questions raised by Commission staff with regard to the conceptual review of margin reduction mechanics (*e.g.,* the applicable margin model, impact of proposed changes), the potential effect on other margin add-on charges, and how FICC intends to model Treasury futures. FICC also provided information pertaining to minimum and maximum margin reduction thresholds, potential effects of the proposed changes to margin calculations, and model backtesting.

[11] Pursuant to the proposed Restated Agreement, ''Cross-Margining Participant'' means a Joint Clearing Member that has become, or a Clearing Member that is part of a pair of affiliated Clearing Members each of which has become, a participant in the cross-margining arrangement between FICC and CME established pursuant to the proposed Restated Agreement. In the latter case, the term ''Cross-Margining Participant'' shall, where the

Continued

improvement in the efficiency and effectiveness of the default management process would enhance the cross-margining arrangement between FICC and CME. FICC believes that these enhancements would encourage greater utilization of centralized clearing, thereby facilitating systemic risk reduction.

Background

The Existing Agreement establishes a cross-margining arrangement [12] that allows FICC to consider the net risk of a participant's related eligible positions at FICC and CME when setting margin requirements of such positions.[13]

FICC proposes to enter into the proposed Restated Agreement which would, among other things, (i) generally expand the list of CME Eligible Products [14] available for cross-margining; (ii) remove certain existing appendices to the Existing Agreement that describe operational calculations and margin examples, and instead establish procedures to be included in a separate service level agreement, including certain other processes covering default management and changes to the lists of CME Eligible Products and FICC Eligible Products; (iii) revise and expand the scope and efficiency for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures; (iv) add provisions describing default management in terms of (x) what steps would be taken in the event of a joint or separate liquidation of Defaulting Member's Eligible Positions, and (y) the exchange between the Parties of ''Variation Margin'' during the course of a joint liquidation (as defined in the proposed Restated Agreement) and loss sharing; and (v) revise certain other provisions that relate to the Clearing Organizations' contractual obligations to one another.[15]

Key Terms of the Existing Agreement

For purposes of additional background, the following is an overview of the key terms of the Existing Agreement.

1. Daily Margin Calculation

Under the Existing Agreement, the cross-margining calculation is not based upon FICC's VaR model. Rather, FICC and CME each separately hold and manage its own positions and collateral and independently determine the amount of margin that it would make available for cross-margining (after they each first conduct their own internal offsets). Once each Business Day, FICC and CME exchange files with respect to their members' positions that are eligible for cross-margining. FICC computes the amount by which a member's margin requirement can be reduced, by comparing that member's Eligible Positions and related margin requirements at GSD against those at CME. FICC and CME may then each reduce the amount of collateral that they collect to reflect the offsets between the Cross-Margining Participant's positions at FICC and its (or its Affiliate's) positions at CME.[16] Currently, the calculation of the offsets each Clearing Organization applies relies upon a methodology for the conversion of CME Eligible Products into equivalent GSD Treasury security products, as well as the use of minimum margin factors to measure interest rate exposure.

Additionally, the Clearing Organizations limit the potential margin reductions from cross-margining. Specifically, they apply a Disallowance Factor to a given CME and GSD Offset Class (an ''Offset Class'' being a grouping of securities by maturity).[17] Based on these Disallowance Factors, margin offsets are determined for each Offset Class. The sum of these margin offsets provides the member's Cross-Margining Reduction) at CME and at GSD.[18]

2. The Cross-Margining Guaranty and Reimbursement Obligation

As would also be the case under the proposed Restated Agreement, under the Existing Agreement, CME agrees to guaranty certain performance obligations of a Cross-Margining Participant to FICC, and FICC agrees to guaranty certain performance obligations of a Cross-Margining Participant to CME. These cross-margining Guaranties [19] are necessary to facilitate the Cross-Margining Arrangement and represent contractual commitments that each Clearing Organization has to the other.[20] Specifically, CME and FICC guarantee the Cross-Margining Participant's performance of its obligations to the other Clearing Corporation up to the amount of the member's Cross-Margining Reduction.[21] There is also a corresponding obligation of the Cross-Margining Participant to reimburse a Clearing Organization for any amounts paid under these Guaranties, which obligation is collateralized by the positions and margin of such Cross-Margining Participant held by the guarantor (CME or FICC, as applicable).

context requires, refer collectively to the pair of Cross-Margining Affiliates.

[12] Cross-margining arrangements are addressed in GSD Rule 43, *supra* note 4.

[13] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[14] *See* Exhibit A of the proposed Restated Agreement, ''CME Eligible Products.'' The CME Eligible Products are the following: CBT 26 2-year T-Note Futures, CBT 3YR 3-year T-Notes Futures, CBT 25 5-Year T-Note Futures, CBT 21 10-year T-Note Futures, CBT 17 U.S. Treasury Bond Futures, CBT TN Ultra Ten-Year T-Note Futures, CBT UBE Ultra U.S. Treasury Bond Futures, CBT TWE 20-Year U.S. Treasury Bond Futures, CBT 41 30 Day Federal Funds Futures, CME ED Eurodollar Futures, CME 1-Month Eurodollar Futures, CME SR1 One-Month SOFR Futures, CME SR3 Three-Month SOFR Futures. *Id.* Of the foregoing, the following CME products would be newly eligible under the Restated agreement: CBT 3YR 3-year T-Notes Futures, CBT TN Ultra Ten-Year T-Note Futures, CBT UBE Ultra U.S. Treasury Bond Futures, CBT TWE 20-Year U.S. Treasury Bond Futures, CBT 41 30 Day Federal Funds Futures, CME SR1 One-Month SOFR Futures, and CME SR3 Three-Month SOFR Futures. As noted above, certain Agency futures have not been used in the current arrangement and will not be carried into the proposed Restated Agreement. Specifically, the following CME products would no longer be eligible: the ''Five Year Agency'' and ''Ten Year Agency'' Futures identified in Appendix B of the Existing Agreement.

[15] These provisions include, but are not limited to, the confidentiality provisions and removing the arbitration provision.

[16] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[17] FICC and CME agree on the applicable Disallowance Factors from time to time. Examples of Disallowance Factor tables are included in Exhibit B of the Existing Agreement.

[18] Pursuant to the Existing Agreement, FICC and CME unilaterally have the right to (1) not reduce a Cross-Margining Participant's margin requirement by the Cross-Margining Reduction or (2) reduce it by less than the Cross-Margining Reduction. However, the Clearing Organizations may not reduce a Cross-Margining Participant's margin requirement by more than the Cross-Margining Reduction. *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[19] Pursuant to the Existing Agreement, ''Guaranty'' is defined as ''the obligation of FICC to CME, or of CME to FICC, as in effect at a particular time with respect to a particular Cross-Margining Participant as set forth in Sections 8A and 8B of this Agreement. The term ''Guaranties'' refers to both the Guaranty of CME to FICC and the Guaranty of FICC to CME [. . .].'' *See* Section 1 of the Existing Agreement, ''Definitions,'' *supra* note 4.

