

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 195	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 021	Amendment No. (req. for Amendments *)
Filing by Fixed Income Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="To adopt the FICC Recovery and Wind-down Plan and Related Rules"/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Jacqueline"/>	Last Name *	<input type="text" value="Chezar"/>	
Title *	<input type="text" value="Executive Director and Associate General Counsel"/>			
E-mail *	<input type="text" value="jfarinella@dtcc.com"/>			
Telephone *	<input type="text" value="(212) 855-3216"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="12/18/2017"/>	<input type="text" value="Managing Director and Deputy General Counsel"/>		
By	<input type="text" value="Nikki Poulos"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="npoulos@dtcc.com"/>				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The proposed rule change of Fixed Income Clearing Corporation (“FICC”) would adopt the Recovery & Wind-down Plan of FICC (“R&W Plan” or “Plan”), attached hereto as Exhibit 5a. The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934, as amended (“Act”), by providing plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.¹

The proposed rule change would also (1) amend FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) in order to (a) adopt Rule 22D (Wind-down of the Corporation) and Rule 50 (Market Disruption and Force Majeure), and (b) make conforming changes to Rule 3A (Sponsoring Members and Sponsored Members), Rule 3B (Centrally Cleared Institutional Triparty Service) and Rule 13 (Funds-Only Settlement) related to the adoption of these Proposed Rules to the GSD Rules; (2) amend FICC’s Mortgage-Backed Securities Division (“MBSD,” and, together with GSD, the “Divisions”) Clearing Rules (“MBSD Rules”) in order to (a) adopt Rule 17B (Wind-down of the Corporation) and Rule 40 (Market Disruption and Force Majeure); and (b) make conforming changes to Rule 3A (Cash Settlement Bank Members) related to the adoption of these Proposed Rules to the MBSD Rules; and (3) amend Rule 1 of the Electronic Pool Netting (“EPN”) Rules of MBSD (“EPN Rules”) in order to provide that EPN Users, as defined therein, are bound by proposed Rule 17B (Wind-down of the Corporation) and proposed Rule 40 (Market Disruption and Force Majeure) to be adopted in the MBSD Rules.² Each of the proposed rules is referred to herein as a “Proposed Rule,” and are collectively referred to as the “Proposed Rules.” The Proposed Rules and the other proposed changes to the Rules are attached hereto as Exhibit 5b.

The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow FICC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations;³ and (3) provide FICC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

(b) Not applicable.

¹ 17 CFR 240.17Ad-22(e)(3)(ii).

² The GSD Rules and the MBSD Rules are referred to collectively herein as the “Rules.” Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

³ References herein to “Members” refer to GSD Netting Members and MBSD Clearing Members. References herein to “Limited Members” refer to participants of GSD or MBSD other than GSD Netting Members and MBSD Clearing Members, including, for example, GSD Comparison-Only Members, GSD Sponsored Members, GSD CCIT Members, and MBSD EPN Users.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposal was approved by the Board of Directors of FICC (“Board”) at a meeting duly called and held on October 18, 2017.

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

(a) Purpose

FICC is proposing to adopt the R&W Plan to be used by the Board and management of FICC in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to FICC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of FICC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return FICC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of FICC and its parent, The Depository Trust & Clearing Corporation (“DTCC”); (ii) an analysis of FICC’s intercompany arrangements and an existing link to another financial market infrastructures (“FMIs”); (iii) a description of FICC’s services, and the criteria used to determine which services are considered critical; (iv) a description of the FICC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to FICC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a “Crisis Continuum” timeline; (vii) a discussion of potential non-default losses and the resources available to FICC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools’ characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to FICC, and how FICC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of FICC’s business, including an estimate of the time and costs to effect a recovery or orderly wind-down of FICC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that FICC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in

contractual arrangements to which FICC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that FICC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to FICC were its governance structure and the nature of the markets within which FICC operates. As a result of these considerations, many of the tools available to FICC that would be described in the R&W Plan are FICC's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe FICC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital Policy"),⁴ (ii) maintaining the Clearing Agency Capital Replenishment Plan ("Replenishment Plan") as a viable plan for the replenishment of capital should FICC's equity fall close to or below the amount being held pursuant to the Capital Policy,⁵ and (iii) the process for the allocation of losses among Members, as provided in Rule 4 of the GSD Rules and Rule 4 of the MBSD Rules.⁶ The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning ("R&R Team") of DTCC.⁷ The R&R Team reports to the DTCC Management Committee ("Management Committee") and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning

⁴ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

⁵ See *id.*

⁶ See GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 2. FICC is proposing changes to GSD Rule 4 and MBSD Rule 4, and other related rules, regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR-FICC-2017-022 and SR-FICC-2017-806, referred to collectively herein as the "Loss Allocation Filing"). FICC expects the U.S. Securities and Exchange Commission ("Commission") to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

⁷ DTCC operates on a shared services model with respect to FICC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including FICC.

process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of FICC's wind-down and would provide for FICC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly FICC's strategy for winding down and transferring its business, and would provide FICC with the legal basis to implement those aspects of the R&W Plan.

FICC R&W Plan

The R&W Plan is intended to be used by the Board and FICC's management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to FICC to either (i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and FICC management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act⁸ by providing plans for the recovery and orderly wind-down of FICC.

The R&W Plan would describe DTCC's business profile, provide a summary of the services of FICC as offered by each of the Divisions, and identify the intercompany arrangements and links between FICC and other entities, most notably a link between GSD and Chicago Mercantile Exchange Inc. ("CME"), which is also an FMI. This overview section would provide a context for the R&W Plan by describing FICC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later

⁸ 17 CFR 240.17Ad-22(e)(3)(ii).

sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of FICC and its affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC”, and, together with FICC and DTC, the “Clearing Agencies”). The Plan would describe how corporate support services are provided to FICC from DTCC and DTCC’s other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of the critical contractual and operational arrangements between FICC and other legal entities, including the cross-margining agreement between GSD and CME, which is also an FMI.⁹ Pursuant to this arrangement, GSD offsets each cross-margining participant’s residual margin amount (based on related positions) at GSD against the offsetting residual margin amounts of the participant (or its affiliate) at CME. GSD and CME may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant’s positions at GSD and its (or its affiliate’s) positions at CME. This section of the Plan, identifying and briefly describing FICC’s established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of FICC’s services as “critical,” and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of FICC’s critical services to the markets it serves. The criteria that would be used to identify an FICC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact FICC’s ability to perform its central counterparty services through either Division; (3) whether failure of the service could impact FICC’s ability to perform its multilateral netting services through either Division and, as such, could impact the volume of transactions; (4) whether failure of the service could impact FICC’s ability to perform its book-entry delivery and settlement services through either Division and, as such, could impact transaction costs; (5) whether failure of the service could impact FICC’s ability to perform its cash payment processing services through either Division and, as such, could impact the flow of liquidity in the U.S. financial markets; and (6) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, and broker-dealers. The Plan would then list each of those services, functions or activities that FICC has identified as “critical” based on the applicability of these six criteria. GSD’s critical services would include, for example, its Real-Time Trade Matching (“RTTM®”)

⁹ Available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf. See also GSD Rule 43 (Cross-Margining Arrangements), supra note 2.

service,¹⁰ its services related to netting and settlement of submitted trades for Netting Members,¹¹ the Auction Takedown service,¹² and the Repurchase Agreement Netting Service.¹³ MBSD's critical services would include, for example, its RTTM® service,¹⁴ its netting service for to-be-announced ("TBA") transactions,¹⁵ its Electronic Pool Notification service,¹⁶ and its pool netting and settlement.¹⁷ The R&W Plan would also include a non-exhaustive list of FICC services that are not deemed critical.

The evaluation of which services provided by FICC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while FICC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event FICC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and FICC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke FICC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through FICC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board ("Board Risk Committee") as being responsible for oversight of risk management activities at FICC, which

¹⁰ See GSD Rule 5 (Comparison System), GSD Rule 6A (Bilateral Comparison), GSD Rule 6B (Demand Comparison), and GSD Rule 6C (Locked-In Comparison), supra note 2.

¹¹ See GSD Rule 11 (Netting System), GSD Rule 12 (Securities Settlement), and GSD Rule 13 (Funds-Only Settlement), supra note 2.

¹² See GSD Rule 6C (Locked-In Comparison) and GSD Rule 17 (Netting and Settlement of Netting-Eligible Auction Purchases), supra note 2.

¹³ See GSD Rule 7 (Repo Transactions), GSD Rule 11 (Netting System), GSD Rule 18 (Special Provisions for Repo Transactions), GSD Rule 19 (Special Provisions for Brokered Repo Transactions), and GSD Rule 20 (Special Provisions for GCF Repo Transactions), supra note 2.

¹⁴ See MBSD Rule 5 (Trade Comparison), supra note 2.

¹⁵ See MBSD Rule 6 (TBA Netting), supra note 2.

¹⁶ See EPN Rules, supra note 2.

¹⁷ See MBSD Rule 8 (Pool Netting System) and MBSD Rule 9 (Pool Settlement with the Corporation), supra note 2.

include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by FICC, and, due to FICC's critical role in the markets in which it operates, oversight of FICC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.¹⁸ The Plan would identify the DTCC Management Risk Committee ("Management Risk Committee") as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office ("GCRO"), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of FICC's business, technology, and operations and the functional areas that support these activities.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer ("CFO") and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.¹⁹ More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

¹⁸ The charter of the Board Risk Committee is available at <http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf>.

¹⁹ The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

FICC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that FICC may employ across both Divisions to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit FICC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. FICC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that FICC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of FICC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to FICC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, FICC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect FICC, the Members, and the markets in which it operates.

Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum. The Recovery Plan would describe the risk management surveillance, tools, and governance that FICC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with FICC's decision to cease to act for a Member or Affiliated Family of Members,²⁰ and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to FICC's decision to cease to act for a Member (referred to in the R&W Plan as a "defaulting Member," and the event as a "Member default") pursuant to the applicable Rules.²¹

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing FICC's ongoing management of credit, market and liquidity risk across the Divisions, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. FICC manages these risk exposures collectively to limit their overall impact on FICC and the memberships of the Divisions. As part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate required deposits

²⁰ The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of either GSD or MBSD.

²¹ See GSD Rule 21 (Restrictions on Access to Services) and MBSD Rule 14 (Restrictions on Access to Services), supra note 2.

to the GSD and MBSD Clearing Fund and monitoring its sufficiency, as provided for in the applicable Rules.²² FICC manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by FICC in the event of a Member default that presents the largest aggregate liquidity exposure to FICC over the settlement cycle.²³

The Recovery Plan would outline the metrics and indicators that FICC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that FICC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default in accordance with the applicable Rules. Therefore, the Recovery Plan would both provide FICC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that FICC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of FICC during a period of stress.

The “stable market phase” of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of the margin calculations for each of GSD and MBSD, and escalation of those results to internal and Board committees;²⁴ and (2) routine monitoring of

²² See GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 2. FICC’s market risk management strategy for both Divisions is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as “credit risks.” See also 17 CFR 240.17Ad-22(e)(4).

²³ FICC’s liquidity risk management strategy, including the manner in which FICC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. See Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

²⁴ FICC’s stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.²⁵

The Recovery Plan would describe some of the indicators of the “stressed market phase” of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that FICC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the “Member default phase” of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that FICC would follow in the event of a Member default and any decision by FICC to cease to act for that Member.²⁶ The Recovery Plan would provide that the objectives of FICC’s actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and the applicable Division’s non-defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, FICC would, pursuant to the applicable Division’s Rules, (1) monitor and assess the adequacy of the GSD and MBSD Clearing Fund resources; (2), when necessary and appropriate pursuant to the applicable Division’s Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the defaulting Member’s portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of FICC’s liquidity resources, and the Recovery Plan would identify certain actions FICC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the defaulting Member’s portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to FICC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, GSD Rule 4 and MBSD Rule 4, as each are proposed to be amended by the Loss Allocation Filing, would provide

²⁵ See supra note 23.

²⁶ See GSD Rule 21 (Restrictions on Access to Services), GSD Rule 22A (Procedures for When the Corporation Ceases to Act), MBSD Rule 14 (Restrictions on Access to Services), and MBSD Rule 17 (Procedures for When the Corporation Ceases to Act), supra note 2.

that losses be satisfied first by applying a “Corporate Contribution,” and then, if necessary, by allocating remaining losses to non-defaulting Members.²⁷

The “recovery phase” of the Crisis Continuum would describe actions that FICC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) a recovery corridor, during which FICC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase; and (2) the recovery phase, which would begin on the date that FICC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given “Event Period.”²⁸

FICC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the defaulting Member, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the recovery corridor, FICC would monitor the adequacy of the Divisions’ respective resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain metrics referred to as “Corridor Indicators.”

The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require either Division to adjust its strategy for hedging and liquidating a

²⁷ See supra note 6. The Loss Allocation Filing proposes to amend GSD Rule 4 and MBS Rule 4 to define the amount FICC would contribute to address a loss resulting from either a Member default or a non-default event as the “Corporate Contribution.” This amount would be 50 percent (50%) of the “General Business Risk Capital Requirement,” which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that FICC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 4; 17 CFR 240.17Ad-22(e)(15).

²⁸ The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an “Event Period” as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event, as described in greater detail in that filing. The proposed GSD Rule 4 and MBS Rule 4 would define a “round” as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the “Loss Allocation Caps” (as defined in the proposed GSD Rule 4 and MBS Rule 4) of those Members included in the round. See supra note 6.

defaulting Member's portfolio, and any such changes would include an assessment of the status of the Corridor Indicators. Corridor Indicators would include, for example, effectiveness and speed of FICC's efforts to close out the portfolio of the defaulting Member, and an impediment to the availability of its financial resources. For each Corridor Indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are steps that may be taken to improve the status of the indicator,²⁹ as well as management escalations required to authorize those steps. Because FICC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, these metrics were chosen based on the business judgment of FICC management.

The Recovery Plan would also describe the reporting and escalation of the status of the Corridor Indicators throughout the recovery corridor. Significant deterioration of a Corridor Indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. FICC management would review the Corridor Indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that FICC may remain in the recovery corridor stage between one day and two weeks. This estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by FICC. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time FICC enters the recovery corridor stage of the Crisis Continuum, and FICC would expect the recovery corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which FICC may allocate its losses, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.³⁰ The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of FICC's liquidity resources following a Member default, and would provide that these tools may be used throughout the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing FICC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, which may supplement FICC's other

²⁹ The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if FICC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

³⁰ As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to GSD Rule 4 and MBSD Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 6.

liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause FICC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to FICC of utilizing these tools, and any potential impact on FICC's credit rating.