[20] *See* Section 8A, ''Guaranty of FICC to CME,'' and Section 8B ''Guaranty of CME to FICC,'' of the Existing Agreement.

[21] Pursuant to the Existing Agreement, ''Cross-Margining Reduction'' is defined as ''the maximum amount by which a Cross-Margining Participant's margin requirement at one Clearing Organization may be reduced (irrespective of the amount by which it is actually reduced) as calculated in accordance with Section 5 of this Agreement. The Cross-Margining Reduction at each Clearing Organization is equal to the sum of the Margin Offsets at that Clearing Organization. There will always be a specified Cross-Margining Reduction that one Clearing Organization could be required to pay the other Clearing Organization. *See* Section 1 of the Existing Agreement, ''Definitions,'' *supra* note 4.

The provisions in the Existing Agreement covering the cross-margining Guaranties and the Cross-Margining Participant's Reimbursement Obligation would remain the same under the proposed Restated Agreement.[22]

3. Member Default Event

Under the Existing Agreement, there is no express language requiring the CME and FICC to conduct a joint liquidation at each Clearing Organization. However, there is language that provides that unless one of the Parties has elected to not liquidate, FICC and CME are required to use reasonable efforts to coordinate the liquidation of the positions covered by the Cross-Margining Arrangement so that offsetting or hedged positions can be closed out simultaneously.[23] There are also provisions covering the sharing of losses by CME and FICC in accordance with the terms of the cross-margining Guaranties.[24] The allocation of losses depends upon whether, as to each Party, the liquidation results in a Cross Margin Gain or Cross Margin Loss. A narrative description of the loss sharing process is set forth in Appendix I of the Existing Agreement titled, ''Loss Sharing Process.'' Additionally, after any payments are made pursuant to the Guaranties and loss sharing arrangement described above, if one of the Clearing Organizations computes an Aggregate Net Surplus, and the other an Aggregate Net Loss, the Existing Agreement includes an obligation for the Clearing Organization with the surplus to make a ''Maximization Payment'' [25] to the other Clearing Organization. There is also an associated ''Maximization Reimbursement Obligation'' [26] of the Defaulting Member to the Clearing Organization that is obligated to make a Maximization Payment. This provision enables excess collateral of a Defaulting Member to initially remain with the Clearing Organizations, if needed, to cover losses.

A. The Proposed Restated Agreement

Overview

As noted above, FICC proposes to enter into the proposed Restated Agreement with CME. The proposed Restated Agreement is primarily designed to, among other things, (i) expand the scope of CME Eligible Products, (ii) expand the scope and efficiency of the margin offsets that are available to Cross-Margining Participants, thus allowing for more efficient capital usage; (iii) improve the efficiency and effectiveness of the default management and loss sharing process; and (iv) as a result of such enhancements, further encourage greater utilization of centralized clearing, thereby facilitating systemic risk reduction. The material provisions of the proposed Restated Agreement are described in detail below.

Key Elements of the Proposed Restated Agreement

Proposal To Expand the List of CME Eligible Products

Pursuant to the proposed Restated Agreement, the list of CME products eligible for cross-margining would be amended to include an expanded list of interest rate futures that are cleared by CME.[27] Under the Existing Agreement, the interest rate futures and options contracts eligible for cross-margining are Eurodollar contracts listed on CME and certain U.S. Treasury contracts listed on the Chicago Board of Trade Incorporated (''CBOT'').[28] FICC understands that the purpose of the change in CME Eligible Products is to provide Cross-Margining Participants cross-margin benefits that better align with today's CME Interest Rates futures market structure. The original list of CME's product set does not include several CME Interest Rate futures contracts which have now become benchmark products for hedging in the broader U.S. Treasury Markets, for example the CBT TN Ultra Ten-Year T-Note Futures and the CBT UBE Ultra U.S. Treasury Bond Futures. The list would be expanded to include additional U.S. Treasury futures, which have been added to CME's suite of U.S. Treasury products since the Existing Agreement was established, and SOFR futures (which CME launched as a complement to and eventual replacement for Eurodollar futures). The list of FICC Eligible Products [29] would be comprised of U.S. Treasury securities which refers to Treasury notes and bonds, and would be set forth on Exhibit B to the proposed Restated Agreement, titled ''FICC Eligible Products.''

FICC and CME would each establish on their books and records a ''Cross-Margining Account'' [30] for each participating member that would identify for their respective member the transactions, positions and margin that are subject to the proposed Restated Agreement.[31]

Proposal To Establish a Separate Service Level Agreement

The proposed Restated Agreement also would include provisions intended to improve the procedures, information sharing, and documented steps covering the default management process between the Parties. Specifically, under the proposed Restated Agreement, Section 6(a) (Daily Procedures for Exchange of Portfolio Cross-Margining Data), FICC and CME would agree to put in place a separate service level agreement between the Parties (''SLA''), which would include specified timeframes, to exchange on each day on which trading in Eligible Products is conducted and on which FICC and CME both conduct money settlements (referred to as a ''Business Day''), such information as may reasonably be required in order to value the positions in the Cross-Margining Accounts and to

[22] The ''Reimbursement Obligation'' is defined under the Existing Agreement as ''the obligation, as set forth in Section 7(h) of this Agreement, of a Cross-Margining Participant to a Clearing Organization that is obligated to make a payment on behalf of such Cross-Margining Participant or its Cross-Margining Affiliate pursuant to a Guaranty.''

[23] Section 7(a) of the Existing Agreement, ''Suspension and Liquidation of a Cross Margining Participant,'' states in pertinent part that, ''Except to the extent that one Clearing Organization has determined unilaterally not to liquidate, FICC and CME shall use reasonable efforts to coordinate the liquidation of the Used Positions so that offsetting or hedged positions can be closed out simultaneously.''

[24] *See* Sections 8A, ''Guaranty of FICC to CME'' and 8B, ''Guaranty of CME to FICC,'' of the Existing Agreement, *supra* note 4.

[25] Pursuant to the Existing Agreement, ''Maximization Payment'' means the additional payment(s), if any, that are required to be made by FICC to CME, or vice versa, pursuant to Section 8C of this Agreement after payments are made under the Guaranty. *See* Section 8C of the Existing Agreement, ''Maximization Payment,'' *supra* note 4.

[26] Pursuant to the Existing Agreement, ''Maximization Reimbursement Obligation'' means the obligation, as set forth in Section 8C(d), of a Cross-Margining Participant to a Clearing Organization that is obligated to make a Maximization Payment on behalf of such Cross-Margining Participant or its Cross-Margining Affiliate pursuant to a Maximization Payment Guaranty. *Id.*

[27] *See* footnote 12 and Exhibit A (CME Eligible Products) of the proposed Restated Agreement.

[28] *Supra* note 4.

[29] *See* Exhibit B (FICC Eligible Products) of the proposed Restated Agreement. In the Existing Agreement, certain Agencies are also included, but these products have been rarely used in the current arrangement and will not be carried into the proposed Restated Agreement. Specifically, the following FICC products will no longer be eligible for cross-margining with CME products: Treasury bills (maturity of one year or less) and Treasury Inflation-Protected Securities (TIPS).

[30] Pursuant to the proposed Restated Agreement, ''Cross-Margining Account'' means with respect to a Clearing Member of FICC, the transactions, positions and margin maintained in the Account (as defined in the GSD Rules) at FICC that are identified in FICC's books and records as being subject to the proposed Restated Agreement, and, with respect to a Clearing Member of CME, means a cross-margining account that is carried on the books of CME for such Clearing Member that is limited to the transactions, positions and margin of the Proprietary Accounts of such Clearing Member that are subject to the proposed Restated Agreement.

[31] *See* Section 1, ''Definitions.'' of the proposed Restated Agreement.

calculate the Cross-Margin Requirement for each Cross-Margining Participant.[32] The SLA would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. The Parties would update the SLA as their operational needs evolve over time.

Further, in order to streamline and ensure coordination between the Clearing Organizations regarding any changes to the products eligible for cross-margining, the SLA would include the process and criteria under which FICC or CME may make a request to the other Clearing Organization to modify its list of CME Eligible Products or FICC Eligible Products, as applicable. Such process would include that only those products that do not require a change to FICC's or CME's margin model would be permitted to be subject to this process,[33] and that any modifications would require the mutual written consent of both Parties.

The SLA would replace certain appendices[34] to the Existing Agreement, which would no longer be applicable under the terms of the proposed Restated Agreement. Operational processes and related information would instead be incorporated into the SLA, which would reflect the process changes necessitated by the proposed changes to the calculation of the cross-margin requirements and loss sharing arrangements under the proposed Restated Agreement (described below).

Proposed Changes to the Calculation of Cross-Margin Requirements

The proposed Restated Agreement would adopt a different methodology applicable to the daily calculation of a Cross-Margining Participant's Cross-Margin Requirements. The purpose of the proposed changes is to expand the scope and efficiency of the margin offsets that are available to clearing members of GSD and CME under the Existing Agreement, thus reducing their margin costs and allowing for more efficient capital usage. This is because by including new Eligible Products, such as Ultras and 20-Year Treasury Futures, CME and FICC are able to reduce the risk exposure at more points of the interest rate curve. The greater margin efficiency is realized by using the security level sensitivity to calculate the VaR charge, instead of what is done today, which is to use the net market value of the Eligible Products in a similar maturity bucket. The proposed new methodology, which is based on offsetting Eligible Positions at FICC and CME, would also simplify the overall margin calculation process by eliminating the need to group securities by maturity and the conversion of CME Eligible Products into equivalent GSD Treasury security products to facilitate such grouping.[35]

Under the Existing Agreement in order to determine the amount of margin it collects, each Clearing Organization separately manages its own positions and collateral, and independently determines the ''Residual Margin Amount'' that remains after each Clearing Organization conducts its own internal offsets.[36] This process requires each Clearing Organization to apply Offset Classes and convert its Eligible Products into equivalent Eligible Products of the other Clearing Organization. The proposed Restated Agreement, in contrast, would provide that FICC and CME each treat a participant's relevant products as a single portfolio (the ''Combined Portfolio'').[37] Treatment as a Combined Portfolio provides the ability for the Clearing Organizations to assess risk at a security level and eliminates the need to use separate margin calculations and apply offset classes and conversions of Eligible Products.

The proposed Restated Agreement would provide that FICC and CME would independently determine the percentage of margin savings that would be derived for a Cross-Margining Account[38] as if it was a Combined Portfolio. First, pursuant to Section 4(a) of the proposed Restated Agreement, each Clearing Organization would calculate the difference between the sum of the (x) ''Stand-Alone Margin Requirements''[39] for the CME Eligible Products and FICC Eligible Products, and (y) the Combined Portfolio of CME Eligible Products and FICC Eligible Products. Based on the above, each Clearing Organization would determine the percentage of margin savings that would be derived by it by margining the Combined Portfolio.

Second, the Clearing Organizations would compare their respective margin savings percentages with one another, and, if the lesser of such margin savings percentage exceeds the minimum margin offset threshold[40] agreed by the Clearing Organizations, each Clearing Organization would reduce the amount of margin required to be deposited by a Cross-Margining Participant by the lower of such margin savings percentages (referred to as the Cross-Margining Participant's ''Margin Reduction''). If the respective margin savings percentages of both Clearing Organizations are less than the agreed

[32] FICC provided the SLA in a confidential Exhibit 3 to File No. SR–FICC–2023–010.

[33] Proposed changes that require a margin model change would require an amendment to the proposed Restated Agreement and regulatory review and approval, as applicable.

[34] The specific Appendices to be removed from the Existing Agreement in accordance with these proposed changes are: Appendix B (Example of Disallowance Factor Schedule Applicable to CME Eligible Products and FICC Eligible Products); Appendix C1 (CME Calculation Process to Convert Eurodollar Futures and Options into Treasury Cash Equivalents and to Determine the Applicable CME Offset Classes); Appendix C2 (Conversion of Futures Contracts into Treasury Equivalents); Appendix F (Methodology for Allocation of Margin Based on Order of Increasing Disallowances); Appendix G (Computation of Cross-Margin Reduction); Appendix H (Data Elements to Be Provided by CME and Returned by FICC); Appendix I (Loss Sharing Process); Appendix J (Examples of Loss Sharing Process); and Appendix K (Timing of the Effectiveness of the Base Amount of the Guaranty). *See* Existing Agreement, *supra* note 4.

[35] Grouping securities by maturity along with the conversion of products may, in some cases, previously have resulted in overestimating the margin credit that should be provided to a Cross-Margining Participant because such grouping and conversion of products is less precise than measuring risk at the individual security level. However, such overestimation of margin credit is no longer an issue under the Existing Agreement, as it has been previously addressed by FICC through a process of daily surveillance in which any instances of any excess margin credits are identified and remediated, prior to submission to the Cross-Margining Participant of their margin reduction amount. FICC provided its assessment of the excess margin credit issue as well as a description of how it remediated the issue in a confidential Exhibit 3 to File No. SR–FICC–2023–010.

[36] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[37] *See* Section 4(a) of the proposed Restated Agreement (Calculation of Cross-Margining Requirements).

[38] *Id.* Also, FICC would utilize the same Value-at Risk (''VaR'') calculation method for the FICC Eligible Positions (*see* GSD Rule 4, *supra* note 4) and the CME Eligible Position (*i.e.,* the same VaR engine for the cash positions and the futures positions).