As stated above, the Recovery Plan would state that FICC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, FICC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the Corridor Indicators applicable to that phase of the Crisis Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and escalation protocol that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the applicable Division's Rules, and around the management and oversight of the subsequent liquidation of the defaulting Member's portfolio. The Recovery Plan would state that, overall, FICC would retain flexibility in accordance with each Division's Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect FICC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

Non-Default Losses. The Recovery Plan would outline how FICC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for FICC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks FICC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe FICC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of risk across the organization.³¹ The Recovery Plan would also describe FICC's

³¹ The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how FICC comprehensively manages various risks, including operational, general business,

approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow FICC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources FICC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,³² (b) the Corporate Contribution,³³ and (c) other amounts held in excess of FICC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of GSD Rule 4 and MBSD Rule 4.³⁴

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.³⁵ Finally the Plan would discuss how FICC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds FICC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to GSD Rule 4 and MBSD Rule 4.³⁶

The Plan would also describe proposed GSD Rule 50 (Market Disruption and Force Majeure) and proposed MBSD Rule 40 (Market Disruption and Force Majeure), which FICC is proposing to adopt in the GSD Rule and MBSD Rules, respectively. This Proposed Rule would

investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which FICC manages operational risks, as defined therein. See Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

³² See supra note 27.

³³ See supra note 27.

³⁴ See supra note 6.

³⁵ See supra note 4.

³⁶ See supra note 6.

provide transparency around how FICC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a “Market Disruption Event” and the governance around a determination that such an event has occurred. The Proposed Rule would also describe FICC’s authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and FICC’s existing processes and procedures addressing business continuity management and disaster recovery (generally, the “BCM/DR procedures”), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to FICC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

Recovery Tool Characteristics. The Recovery Plan would describe FICC’s evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.³⁷ FICC’s analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

FICC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of FICC if the use of the recovery tools described in the Recovery Plan do not successfully return FICC to financial viability. While FICC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, FICC is proposing a wind-down strategy that provides for (1) the transfer of FICC’s business, assets and memberships of both Divisions to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code,³⁸ and (3) after effectuating this transfer, FICC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. FICC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that FICC’s critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by FICC’s failure.

³⁷ Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

³⁸ 11 U.S.C. 1101 et seq.

In describing the transfer approach to FICC's Wind-down Plan, the Plan would identify the factors that FICC considered in developing this approach, including the fact that FICC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, FICC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause FICC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of FICC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down FICC as the "Runway Period." This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for FICC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.³⁹ The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and FICC's inability to replenish its financial resources following the liquidation of the portfolio of the defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. As described in the Plan, FICC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of FICC and the Members to avoid actions that might undermine FICC's recovery efforts. Additionally, this approach takes into account the characteristics of FICC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of FICC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of FICC's critical services, business, assets and membership, and the assignment of GSD's link with another FMI, to another legal entity that is legally, financially, and operationally able to provide FICC's critical services to entities that wish to continue their membership following the transfer ("Transferee"). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently ("Third Party Transferee"); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC ("Failover Transferee") to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire FICC's business. FICC would seek to identify

³⁹ The Wind-down Plan would state that, given FICC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that FICC cannot predict the willingness of Members to do so.

the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.⁴⁰ As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, FICC, except to the extent expressly provided in the court's order.⁴¹

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, FICC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. FICC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to FICC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of FICC's link arrangements, including its arrangements with clearing banks and GSD's cross-margining arrangement with CME, described above, to the Transferee.⁴² The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule, as defined and described below, and the existing GSD Rule 22B (Corporation Default) and MBSD Rule 17 (Corporation Default) (collectively, "Corporation Default Rule"), as applicable, and that the Transferee would not acquire any pending or open transactions with the transfer of the business.⁴³ The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of FICC would involve addressing any residual claims against FICC through the bankruptcy process and liquidating the legal entity. As such, and as stated

⁴⁰ See 11 U.S.C. et seq.

⁴¹ See id. at 363.

⁴² The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by FICC. However, to the extent the Transferee adopts rules substantially identical to those FICC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that neither of the Divisions' respective Clearing Funds would be transferred to the Transferee, as they are not held in a bankruptcy remote manner and they are the primary prefunded liquidity resource to be accessed in the recovery phase

⁴³ See supra note 2.

above, the Wind-down Plan does not contemplate FICC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated. The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of FICC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of FICC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) FICC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether FICC could safely stabilize the business and protect its value without seeking bankruptcy protection, and FICC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions FICC or DTCC may take to prepare for wind-down in the period before FICC experiences any financial distress, (2) actions FICC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions FICC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of FICC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by FICC's average monthly operating expenses, including adjustments to account for changes to FICC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of FICC's critical operations. The estimated wind-down costs would constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.⁴⁴ Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.⁴⁵

⁴⁴ See supra note 4.

⁴⁵ See supra note 4.

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, FICC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both FICC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation)

The proposed GSD Rule 22D and MBSD Rule 17B (collectively, “Wind-down Rule”) would be adopted by both Divisions to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of FICC’s business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of FICC’s services to a Transferee, as described therein. Because GSD and MBSD are both divisions of FICC, the individual Wind-down Rules are designed to work together. A decision by the Board to initiate the Wind-down Plan would be pursuant to, and trigger the provisions of, the Wind-down Rule of each Division simultaneously. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and FICC’s business in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

Wind-down Trigger. First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore FICC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of FICC’s business, is in the best interests of FICC, Members and Limited Members of both Divisions, its shareholders and creditors, and the U.S. financial markets.

Identification of Critical Services; Designation of Dates and Times for Specific Actions. The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down

Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of FICC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to either Division for processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to either Division will be settled ("Last Settlement Date").

Treatment of Pending Transactions. The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions of either Division prior to the Transfer Time, so long as the applicable Division's Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on FICC's resources at that time, allow pending transactions of either Division to complete prior to the transfer of FICC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades to the applicable Division that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions of the applicable Division and reduce claims against FICC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the applicable Division's Corporation Default Rule has been triggered with respect to a Division), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions of such Division.

The Proposed Rule would make clear, however, that neither Division would accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date for such Division. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be FICC's responsibility.

Notice Provisions. The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, FICC would provide its Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of the membership of both Divisions and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of FICC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. FICC would also make available the rules and procedures and membership agreements of the Transferee.

Transfer of Membership. The proposed Wind-down Rule would address the expected transfer of both Divisions' membership to the Transferee, which FICC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable

efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with the applicable Division would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to FICC or has provided notice of its election to withdraw its membership from the applicable Division. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.⁴⁶

Comparability Period. The proposed automatic mechanism for the transfer of both Divisions' memberships is intended to provide the membership with continuous access to critical services in the event of FICC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that FICC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from FICC to the Transferee, for at least a period of time to be agreed upon ("Comparability Period"), the business transferred from FICC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by FICC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of FICC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to FICC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by FICC. The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of FICC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by FICC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims

⁴⁶ The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

against FICC of its Members and Limited Members who fail to participate in FICC's recovery efforts (*i.e.*, such firms are delinquent in their obligations to FICC or elect to retire from FICC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in FICC's recovery efforts.⁴⁷

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Members, Limited Members and Settling Banks (1) will assist and cooperate with FICC to effectuate the transfer of FICC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant FICC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by FICC pursuant to the Proposed Rule.

GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure)

The proposed GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure) (collectively, "Force Majeure Rule") would address FICC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. Because GSD and MBSD are both divisions of FICC, the individual Force Majeure Rules are designed to work together. A decision by the Board or management of FICC that a Market Disruption Event has occurred in accordance with the Force Majeure Rule would trigger the provisions of the Force Majeure Rule of each Division simultaneously. The Proposed Rule is designed to clarify FICC's ability to take actions to address extraordinary events outside of the control of FICC and of the memberships of the Divisions, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, FICC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require its Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of FICC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how FICC would determine whether, and how, to implement the provisions of the rule. A

⁴⁷ Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at either of the Divisions from applying for membership with the Transferee. Once its FICC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable. The Proposed Rule would require Members and Limited Members to notify FICC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require FICC to notify Members and Limited Members if it has triggered the Proposed Rule.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event.

Proposed Changes to GSD Rules, MBSD Rules, and EPN Rules

In order to incorporate the Proposed Rules into the Rules and the EPN Rules, FICC is also proposing to amend (1) GSD Rule 3A (Sponsoring Members and Sponsored Members), GSD Rule 3B (Centrally Cleared Institutional Triparty Service) and GSD Rule 13 (Funds-Only Settlement); (2) MBSD Rule 3A (Cash Settlement Bank Members); and (3) Rule 1 of the EPN Rules. As shown on Exhibit 5b, these proposed changes would clarify that certain types of Limited Members, as identified in those rules, would be subject to the Proposed Rules.

(b) Statutory Basis

FICC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that the R&W Plan, each of the Proposed Rules and the other proposed changes to the Rules and the EPN Rules are consistent with Section 17A(b)(3)(F) of the Act,⁴⁸ the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii) under the Act,⁴⁹ and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,⁵⁰ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of FICC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.⁵¹ The Recovery Plan and the proposed Force Majeure Rule would

⁴⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵⁰ Id. at 240.17Ad-22(e)(15)(ii).

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

promote the prompt and accurate clearance and settlement of securities transactions by providing FICC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools FICC may use to address and minimize losses to both FICC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide FICC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would also promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible. The Wind-down Plan and the proposed Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of FICC's business. These proposals would establish clear mechanisms for the transfer of FICC's critical services and membership. By doing so, the Wind-down Plan and this Proposed Rule are designed to facilitate the continuity of FICC's critical services and enable Members and Limited Members to maintain access to FICC's services through the transfer of the Divisions' memberships in the event the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of FICC's critical clearance and settlement services, FICC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of FICC's business, FICC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

Finally, the other proposed changes to the Rules and the EPN Rules would clarify the application of the Proposed Rules to certain types of Limited Members and would enable these Limited Members to readily understand their rights and obligations. As such, FICC believes these proposed changes would enable Limited Members that are governed by the applicable rules to have a better understanding of those rules and, thereby, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, FICC believes the R&W Plan, each of the Proposed Rules, and the other proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁵²

Rule 17Ad-22(e)(3)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered

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Id.

clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.⁵³ The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).⁵⁴

The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.⁵⁵ Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that FICC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that FICC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of the memberships of both Divisions and FICC's business, and would be designed to facilitate continued access to FICC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of FICC in order to facilitate continuous access to FICC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of FICC. Therefore, FICC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).⁵⁶

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide FICC with a legal basis for implementation of those provisions. As such, FICC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).⁵⁷

FICC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide FICC with a

⁵³ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. FICC also believes the recovery tools are effective, as FICC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with FICC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,⁵⁸ providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which FICC is a party, as described above. Further, as many of the tools are embedded in FICC's ongoing risk management practices or are embedded into its predefined default-management procedures, FICC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. FICC believes the recovery tools also provide appropriate incentives to Members, as they are designed to control the amount of risk they present to FICC's clearance and settlement system. Members' financial obligations to FICC, particularly their required deposits to the applicable Division's Clearing Fund, are measured by the risk posed by the Members' activity in FICC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, FICC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to FICC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, FICC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).⁵⁹

Therefore, FICC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).⁶⁰

Rule 17Ad-22(e)(15)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that FICC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and

⁵⁸ Id. at 240.19b-4.

⁵⁹ Supra note 37.

⁶⁰ 17 CFR 240.17Ad-22(e)(3)(ii).

services of the covered clearing agency.⁶¹ While the Capital Policy addresses how FICC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of FICC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that FICC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, FICC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).⁶²

4. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.⁶³ The proposal would apply uniformly to all Members and Limited Members. FICC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. FICC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. FICC also does not propose to change either Division's methodology for calculation of margin or their respective Clearing Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore FICC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects FICC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to FICC in connection with its recovery efforts. By proposing to enhance FICC's existing internal management and its regulatory compliance related to its recovery efforts, FICC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

⁶¹ 17 CFR 240.17Ad-22(e)(15)(ii).

⁶² Id.

⁶³ 15 U.S.C. 78q-1(b)(3)(I).

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members of both Divisions to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from FICC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and this Proposed Rule, FICC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

FICC does not believe that the other proposed changes to the Rules and the EPN Rules would have any impact on competition because these proposed changes to incorporate the Proposed Rules into the Rules and the EPN Rules are technical clarifications, which would not, on their own, change FICC's current practices or the rights or obligations of the Members or EPN Users.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While FICC has not solicited or received any written comments relating to this proposal, FICC has conducted outreach to Members in order to provide them with notice of the proposal. FICC will notify the Commission of any written comments received by FICC.

6. Extension of Time Period for Commission Action

FICC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.⁶⁴

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

While the proposal is not based on the rules of another self-regulatory organization or of the Commission, each of the Clearing Agencies has filed similar proposals concurrently with this

⁶⁴ Id. at 78s(b)(2).

filing to adopt comparable plans to provide for their recovery and orderly wind-down.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act of 2010

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposal for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5a – R&W Plan. **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5a pursuant to 17 CFR 240.24b-2 being requested.**

Exhibit 5b – Proposed changes to the GSD Rules, MBSD Rules and EPN Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-FICC-2017-021)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change to Adopt the Recovery & Wind-down Plan and Related Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December __, 2017, 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 by the clearing agency.³ 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 of FICC would adopt the Recovery & Wind-down Plan of FICC (“R&W Plan” or “Plan”). The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act by providing plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December __, 2017, FICC filed this proposed rule change as an advance notice (SR-FICC-2017-805) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) of the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings>.

shortfalls, losses from general business risk, or any other losses, as described below.⁴

The proposed rule change would also (1) amend FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules") in order to (a) adopt Rule 22D (Wind-down of the Corporation) and Rule 50 (Market Disruption and Force Majeure), and (b) make conforming changes to Rule 3A (Sponsoring Members and Sponsored Members), Rule 3B (Centrally Cleared Institutional Triparty Service) and Rule 13 (Funds-Only Settlement) related to the adoption of these Proposed Rules to the GSD Rules; (2) amend FICC's Mortgage-Backed Securities Division ("MBSD," and, together with GSD, the "Divisions") Clearing Rules ("MBSD Rules") in order to (a) adopt Rule 17B (Wind-down of the Corporation) and Rule 40 (Market Disruption and Force Majeure); and (b) make conforming changes to Rule 3A (Cash Settlement Bank Members) related to the adoption of these Proposed Rules to the MBSD Rules; and (3) amend Rule 1 of the Electronic Pool Netting ("EPN") Rules of MBSD ("EPN Rules") in order to provide that EPN Users, as defined therein, are bound by proposed Rule 17B (Wind-down of the Corporation) and proposed Rule 40 (Market Disruption and Force Majeure) to be adopted to the MBSD Rules.⁵ Each of the proposed rules is referred to herein as a "Proposed Rule," and are collectively referred to as the "Proposed Rules."