[39] Pursuant to the proposed Restated Agreement, ''Stand-Alone Margin Requirement'' means, as to each Clearing Organization, the margin requirement that such Clearing Organization would calculate with respect to a Cross-Margining Account it carries as if calculated by such Clearing Organization without regard to this Agreement or another cross-margining agreement.'' FICC would calculate this requirement using a its VaR methodology, applying it also to the standalone CME portfolio, and the Combined Portfolio.

[40] The Clearing Organizations would set the initial margin offset threshold at 1% (which may be subject to change) to prevent any negatively correlated portfolios and/or portfolios with little to no correlation to receive cross-margin benefit, which requires the operational coordination between the two Clearing Organizations in the event of Member default, and they would reserve the right to amend the threshold from time to time. Changes to the minimum margin offset threshold would be subject the requirements of the Clearing Agency Model Risk Management Framework, which addresses review of margin methodologies, such as the model that would be used for the proposed Restated Agreement.

upon margin offset threshold, no Margin Reduction would be applied.[41]

Lastly, the Parties would agree that the Cross-Margin Requirement with respect to a Cross-Margining Participant may not be changed without the consent of both Clearing Organizations. Further, CME and FICC would agree to cause CME Eligible Products and FICC Eligible Products, respectively, to be cross-margined solely pursuant to the proposed Restated Agreement, and neither CME nor FICC would permit such Eligible Products to be subject to any other cross-margining arrangement.[42] This feature will prevent underlying Eligible Products from being double-counted to reduce margin in another cross-margining program or account, and ensure that each Clearing Organization will have the appropriate amount of margin to satisfy obligations if a default occurs.

Proposed Changes Related to Default Management

1. The Liquidation Process—Overview

Like the Existing Agreement, the proposed Restated Agreement would provide that either FICC or CME may at any time exercise any rights under its Rules to terminate, suspend or otherwise cease to act for or limit the activities of a Cross-Margining Participant (a ''Defaulting Member''). Upon such event (a ''Default Event''), the Clearing Organization that has taken the foregoing actions (referred to as the ''Liquidating CO'') would be required to immediately notify the other Clearing Organization (referred to for purposes of this provision of the proposed Restated Agreement as the ''other Clearing Organization'') of the actions it has taken.[43] Under the Existing Agreement, absent certain exceptions, both Clearing Organizations are required to promptly and prudently liquidate Eligible Positions of the Defaulting Member. However, in contrast to the Existing Agreement, the proposed Restated Agreement would provide a different approach to the liquidation process by delineating a sequence of coordinated steps the Clearing Organizations are required to take depending upon whether or not the other Clearing Organization elects to treat the Cross-Margining Participant as a Defaulting Member under its Rules. The objective of this proposed new approach is to improve the efficiency and effectiveness of the default management process and lead to greater coordination between the Clearing Organizations.

One Clearing Organization Elects To Treat the Member as a Defaulting Member and the Other Clearing Organization Does Not

The proposed Restated Agreement includes provisions to cover the scenario where one Clearing Organization (the ''Liquidating CO'') elects to treat the Cross-Margining Participant as a Defaulting Member, and the other Clearing Organization (the Non-Liquidating CO'') does not.[44] Generally, the Non-Liquidating CO would provide the Liquidating CO with cash to cover the margin reduction provided under the proposed Restated Agreement. The purpose of such cash payment is to align the Defaulting Member's margin resources with its exposures at the Liquidating CO.

Specifically, the Non-Liquidating CO would be obligated to require the Defaulting Member to pay the Non-Liquidating CO in immediately available funds the sum of (x) its Margin Reduction at the Liquidating CO, and (y) its Margin Reduction at the Non-Liquidating CO, within one hour of demand. If the Non-Liquidating CO receives this payment in full from the Defaulting Member or otherwise, such as from the Non-Liquidating CO, within such timeframe, the Non-Liquidating CO would be required, within one hour of such receipt, to pay the Liquidating CO in immediately available funds the Defaulting Member's Margin Reduction at the Liquidating CO. After the Non-Liquidating CO makes such payment in full, then, it would have no further obligations to the Liquidating CO with respect to the Default Event. If the Non-Liquidating CO does not receive this payment in full from the Defaulting Member or otherwise, within one hour of such receipt or other agreed upon timeframe, then the Non-Liquidating CO would cease to act for the Defaulting Member, and the provisions of the proposed Restated Agreement pertaining to the scenario where both Clearing Organizations treat the Member as a Defaulting Member (discussed immediately below) would apply.[45]

3. Both Clearing Organizations Elect To Treat the Member as a Defaulting Member

If both Clearing Organizations determine to treat the Cross-Margining Participant as a Defaulting Member, there are three possible liquidation routes under the proposed Restated Agreement the Clearing Organizations can take regarding a Defaulting Member. The following liquidation alternatives would be determined after evaluating the portfolio exposure, resources, hedging cost and approved through DTCC's default management governance process.

First, the Clearing Organizations would attempt in good faith to conduct a joint liquidation in which the Parties jointly transfer, liquidate or close out the Eligible Positions in the Cross-Margining Accounts carried for the Defaulting Member (the ''Relevant Positions'').[46]

Second, in the event a Clearing Organization determines that jointly transferring, liquidating or closing out the Relevant Positions is not feasible or advisable, the proposed Restated Agreement provides that either Clearing Organization may offer to buy-out the Relevant Positions, and any remaining collateral relating thereto, at the last settlement price for such positions immediately prior to the time such offer is made.[47]

Finally, if a Clearing Organization determines that it is not advisable or feasible to resolve the Default Event pursuant to the first or second options above, the proposed Restated Agreement provides that it shall so notify the other Clearing Organization. In such event, each Clearing Organization would promptly transfer, liquidate or otherwise close out the Eligible Positions in the Cross-Margining Account carried for the Defaulting Member at that Clearing Organization.[48]

Each of the foregoing liquidation routes is described in detail below.

a. Joint Liquidation

A joint liquidation is optimal because it maximizes the efficiency and effectiveness of the liquidation process by enabling each Clearing Organization to recognize reduced risk by liquidating offsetting risk positions together. To the extent there is a joint liquidation, the proposed Restated Agreement provides for an exchange of variation margin during the course of the liquidation and loss sharing following liquidation. The exchange of variation margin during the liquidation process would be designed to address scenarios in which either CME or FICC has a payment obligation arising out of cross-margin positions

[41] *Supra* note 36.

[42] *See* Section 4(b) of the proposed Restated Agreement (Calculation of Cross-Margining Requirements).

[43] *See* Section 7(a) of the proposed Restated Agreement (Suspension and Liquidation of Cross-Margining Participant).

[44] *Id.*

[45] *Id.*

[46] *See* Section 7(b)(i) of the proposed Restated Agreement.

[47] *See* Section 7(b)(ii) of the proposed Restated Agreement.

[48] *See* Section 7(b)(iii) of the proposed Restated Agreement.

that could be covered by the variation margin gains on offsetting cross-margin positions held by the other Clearing Organization. The Existing Agreement has no such provisions, and they would be added to the proposed Restated Agreement to improve the efficiency of the default management process. Following liquidation, payments made as part of a cross-guaranty between FICC and CME would be designed to minimize total credit losses across the Clearing Organizations related to cross-margin positions. The Existing Agreement also includes a cross-guaranty and loss-sharing provisions but is determined based upon a significantly more complex formula for calculating closeout gains and losses post-liquidation than are included in the proposed Restated Agreement.

VM Margin: The exchange of Variation Margin [49] during the joint liquidation process under certain circumstances would be as follows:

- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain [50] and an Other VM Gain [51] with respect to a Defaulting Member (such Clearing Organization being the ''VM Payor''), and the other Clearing Organization has a Cross-Margin VM Loss with respect to a Defaulting Member (such Clearing Organization being the ''VM Receiver''), the proposed Restated Agreement provides that the VM Payor would make a payment to the VM Receiver in the amount of the VM Receiver's Cross-Margin VM Loss, but not to exceed the VM Payor's Cross-Margin VM Gain. The proposed Restated Agreement provides, however, that the VM Payor will not be required to make such payment to the extent it reasonably determines that the liquidation of the Defaulting Member will result in a loss to it following liquidation [52] or that the VM Receiver will be limited by statute, court order or other applicable law from making the payment.[53]
- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain and an Other VM Loss (such Clearing Organization being the ''VM Payor'') and the sum of these amounts is positive (hereinafter ''Aggregate VM Gain''), and the other Clearing Organization has a Cross-Margin VM Loss with respect to a Defaulting Member (such Clearing Organization being the ''VM Receiver''), the proposed Restated Agreement provides that the VM Payor will make a payment to the VM Receiver in the amount of the VM Receiver's Cross-Margin VM Loss, but not to exceed the VM Payor's Aggregate VM Gain unless the Clearing Organizations otherwise agree that the VM Payor shall pay a higher amount. The proposed Restated Agreement provides, however, that the VM Payor will not be required to make such payment to the extent it reasonably determines that the liquidation of the Defaulting Member will result in a loss to it following liquidation or that the VM Receiver will be limited by statute, court order or other applicable law from making the payment.[54]
- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain and an Other VM Loss with respect to a Defaulting Member and the sum of these two amounts is negative, and the other Clearing Organization has a Cross-Margin VM Loss with respect to the Defaulting Member, the proposed Restated Agreement states that neither Clearing Organization will be required to make a payment unless otherwise agreed to by the Parties.[55]

Following the liquidation of a Defaulting Member, the VM Receiver must repay any variation margin payments it received from the VM Payor.[56] Such repayment obligation, however, shall be netted and offset against the VM Payor's payment obligation pursuant to the loss sharing provisions in Section 7 of the Agreement, discussed immediately below.[57]

Loss Sharing: The sharing of losses following a joint liquidation would be calculated under the proposed Restated Agreement as follows:

- Each Clearing Organization would calculate its individual ''Net Gain'' or individual ''Net Loss,'' if any, taking into account solely its individual ''Collateral on Hand'' and its individual ''Liquidation Cost.'' These terms have specific meanings in the proposed Restated Agreement as follows:
  - The proposed Restated Agreement defines ''Net Gain'' or ''Net Loss'' to mean, with respect to the Cross-Margining Account of a Defaulting Member held at a Clearing Organization, the sum of the (i) Collateral on Hand; and (ii) Liquidation Cost. If such amount is a positive number, a Clearing Organization shall be deemed to have a ''Net Gain'' with respect to the relevant account and if such amount is a negative number, a ''Net Loss.'' [58]
  - The proposed Restated Agreement defines ''Collateral on Hand'' to mean the margin held with respect to the Cross-Margining Account of a Defaulting Member immediately prior to the time at which the Default Event occurred.[59]
  - The proposed Restated Agreement defines ''Liquidation Cost'' to mean the aggregate gain or loss realized in the liquidation, transfer, or management of Eligible Positions held by the Clearing Organization in the Cross-Margining Account of the Defaulting Member, including, without limitation, (i) any Variation Margin [60] owed to the Defaulting Member by the Clearing Organization and unpaid (which shall constitute gains); (ii) any Variation Margin owed by the Defaulting Member

[49] The proposed Restated Agreement defines ''Variation Margin'' to mean, with respect to the Cross-Margining Account of a Defaulting Member, the amounts owed to or by the Defaulting Member, as applicable, by or to a Clearing Organization due to the mark-to-market movement arising from or related to the positions in the Defaulting Member's Cross-Margining Account at CME or the Defaulting Member's Cross-Margin Positions at FICC from the time immediately prior to a Default Event until the time the liquidation of a Defaulting Member is complete for both CME and FICC. *See* Section 1 (Definitions) of the proposed Restated Agreement.

[50] The proposed Restated Agreement defines ''Cross-Margin VM Gain'' or ''Cross-Margin VM Loss'' to mean, with respect to the Cross-Margining Account of a Defaulting Member, the amounts owed to or by the Defaulting Member, as applicable, by or to a Clearing Organization due to the mark-to-market movement arising from or related to the positions in the Defaulting Member's Cross-Margining Account at CME or the Defaulting Member's Cross-Margin Positions at FICC. *See* Section 1 (Definitions) of the proposed Restated Agreement.

[51] The proposed Restated Agreement defines ''Other VM Gain'' or ''Other VM Loss'' to mean, (x) with respect to a Defaulting Member of FICC, the amounts owed to or by the Defaulting Member, as applicable, by or to FICC due to the Funds-Only Settlement payments (as defined in the GSD Rules) arising from or related to the mark-to-market movement of the portion of the Defaulting Member's GSD Accounts that does not include the positions in the Cross-Margining Account at FICC; and (y) with respect to a Defaulting Member of CME, the amounts owed to or by the Defaulting Member, as applicable, by or to CME arising from or related to the mark-to-market movement of the positions (excluding positions in IRS Contracts (as defined under CME's Rules)) or positions that are commingled with positions in IRS Contracts pursuant to CME Rule 8G831 in the Defaulting Member's accounts (but excluding its Cross-Margining Account) at CME. *See* Section 1 ''Definitions'' of the proposed Restated Agreement.

[52] *See* discussion of ''Net Loss'' below.

[53] *See* Section 7(c)(v)(1) of the proposed Restated Agreement.

[54] *See* Section 7(c)(v)(2) of the proposed Restated Agreement.

[55] *See* Section 7(c)(v)(3) of the proposed Restated Agreement.