The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow FICC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵ The GSD Rules and the MBSD Rules are referred to collectively herein as the "Rules." Capitalized terms not defined herein are defined in the Rules. The Rules and the EPN Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>.

transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations;⁶ and (3) provide FICC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

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

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

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

1. Purpose

FICC is proposing to adopt the R&W Plan to be used by the Board and management of FICC in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to FICC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for

⁶ References herein to "Members" refer to GSD Netting Members and MBSB Clearing Members. References herein to "Limited Members" refer to participants of GSD or MBSB other than GSD Netting Members and MBSB Clearing Members, including, for example, GSD Comparison-Only Members, GSD Sponsored Members, GSD CCIT Members, and MBSB EPN Users.

implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of FICC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return FICC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of FICC and its parent, The Depository Trust & Clearing Corporation (“DTCC”); (ii) an analysis of FICC’s intercompany arrangements and an existing link to another financial market infrastructures (“FMIs”); (iii) a description of FICC’s services, and the criteria used to determine which services are considered critical; (iv) a description of the FICC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to FICC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a “Crisis Continuum” timeline; (vii) a discussion of potential non-default losses and the resources available to FICC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools’ characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to FICC, and how FICC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of FICC’s business, including an estimate of the time and costs to effect a recovery or orderly wind-down of FICC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that FICC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which FICC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that FICC may develop further supporting internal guidelines and materials that may provide operationality for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to FICC were its governance structure and the nature of the markets within which FICC operates. As a result of these considerations, many of the tools available to FICC that would be described in the R&W Plan are FICC's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe FICC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital

Policy”),⁷ (ii) maintaining the Clearing Agency Capital Replenishment Plan (“Replenishment Plan”) as a viable plan for the replenishment of capital should FICC’s equity fall close to or below the amount being held pursuant to the Capital Policy,⁸ and (iii) the process for the allocation of losses among Members, as provided in Rule 4 of the GSD Rules and Rule 4 of the MBSD Rules.⁹ The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning (“R&R Team”) of DTCC.¹⁰ The R&R Team reports to the DTCC Management Committee (“Management Committee”) and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and

⁷ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

⁸ See *id.*

⁹ See GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 5. FICC is proposing changes to GSD Rule 4 and MBSD Rule 4, and other related rules, regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR-FICC-2017-022 and SR-FICC-2017-806, referred to collectively herein as the “Loss Allocation Filing”). FICC expects the Commission to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

¹⁰ DTCC operates on a shared services model with respect to FICC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including FICC.

approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of FICC's wind-down and would provide for FICC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly FICC's strategy for winding down and transferring its business, and would provide FICC with the legal basis to implement those aspects of the R&W Plan.

FICC R&W Plan

The R&W Plan is intended to be used by the Board and FICC's management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to FICC to either (i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document’s purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and FICC management in the event FICC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act¹¹ by providing plans for the recovery and orderly wind-down of FICC.

The R&W Plan would describe DTCC’s business profile, provide a summary of the services of FICC as offered by each of the Divisions, and identify the intercompany arrangements and links between FICC and other entities, most notably a link between GSD and Chicago Mercantile Exchange Inc. (“CME”), which is also an FMI. This overview section would provide a context for the R&W Plan by describing FICC’s business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of FICC and its affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC”, and, together with FICC and DTC, the “Clearing Agencies”). The Plan would describe how corporate support services are

¹¹ 17 CFR 240.17Ad-22(e)(3)(ii).

provided to FICC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of the critical contractual and operational arrangements between FICC and other legal entities, including the cross-margining agreement between GSD and CME, which is also an FMI.¹² Pursuant to this arrangement, GSD offsets each cross-margining participant's residual margin amount (based on related positions) at GSD against the offsetting residual margin amounts of the participant (or its affiliate) at CME. GSD and CME may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant's positions at GSD and its (or its affiliate's) positions at CME. This section of the Plan, identifying and briefly describing FICC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of FICC's services as "critical," and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of FICC's critical services to the markets it serves. The criteria that would be used to identify an FICC service or function as critical would include consideration as to (1) whether there is a lack

¹² Available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf. See also GSD Rule 43 (Cross-Margining Arrangements), supra note 5.

of alternative providers or products; (2) whether failure of the service could impact FICC’s ability to perform its central counterparty services through either Division; (3) whether failure of the service could impact FICC’s ability to perform its multilateral netting services through either Division and, as such, could impact the volume of transactions; (4) whether failure of the service could impact FICC’s ability to perform its book-entry delivery and settlement services through either Division and, as such, could impact transaction costs; (5) whether failure of the service could impact FICC’s ability to perform its cash payment processing services through either Division and, as such, could impact the flow of liquidity in the U.S. financial markets; and (6) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, and broker-dealers. The Plan would then list each of those services, functions or activities that FICC has identified as “critical” based on the applicability of these six criteria. GSD’s critical services would include, for example, its Real-Time Trade Matching (“RTTM®”) service,¹³ its services related to netting and settlement of submitted trades for Netting Members,¹⁴ the Auction Takedown service,¹⁵ and the Repurchase Agreement Netting Service.¹⁶ MBSD’s critical services

¹³ See GSD Rule 5 (Comparison System), GSD Rule 6A (Bilateral Comparison), GSD Rule 6B (Demand Comparison), and GSD Rule 6C (Locked-In Comparison), supra note 5.

¹⁴ See GSD Rule 11 (Netting System), GSD Rule 12 (Securities Settlement), and GSD Rule 13 (Funds-Only Settlement), supra note 5.

¹⁵ See GSD Rule 6C (Locked-In Comparison) and GSD Rule 17 (Netting and Settlement of Netting-Eligible Auction Purchases), supra note 5.

¹⁶ See GSD Rule 7 (Repo Transactions), GSD Rule 11 (Netting System), GSD Rule 18 (Special Provisions for Repo Transactions), GSD Rule 19 (Special Provisions for Brokered Repo Transactions), and GSD Rule 20 (Special Provisions for GCF Repo Transactions), supra note 5.

would include, for example, its RTTM® service,¹⁷ its netting service for to-be-announced (“TBA”) transactions,¹⁸ its Electronic Pool Notification service,¹⁹ and its pool netting and settlement.²⁰ The R&W Plan would also include a non-exhaustive list of FICC services that are not deemed critical.