[56] A VM Receiver will only be required to pay such amount to the VM Payor if it is not prohibited by statute, court order or other applicable law from making such payment.

[57] *See* Section 7(c)(vi) of the proposed Restated Agreement.

[58] *Supra* note 31.

[59] *Id.*

[60] The exchange of Variation Margin during a joint liquidation is discussed above.

to the Clearing Organization and unpaid (which shall constitute losses); and (iii) any reasonable costs, fees and expenses incurred by the Clearing Organization in connection therewith.[61]

The Clearing Organizations would determine whether the sum of the individual Net Gains and Net Losses results in a combined Net Gain or Net Loss. The Clearing Organizations would then allocate any combined Net Gain or Net Loss pro rata based on each Clearing Organization's ''Share of the Cross-Margining Requirement'' [62] (its ''Allocated Net Gain'' or ''Allocated Net Loss,'' as applicable).[63]

If a Clearing Organization has an individual Net Gain that is less than its Allocated Net Gain, an individual Net Loss that is greater than its Allocated Net Loss or an individual Net Loss when the joint liquidation resulted in a combined Net Gain (the ''worse-off party'') then the other Clearing Organization shall be required to pay to the worse-off party an amount equal to the difference between the worse-off party's individual Net Gain or Net Loss and its Allocated Net Gain and Allocated Net Loss.[64]

b. Buy-Out

As noted above, in the event a Clearing Organization determines that jointly transferring, liquidating, or closing out the Relevant Positions is not feasible or advisable, for example if a Member's portfolio has changed materially since the last cross margin calculation, any Clearing Organization (''X'') may, upon written notice to the other Clearing Organization (''Y''), offer to buy-out the Relevant Positions at the last settlement price for such positions immediately prior to the time such offer is made and any remaining collateral relating thereto from Y (which Y may accept or reject in its sole discretion). The value of the remaining collateral would reflect the last available price based on market conditions, which for FICC, would be obtained from its pricing vendor(s). Upon reviewing exposures of the defaulter's portfolio, the hedge or risk reduction that may be achieved through a buy-out and comparing the results to the available risk budget, or defaulter's margin, an economic decision would be made in consideration of a separate liquidation option. If such a buy-out occurs, then Y shall have no further obligations to X with respect to the Default Event. For the avoidance of doubt, the loss sharing provisions set forth in Default Management section of the Agreement would not apply.[65]

c. Separate Liquidations

If a Clearing Organization determines that it is not advisable or feasible to resolve the Default Event pursuant to a joint liquidation or a buy-out, it would notify the other Clearing Organization. In such event, each Clearing Organization shall promptly transfer, liquidate or otherwise close out the Eligible Positions in the Cross-Margining Account carried for the Defaulting Member at that Clearing Organization.[66]

The loss sharing provisions that would be applicable under this separate liquidation scenario would be as follows:

- If, with respect to the Cross-Margining Account of the Defaulting Member, both Clearing Organizations have a Net Gain or a Net Loss, no payment will be due to either Clearing Organization in respect of the Guaranties between FICC and CME referred to in Sections 8 and 9 of the proposed Restated Agreement.[67]
- If either Clearing Organization has a Net Loss (the ''worse-off party'') and the other has a Net Gain (the ''better-off party''), then the better-off party will pay the worse-off party the lesser of the Net Gain or the absolute value of the Net Loss.[68]

The proposed Restated Agreement would not retain language included in the Existing Agreement covering the fact that each Clearing Organization's calculation of Available Margin (as defined in the Existing Agreement) for loss sharing purposes is subject to such Clearing Organization's prior satisfaction of its obligations under the other cross-margining agreements and loss sharing arrangements that it may have listed on Appendix A.[69] FICC and the CME are proposing to eliminate this priority which means that all margin amounts calculated pursuant to the proposed Restated Agreement would be available to cover a Clearing Organization's losses. As a result of this change, the proposed Restated Agreement would not include the priority provision nor the related Appendix A.

Other Terms of the Proposed Restated Agreement

The proposed Restated Agreement also would continue to include a number of other provisions intended to either generally maintain the usual and customary terms for an agreement of this type included in the Existing Agreement or update them to better reflect the Clearing Organizations' course of dealing and industry practices. For example, similar to the Existing Agreement,[70] the proposed Restated Agreement would include a confidentiality provision reflecting each Clearing Organization's obligation not to disclose to a third-party the other Clearing Organization's Confidential Information except under certain circumstances. Under the proposed Restated Agreement, this provision would be updated to reflect that the Clearing Organizations' confidentiality obligations would survive three (3) years after the termination of the proposed Restated Agreement. In addition, this provision would state that an actual or threatened violation by a Clearing Organization of its confidentiality obligations would entitle the other Clearing Organization to seek immediate injunctive and other equitable relief, without the necessity of proving monetary damages or posting bond or other security. The updated confidentiality provision included in the proposed Restated Agreement (Section 10, Confidentiality) would replace the similar provision in the Existing Agreement.

Additionally, the proposed Restated Agreement would retain the indemnification provision included in the Existing Agreement, but for purposes of clarity and simplification, would revise the language in that section that describes the administrative process between the Clearing

[61] *Supra* note 31.

[62] Under the proposed Restated Agreement, the ''Share of the Cross-Margining Requirement'' in respect of a Clearing Organization is the ratio of (i) the margin required for the Cross-Margining Account at the Clearing Organization after taking into account the Margin Reduction to (ii) the total Cross-Margining Requirement across both Clearing Organizations.

[63] *See* Section 7(c)(ii) of the proposed Restated Agreement.

[64] *See* Section 7(c)(iii) of the proposed Restated Agreement.

[65] *See* Section 7(b)(ii) of the proposed Restated Agreement.

[66] *See* Section 7(b)(iii) of the proposed Restated Agreement.

[67] *See* Section 7(d) of the proposed Restated Agreement.

[68] *See* Sections 7(e) and (f) of the proposed Restated Agreement. The proposed Restated Agreement provides, however, that the better-off party shall only be required to pay the amount of such Net Loss to the worse-off party if it is not prohibited by statute, court order or other applicable law from making such payment.

[69] *See* Appendix A to the Existing Agreement: (1) with respect to the CME, the cross-margining agreement between the CME, The Options Clearing Corporation (''OCC'') and New York Clearing Corporation dated June 1993 as amended from time to time; and (2) with respect to FICC, the multilateral netting contract and limited cross-guaranty agreement among The Depository Trust Company, FICC, National Securities Clearing Corporation and OCC dated January 1, 2003, *supra* note 4.

[70] *See* Section 9 of the Existing Agreement, ''Confidentiality,'' *supra* note 4.

Organizations regarding notification and control of the defense of an indemnification claim.[71]

The proposed Restated Agreement would include some revisions to the language in the Existing Agreement and would add a provision covering the limitation of liability between FICC and CME. Specifically, a clause would be added to provide that, to the fullest extent permitted under applicable law, and other than with respect to a Clearing Organization's breach of its confidentiality obligations, in no case would either Clearing Organization be liable to the other for any indirect, consequential, incidental, punitive, exemplary or special damages.[72] The purpose of this new provision is to provide clear and specific terms regarding each Clearing Organization's potential liability to the other for these types of damages under the proposed Restated Agreement.

The proposed Restated Agreement would add certain usual and customary provisions for an agreement of this type that are not contained in the Existing Agreement, including that (i) no remedy conferred by any provision of the proposed Restated Agreement is intended to be exclusive of any other remedy,[73] (ii) no provision is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third-party,[74] and (iii) each Clearing Organization waives any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with the proposed Restated Agreement, or transactions contemplated by it.[75] Also, the proposed Restated Agreement would include updates to the relevant FICC and CME contacts to whom notices would be directed.

In order to simplify and improve its structure, the proposed Restated Agreement would consolidate into a new separate section,[76] language addressing the fact that the proposed Restated Agreement, together with GSD Rules, CME Rules, the Clearing Member Agreement and any other agreements between FICC, CME and a Cross-Margining Participant or any Affiliate thereof is, for purposes of Title IV, Subtitle A of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) a ''netting contract.'' This same language is currently included in the Existing Agreement but is broken out across multiple sections. This provision would also state that ''all payments made or to be made hereunder, including payments made in accordance with this Agreement in connection with the liquidation of a Cross-Margining Participant are ''covered contractual payment obligations'' or ''covered contractual payment entitlements,'' as the case may be, as well as ''covered clearing obligations;'' and for purposes of the Bankruptcy Code and the Federal Deposit Insurance Act is considered a ''master netting agreement'' with respect to some or all of ''swap agreements,'' ''commodity contracts,'' ''forward contracts,'' and ''securities contracts.''[77]

Further, the proposed Restated Agreement would remove the arbitration clause included in the Existing Agreement in its entirety.[78] Instead, the proposed Restated Agreement would add language to the Governing Law provision stating disputes under the agreement would be resolved in the federal or state courts located in New York, New York, including the United States District Court for the Southern District of New York.[79] FICC believes that New York venue and forum are appropriate because New York courts can more efficiently and effectively adjudicate disputes arising under an agreement governed by New York law. In addition, New York venue and forum is generally consistent with FICC's current approach to dispute management.

B. Delayed Implementation of the Proposal

The proposed rule change would become operative within 180 business days after the later date of the Commission's approval of this proposed rule change, and the Commodity Futures Trading Commission's approval of the CME's proposed rule change (collectively, the ''Date of Regulatory Approval''). Not later than two (2) business days following the date of the Commission's approval of this proposed rule change, FICC would add a legend to the proposed Restated Agreement to state that the specified changes are approved but not yet operative. The legend would also include the file numbers of the approved proposed rule change, and would state that once operative, the legend would automatically be removed from the proposed Restated Agreement. FICC will issue a notice to members providing notice of the specific operative date at least two weeks prior to such date.

2. Statutory Basis

FICC believes that the proposed rule change is consistent with section 17A of the Act[80] and the rules thereunder applicable to FICC. Section 17A(b)(3)(F) of the Act, requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[81] FICC is proposing to replace the Existing Agreement with the proposed Restated Agreement. As described in the discussion of the proposed changes to the calculation of cross-margin requirements above, the proposed Restated Agreement would, among other things, revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated. As such, FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible.[82]

In addition, as described in the discussion of a joint liquidation above, the proposed Restated Agreement would enhance the efficiency of the default management process between FICC and CME by providing for the exchange of Variation Margin under certain circumstances during the course of a liquidation and by improving the efficiency and effectiveness of the default management and loss sharing process. By enhancing these processes, FICC believes that overall default losses

[71] *See* Section 12(c) (Indemnification) of the proposed Restated Agreement.

[72] *See* Section 17 (Liability) of the proposed Restated Agreement.

[73] *See* Section 18(l) (Remedies Not Exclusive) of the proposed Restated Agreement.

[74] *See* Section 18(m) (No Third-Party Beneficiaries) of the proposed Restated Agreement.

[75] *See* Section 18(n) (Waiver of Jury Trial) of the proposed Restated Agreement.

[76] *See* Section 11 (FDICIA) of the proposed Restated Agreement.

[77] *Id.*

[78] *See* Section 16 of the Existing Agreement, ''Arbitration,'' *supra* note 4.

[79] *See* Section 18(c) (Governing Law) of the proposed Restated Agreement.

[80] 15 U.S.C. 78q–1.

[81] 15 U.S.C. 78q–1(b)(3)(F).

[82] *Id.*

could be minimized and thereby reduce the potential risk to non-defaulting members. As such, FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[83] FICC believes that the proposal is consistent with this requirement for the following reasons.

First, the proposal to amend the list of CME products that would be eligible for cross-margining would expand the potential opportunity for cross-margin benefits that Cross-Margining Participants receive.

Second, the removal of the operational details to an SLA would streamline the proposed Restated Agreement by removing information that may not be relevant to the Cross-Margining Participants and would place this information in a separate document that the Clearing Organizations can more easily amend as their operational needs evolve.

Third, the proposal to amend the margin calculation would simplify the calculation and provide transparency.

Fourth, the proposed liquidation procedures and loss sharing arrangements would provide transparency into the steps that the Clearing Organizations would take during a liquidation and how gains and losses would be allocated.

Fifth, the revisions to various provisions throughout the proposed Restated Agreement would update provisions to ensure that they are reflective of the current standards and industry practices that each Clearing Organization adheres to in the ordinary course of business.

As such, given the foregoing, FICC believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[84]

Rule 17Ad–22(e)(6)(i) under the Act requires a covered clearing agency to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[85] As described above, the proposed Restated Agreement would revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated and reduce the complexity of the calculations. Accordingly, FICC believes the proposed changes are reasonably designed to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market in a manner consistent with Rule 17Ad–22(e)(6)(i).[86]

As described above in the discussion of a joint liquidation, FICC and CME would agree to put in place a separate SLA, which would include specified timeframes, to exchange on each Business Day, such information as may reasonably be required in order to value the positions in the Cross-Margining Account and to calculate the Cross-Margin Requirement for each Cross-Margining Participant. The SLA would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. By agreeing to share certain information as described herein, FICC believes that each Clearing Organization would be able to effectively identify, monitor, and manage risks that may be presented by the proposed Restated Agreement. Accordingly, FICC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between FICC and CME in a manner consistent with Rule 17Ad–22(e)(20) under the Act.[87]

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

FICC believes that the proposed rule change to replace the Existing Agreement with the Restated Agreement could have an impact on competition. Specifically, FICC believes that the proposed changes could both burden and promote competition because the margin savings for the Cross-Margining Participants (and therefore their margin requirements) would change under the proposed Restated Agreement. As noted in the Executive Summary in Item 3(a) above[sic], the margin savings under the Existing Agreement range from 0.1% to 17.4%, whereas the study conducted by FICC under the proposed Restated Agreement showed margin savings in the range of 0% to 36.6%. Some Cross-Margining Participants could see an increase in margin savings under the proposed rule change and some could see a decrease in margin savings under the proposed rule change. When the proposal results in decreased margin savings and therefore higher margin requirements, the proposed rule change could burden competition for Cross-Margining Participants that have lower operating margins or higher costs of capital compared to other Members. When the proposal results in higher margin savings and therefore lower margin requirements, the proposed rule change could promote competition by resulting in lower operating costs and capital efficiencies for Cross-Margining Participants. FICC does not believe that these impacts are significant because based on FICC's analysis, the proposal would not result in a significant change to the average margin requirement of Cross-Margining Participants.