The evaluation of which services provided by FICC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while FICC’s Wind-down Plan would provide for the transfer of all critical services to a transferee in the event FICC’s wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and FICC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke FICC’s wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through FICC’s governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the

¹⁷ See MBSD Rule 5 (Trade Comparison), supra note 5.

¹⁸ See MBSD Rule 6 (TBA Netting), supra note 5.

¹⁹ See EPN Rules, supra note 5.

²⁰ See MBSD Rule 8 (Pool Netting System) and MBSD Rule 9 (Pool Settlement with the Corporation), supra note 5.

Risk Committee of the Board (“Board Risk Committee”) as being responsible for oversight of risk management activities at FICC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by FICC, and, due to FICC’s critical role in the markets in which it operates, oversight of FICC’s efforts to mitigate systemic risks that could impact those markets and the broader financial system.²¹ The Plan would identify the DTCC Management Risk Committee (“Management Risk Committee”) as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office (“GCRO”), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of FICC’s business, technology, and operations and the functional areas that support these activities.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that

²¹ The charter of the Board Risk Committee is available at <http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf>.

could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer (“CFO”) and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.²² More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

FICC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that FICC may employ across both Divisions to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit FICC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based.

²² The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

FICC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that FICC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of FICC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to FICC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, FICC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect FICC, the Members, and the markets in which it operates.

Managing Member Default Losses and Liquidity Needs Through the Crisis

Continuum. The Recovery Plan would describe the risk management surveillance, tools, and governance that FICC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with FICC's decision to cease to act for a Member or Affiliated Family of Members,²³ and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to FICC's decision to cease to act for a Member

²³ The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of either GSD or MBSD.

(referred to in the R&W Plan as a “defaulting Member,” and the event as a “Member default”) pursuant to the applicable Rules.²⁴

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing FICC’s ongoing management of credit, market and liquidity risk across the Divisions, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. FICC manages these risk exposures collectively to limit their overall impact on FICC and the memberships of the Divisions. As part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate required deposits to the GSD and MBSD Clearing Fund and monitoring its sufficiency, as provided for in the applicable Rules.²⁵ FICC manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by FICC in the event of a Member default that presents the largest aggregate liquidity exposure to FICC over the settlement cycle.²⁶

²⁴ See GSD Rule 21 (Restrictions on Access to Services) and MBSD Rule 14 (Restrictions on Access to Services), supra note 5.

²⁵ See GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), supra note 5. FICC’s market risk management strategy for both Divisions is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as “credit risks.” See also 17 CFR 240.17Ad-22(e)(4).

²⁶ FICC’s liquidity risk management strategy, including the manner in which FICC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. See Securities Exchange Act Release Nos. 80489

The Recovery Plan would outline the metrics and indicators that FICC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that FICC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default in accordance with the applicable Rules. Therefore, the Recovery Plan would both provide FICC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that FICC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of FICC during a period of stress.

The “stable market phase” of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of the margin calculations for each of GSD

(April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

and MBSD, and escalation of those results to internal and Board committees;²⁷ and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.²⁸

The Recovery Plan would describe some of the indicators of the “stressed market phase” of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that FICC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the “Member default phase” of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that FICC would follow in the event of a Member default and any decision by FICC to cease to act for that Member.²⁹ The Recovery Plan would provide that the objectives of FICC’s actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and the applicable Division’s non-defaulting Members; and (2), to the extent

²⁷ FICC’s stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

²⁸ See supra note 26.

²⁹ See GSD Rule 21 (Restrictions on Access to Services), GSD Rule 22A (Procedures for When the Corporation Ceases to Act), MBSD Rule 14 (Restrictions on Access to Services), and MBSD Rule 17 (Procedures for When the Corporation Ceases to Act), supra note 5.

practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, FICC would, pursuant to the applicable Division's Rules, (1) monitor and assess the adequacy of the GSD and MBSD Clearing Fund resources; (2), when necessary and appropriate pursuant to the applicable Division's Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of FICC's liquidity resources, and the Recovery Plan would identify certain actions FICC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the defaulting Member's portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to FICC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, GSD Rule 4 and MBSD Rule 4, as each are proposed to be amended by the Loss Allocation Filing, would provide that losses be satisfied first by applying a "Corporate Contribution," and then, if necessary, by allocating remaining losses to non-defaulting Members.³⁰

³⁰ See supra note 9. The Loss Allocation Filing proposes to amend GSD Rule 4 and MBSD Rule 4 to define the amount FICC would contribute to address a loss resulting from either a Member default or a non-default event as the "Corporate

The “recovery phase” of the Crisis Continuum would describe actions that FICC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) a recovery corridor, during which FICC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase; and (2) the recovery phase, which would begin on the date that FICC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given “Event Period.”³¹

FICC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the defaulting Member, neither

Contribution.” This amount would be 50 percent (50%) of the “General Business Risk Capital Requirement,” which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that FICC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 7; 17 CFR 240.17Ad-22(e)(15).

³¹ The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an “Event Period” as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event, as described in greater detail in that filing. The proposed GSD Rule 4 and MBSD Rule 4 would define a “round” as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the “Loss Allocation Caps” (as defined in the proposed GSD Rule 4 and MBSD Rule 4) of those Members included in the round. See supra note 9.

of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the recovery corridor, FICC would monitor the adequacy of the Divisions' respective resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain metrics referred to as "Corridor Indicators."

The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require either Division to adjust its strategy for hedging and liquidating a defaulting Member's portfolio, and any such changes would include an assessment of the status of the Corridor Indicators. Corridor Indicators would include, for example, effectiveness and speed of FICC's efforts to close out the portfolio of the defaulting Member, and an impediment to the availability of its financial resources. For each Corridor Indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are steps that may be taken to improve the status of the indicator,³² as well as management escalations required to authorize those steps. Because FICC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, these metrics were chosen based on the business judgment of FICC management.

³² The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if FICC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

The Recovery Plan would also describe the reporting and escalation of the status of the Corridor Indicators throughout the recovery corridor. Significant deterioration of a Corridor Indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. FICC management would review the Corridor Indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that FICC may remain in the recovery corridor stage between one day and two weeks. This estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by FICC. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time FICC enters the recovery corridor stage of the Crisis Continuum, and FICC would expect the recovery corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which FICC may allocate its losses, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.³³ The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of FICC's liquidity resources following a Member default, and would provide that these tools may be used throughout the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing FICC's qualified liquidity resources is to maximize resource availability in an

³³ As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to GSD Rule 4 and MBSD Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 9.

evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, which may supplement FICC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause FICC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to FICC of utilizing these tools, and any potential impact on FICC's credit rating.

As stated above, the Recovery Plan would state that FICC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, FICC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the Corridor Indicators applicable to that phase of the Crisis

Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and escalation protocol that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the applicable Division's Rules, and around the management and oversight of the subsequent liquidation of the defaulting Member's portfolio. The Recovery Plan would state that, overall, FICC would retain flexibility in accordance with each Division's Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect FICC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

Non-Default Losses. The Recovery Plan would outline how FICC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for FICC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks FICC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe FICC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of

risk across the organization.³⁴ The Recovery Plan would also describe FICC's approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow FICC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources FICC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,³⁵ (b) the Corporate Contribution,³⁶ and (c) other amounts held in excess of FICC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of GSD Rule 4 and MBSD Rule 4.³⁷

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a

³⁴ The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how FICC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which FICC manages operational risks, as defined therein. See Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

³⁵ See supra note 30.