Regardless of whether the burden on competition discussed above could be deemed significant, FICC believes that any related burden on competition would be necessary and appropriate, as permitted by section 17A(b)(3)(I) of the Act, for the following reasons.[88]

FICC believes that any burden on competition would be necessary in furtherance of the Act, specifically section 17A(b)(3)(F) of the Act.[89] As stated above, the proposed Restated Agreement, would, among other things, revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposure. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products

[83] *Id.*

[84] *Id.*

[85] 17 CFR 240.17Ad–22(e)(6)(i).

[86] *Id.*

[87] 17 CFR 240.17Ad–22(e)(20).

[88] 15 U.S.C. 78q–1(b)(3)(I).

[89] 15 U.S.C. 78q–1(b)(3)(F).

into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated. Therefore, FICC believes this proposed change is consistent with the requirements of section17A(b)(3)(F) of the Act, which requires that the Rules be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or for which it is responsible.[90]

FICC believes the proposed rule change would also support FICC's compliance with Rule 17Ad–22(e)(6)(i) under the Act, which requires a covered clearing agency to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[91] By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated and would reduce the complexity of the calculations. Accordingly, FICC believes the proposed changes are reasonably designed to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market in a manner consistent with Rule 17Ad–22(e)(6)(i).[92]

FICC also believes the proposed rule change would support FICC's compliance with Rule 17Ad–22(e)(20) under the Act.[93] Specifically, as described above, FICC and CME would agree to put in place a separate SLA, which would cover information exchange between the two parties and would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. By agreeing to the SLA, FICC believes that it would be able to effectively identify, monitor, and manage risks that may be presented by the proposed Restated Agreement. Accordingly, FICC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between FICC and CME in a manner consistent with Rule 17Ad–22(e)(20) under the Act.[94]

[90] *Id.*

[91] 17 CFR 240.17Ad–22(e)(6)(i).

[92] *Id.*

[93] 17 CFR 240.17Ad–22(e)(20).

[94] *Id.*

FICC believes that the above-described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. The proposed Restated Agreement has been designed to allow FICC to recognize the offsetting value of positions maintained by Cross-Margining Participants at the two Clearing Organizations for margin purposes by using a risk-based margining approach that would produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio and market. As such, by enhancing the method for calculating the margin reduction as described above, FICC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

Therefore, as described above, FICC believes the proposed changes are necessary and appropriate in furtherance of FICC's obligations under the Act, specifically section 17A(b)(3)(F) of the Act [95] and Rule 17Ad–22(e)(6)(i) and Rule 17Ad–22(e)(20) under the Act.[96]

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

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing[sic], as required by Form 19b–4 and the General Instructions thereto. Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777. FICC reserves the right to not respond to any comments received.

[95] 15 U.S.C. 78q–1(b)(3)(F).

[96] 17 CFR 240.Ad–22(e)(6)(i), (e)(20).

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2023–010 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FICC–2023–010. 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 (*dtcc.com/legal/sec-rule-filings*).

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2023–010 and should be submitted on or before August 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[97]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15981 Filed 7–27–23; 8:45 am]

BILLING CODE 8011–01–P

[97] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97964; File No. SR–PEARL–2023–31]

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

July 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) reduce the rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (''Added Displayed Volume''); (2) increase the fees applicable to the Remove Volume Tiers[3] for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (''Removed Volume''); and (3) adopt new Liquidity Indicator Codes and for executions of orders in all securities that remove Retail Orders[4] from the Exchange (displayed and non-displayed liquidity).[5] The Exchange originally filed this proposal on June 30, 2023 (SR–PEARL–2023–29). On July 11, 2023, the Exchange withdrew SR–PEARL–2023–29 and refiled this proposal.

Proposal To Reduce the Rebate for Added Displayed Volume in Securities Priced at or Above $1.00 per Share

The Exchange proposes to reduce the standard rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. Currently, the Exchange provides a standard rebate of ($0.0029)[6] per share for executions of Added Displayed Volume in all Tapes. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume in securities priced at or above $1.00 per share from ($0.0029) to ($0.0027) per share for all Tapes.[7] Accordingly, the Exchange proposes to amend Section 1)a), Standard Rates, to reflect this proposed change and amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the corresponding changes to the applicable Liquidity Indicator Codes, AA, AB and AC. The Exchange notes that executions of orders in securities priced below $1.00 per share for Added Displayed Volume on the Exchange will continue to receive the standard rebate applicable to such executions (*i.e.,* 0.15% of the total dollar value of the transaction).

The purpose of reducing the standard rebate for executions of Added Displayed Volume is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (*i.e.,* ($0.0027) per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[8]

Proposal To Increase the Fees for the Remove Volume Tiers

Next, the Exchange proposes to amend Section 1)d) of the Fee Schedule to increase the fees applicable to executions of orders in securities priced at or above $1.00 per share that qualify for the reduced fees of the Exchange's Remove Volume Tiers. Currently, Section 1)d) of the Fee Schedule provides reduced fees for executions of

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

[2] 17 CFR 240.19b–4.

[3] *See* Fee Schedule, Section 1)d).

[4] A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 2626(a)(2).

[5] The Exchange notes that it is not adopting new fees for these types of transactions. The Exchange proposes to adopt the new Liquidity Indicator Codes, as described below, for purposes of clarification in the Fee Schedule.

[6] Rebates are indicated by parentheses. *See* the General Notes section of the Fee Schedule.

[7] *See* Fee Schedule, Section 1)a), Standard Rates, for the standard pricing for executions of Added Displayed Volume, among other rates.

[8] *See e.g.,* NYSE Arca Equities Fee Schedule, *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (providing standard rebates of $0.0020 per share (Tapes A and C) and $0.0016 per share (Tape B) for adding displayed liquidity in securities priced at or above $1.00 per share); *see also* Cboe BZX Equities Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing a standard rebate of $0.0016 per share for adding displayed liquidity in securities priced at or above $1.00 per share).