³⁶ See supra note 30.

³⁷ See supra note 9.

loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.³⁸ Finally the Plan would discuss how FICC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds FICC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to GSD Rule 4 and MBSD Rule 4.³⁹

The Plan would also describe proposed GSD Rule 50 (Market Disruption and Force Majeure) and proposed MBSD Rule 40 (Market Disruption and Force Majeure), which FICC is proposing to adopt in the GSD Rule and MBSD Rules, respectively. This Proposed Rule would provide transparency around how FICC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a "Market Disruption Event" and the governance around a determination that such an event has occurred. The Proposed Rule would also describe FICC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and FICC's existing processes and procedures addressing business continuity management and

³⁸ See supra note 7.

³⁹ See supra note 9.

disaster recovery (generally, the “BCM/DR procedures”), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to FICC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

Recovery Tool Characteristics. The Recovery Plan would describe FICC’s evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.⁴⁰ FICC’s analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

FICC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of FICC if the use of the recovery tools described in the Recovery Plan do not successfully return FICC to financial viability. While FICC believes that, given the

⁴⁰ Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, FICC is proposing a wind-down strategy that provides for (1) the transfer of FICC's business, assets and memberships of both Divisions to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code,⁴¹ and (3) after effectuating this transfer, FICC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. FICC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that FICC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by FICC's failure.

In describing the transfer approach to FICC's Wind-down Plan, the Plan would identify the factors that FICC considered in developing this approach, including the fact that FICC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, FICC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause FICC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of FICC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down FICC as the "Runway Period." This period would follow the implementation of any recovery tools,

⁴¹ 11 U.S.C. 1101 et seq.

as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for FICC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.⁴² The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and FICC's inability to replenish its financial resources following the liquidation of the portfolio of the defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. As described in the Plan, FICC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of FICC and the Members to avoid actions that might undermine FICC's recovery efforts. Additionally, this approach takes into account the characteristics of FICC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of FICC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of FICC's critical services, business, assets and membership, and the assignment of GSD's link with another FMI, to another legal entity that is legally, financially, and operationally able to

⁴² The Wind-down Plan would state that, given FICC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that FICC cannot predict the willingness of Members to do so.

provide FICC’s critical services to entities that wish to continue their membership following the transfer (“Transferee”). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently (“Third Party Transferee”); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC (“Failover Transferee”) to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire FICC’s business. FICC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.⁴³ As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, FICC, except to the extent expressly provided in the court’s order.⁴⁴

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, FICC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership.

Following the transfer, the Wind-down Plan would anticipate that the Transferee and its

⁴³ See 11 U.S.C. et seq.

⁴⁴ See id. at 363.

continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. FICC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to FICC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of FICC's link arrangements, including its arrangements with clearing banks and GSD's cross-margining arrangement with CME, described above, to the Transferee.⁴⁵ The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule, as defined and described below, and the existing GSD Rule 22B (Corporation Default) and MBSD Rule 17 (Corporation Default) (collectively, "Corporation Default Rule"), as applicable, and that the Transferee would not acquire any pending or open transactions with the transfer of the business.⁴⁶ The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

⁴⁵ The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by FICC. However, to the extent the Transferee adopts rules substantially identical to those FICC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that neither of the Divisions' respective Clearing Funds would be transferred to the Transferee, as they are not held in a bankruptcy remote manner and they are the primary prefunded liquidity resource to be accessed in the recovery phase

⁴⁶ See supra note 5.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of FICC would involve addressing any residual claims against FICC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate FICC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated. The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of FICC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of FICC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) FICC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether FICC could safely stabilize the business and protect its value without seeking bankruptcy protection, and FICC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions FICC or DTCC may take to prepare for wind-down in the period before FICC experiences any financial distress, (2) actions FICC would take both during the recovery phase and the Runway Period to

prepare for the execution of the Wind-down Plan, and (3) actions FICC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of FICC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by FICC's average monthly operating expenses, including adjustments to account for changes to FICC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of FICC's critical operations. The estimated wind-down costs would constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.⁴⁷ Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.⁴⁸

⁴⁷ See supra note 7.

⁴⁸ See supra note 7.

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, FICC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both FICC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

GSD Rule 22D and MBSD Rule 17B (Wind-down of the Corporation)

The proposed GSD Rule 22D and MBSD Rule 17B (collectively, “Wind-down Rule”) would be adopted by both Divisions to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of FICC’s business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of FICC’s services to a Transferee, as described therein. Because GSD and MBSD are both divisions of FICC, the individual Wind-down Rules are designed to work together. A decision by the Board to initiate the Wind-down Plan would be pursuant to, and trigger the provisions of, the Wind-down

Rule of each Division simultaneously. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and FICC's business in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

Wind-down Trigger. First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore FICC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of FICC's business, is in the best interests of FICC, Members and Limited Members of both Divisions, its shareholders and creditors, and the U.S. financial markets.

Identification of Critical Services; Designation of Dates and Times for Specific Actions. The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be

terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of FICC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to either Division for processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to either Division will be settled ("Last Settlement Date").

Treatment of Pending Transactions. The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions of either Division prior to the Transfer Time, so long as the applicable Division's Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on FICC's resources at that time, allow pending transactions of either Division to complete prior to the transfer of FICC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades to the applicable Division that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions of the applicable Division and reduce claims against FICC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the applicable Division's Corporation Default Rule has been triggered with respect to a Division), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions of such Division.

The Proposed Rule would make clear, however, that neither Division would accept any transactions for processing after the Last Transaction Acceptance Date or

which are designated to settle after the Last Settlement Date for such Division. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be FICC's responsibility.

Notice Provisions. The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, FICC would provide its Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of the membership of both Divisions and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of FICC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. FICC would also make available the rules and procedures and membership agreements of the Transferee.

Transfer of Membership. The proposed Wind-down Rule would address the expected transfer of both Divisions' membership to the Transferee, which FICC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-

down Plan and with no further action required by any party, (1) their membership with the applicable Division would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to FICC or has provided notice of its election to withdraw its membership from the applicable Division. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.⁴⁹

Comparability Period. The proposed automatic mechanism for the transfer of both Divisions' memberships is intended to provide the membership with continuous access to critical services in the event of FICC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that FICC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from FICC to the Transferee, for at least a period of time to be agreed upon

⁴⁹ The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

(“Comparability Period”), the business transferred from FICC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by FICC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of FICC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to FICC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by FICC. The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of FICC’s business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by FICC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against FICC of its Members and Limited Members who fail to participate in FICC’s recovery efforts (*i.e.*, such firms are delinquent in their obligations to FICC or elect to retire from FICC in order to minimize their obligations with respect to

the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in FICC's recovery efforts.⁵⁰

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Members, Limited Members and Settling Banks (1) will assist and cooperate with FICC to effectuate the transfer of FICC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant FICC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by FICC pursuant to the Proposed Rule.

GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure)

The proposed GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure) (collectively, "Force Majeure Rule") would address FICC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. Because GSD and MBSD are both divisions of FICC, the individual Force Majeure Rules are designed to work together. A decision by the Board or management of FICC that a Market Disruption Event has occurred in accordance with the Force Majeure Rule would trigger the provisions of the Force Majeure Rule of each Division simultaneously. The Proposed Rule is designed to clarify FICC's ability to take

⁵⁰ Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at either of the Divisions from applying for membership with the Transferee. Once its FICC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

actions to address extraordinary events outside of the control of FICC and of the memberships of the Divisions, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, FICC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require its Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of FICC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how FICC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation

with Commission staff, when practicable. The Proposed Rule would require Members and Limited Members to notify FICC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require FICC to notify Members and Limited Members if it has triggered the Proposed Rule.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event.

Proposed Changes to GSD Rules, MBSD Rules, and EPN Rules

In order to incorporate the Proposed Rules into the Rules and the EPN Rules, FICC is also proposing to amend (1) GSD Rule 3A (Sponsoring Members and Sponsored Members), GSD Rule 3B (Centrally Cleared Institutional Triparty Service) and GSD Rule 13 (Funds-Only Settlement); (2) MBSD Rule 3A (Cash Settlement Bank Members); and (3) Rule 1 of the EPN Rules. As shown on Exhibit 5b, these proposed changes would clarify that certain types of Limited Members, as identified in those rules, would be subject to the Proposed Rules.

2. Statutory Basis

FICC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that the R&W Plan, each of the Proposed Rules and the other proposed changes to the Rules and the EPN Rules are consistent with Section 17A(b)(3)(F) of the Act,⁵¹ the R&W Plan and each of the Proposed Rules are consistent

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

with Rule 17Ad-22(e)(3)(ii) under the Act,⁵² and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,⁵³ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of FICC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.⁵⁴ The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing FICC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools FICC may use to address and minimize losses to both FICC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide FICC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible by enabling actions that would address and minimize losses.

⁵² 17 CFR 240.17Ad-22(e)(3)(ii).

⁵³ Id. at 240.17Ad-22(e)(15)(ii).

⁵⁴ 15 U.S.C. 78q-1(b)(3)(F).

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would also promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible. The Wind-down Plan and the proposed Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of FICC's business. These proposals would establish clear mechanisms for the transfer of FICC's critical services and membership. By doing so, the Wind-down Plan and this Proposed Rule are designed to facilitate the continuity of FICC's critical services and enable Members and Limited Members to maintain access to FICC's services through the transfer of the Divisions' memberships in the event the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of FICC's critical clearance and settlement services, FICC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of FICC's business, FICC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

Finally, the other proposed changes to the Rules and the EPN Rules would clarify the application of the Proposed Rules to certain types of Limited Members and would enable these Limited Members to readily understand their rights and obligations. As such, FICC believes these proposed changes would enable Limited Members that are governed by the applicable rules to have a better understanding of those rules and,

thereby, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, FICC believes the R&W Plan, each of the Proposed Rules, and the other proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁵⁵

Rule 17Ad-22(e)(3)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.⁵⁶ The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).⁵⁷

The R&W Plan would be maintained by FICC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of FICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.⁵⁸ Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that FICC may use to

⁵⁵ Id.

⁵⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵⁷ Id.

⁵⁸ Id.

address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that FICC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of the memberships of both Divisions and FICC's business, and would be designed to facilitate continued access to FICC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of FICC in order to facilitate continuous access to FICC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of FICC. Therefore, FICC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).⁵⁹

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide FICC with a legal

⁵⁹ Id.

basis for implementation of those provisions. As such, FICC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).⁶⁰

FICC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide FICC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. FICC also believes the recovery tools are effective, as FICC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with FICC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,⁶¹ providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which FICC is a party, as described above. Further, as many of the tools are embedded in FICC's ongoing risk management practices or are embedded into its predefined default-management procedures, FICC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. FICC believes the recovery tools also provide appropriate incentives to Members, as they are designed to

⁶⁰ Id.

⁶¹ Id. at 240.19b-4.

control the amount of risk they present to FICC's clearance and settlement system. Members' financial obligations to FICC, particularly their required deposits to the applicable Division's Clearing Fund, are measured by the risk posed by the Members' activity in FICC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, FICC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to FICC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, FICC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).⁶²

Therefore, FICC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).⁶³

Rule 17Ad-22(e)(15)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that FICC can continue operations and services as a going

⁶² Supra note 40.

⁶³ 17 CFR 240.17Ad-22(e)(3)(ii).

concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.⁶⁴

While the Capital Policy addresses how FICC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of FICC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that FICC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, FICC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).⁶⁵

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

FICC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.⁶⁶ The proposal would apply uniformly to all Members and Limited Members.

⁶⁴ 17 CFR 240.17Ad-22(e)(15)(ii).

⁶⁵ Id.

⁶⁶ 15 U.S.C. 78q-1(b)(3)(I).

FICC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. FICC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. FICC also does not propose to change either Division's methodology for calculation of margin or their respective Clearing Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore FICC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects FICC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to FICC in connection with its recovery efforts. By proposing to enhance FICC's existing internal management and its regulatory compliance related to its recovery efforts, FICC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the

transfer of all eligible Members and Limited Members of both Divisions to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from FICC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and this Proposed Rule, FICC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

FICC does not believe that the other proposed changes to the Rules and the EPN Rules would have any impact on competition because these proposed changes to incorporate the Proposed Rules into the Rules and the EPN Rules are technical clarifications, which would not, on their own, change FICC's current practices or the rights or obligations of the Members or EPN Users.

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

While FICC has not solicited or received any written comments relating to this proposal, FICC has conducted outreach to its Members in order to provide them with notice of the proposal. FICC will notify the Commission of any written comments received by FICC.

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 clearing agency 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2017-021 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-2017-021. This file number should be included on the subject line if e-mail 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-2017-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

Secretary

⁶⁷ 17 CFR 200.30-3(a)(12).

PAGE REDACTED IN ITS ENTIRETY

Bold and underlined text indicates proposed added language

~~**Bold and strikethrough text**~~ indicates proposed deleted language

FIXED INCOME CLEARING CORPORATION
GOVERNMENT SECURITIES DIVISION RULEBOOK

* * *

RULE 3A—SPONSORING MEMBERS AND SPONSORED MEMBERS

* * *

Section 17 —Other Applicable Rules, Schedules, Interpretations and Statements

(a) **Rule 22D (Wind-down of the Corporation)**, Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Release of Clearing Data), Rule 30 (Lists to be Maintained), Rule 31 (Distribution Facilities), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Section 3 of Rule 40 (General Provisions), Rule 41 (Cross-Guaranty Agreements), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule 47 (Interpretation of Rules), ~~and~~ Rule 48 (Disciplinary Proceedings), **and Rule 50 (Market Disruption and Force Majeure)** shall apply to, or with respect to, Sponsored Members and Sponsoring Members.

* * *

RULE 3B – CENTRALLY CLEARED INSTITUTIONAL TRIPARTY SERVICE

* * *

Section 17 – Other Applicable Rules, Schedules, Interpretations and Statements

(a) Rule 1 (Definitions), Rule 22B (Corporation Default), Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991), **Rule 22D (Wind-down of the Corporation)**, Rule 23 (Fine Payments), Rule 25 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Release of Clearing Data), Rule 31 (Distribution Facilities), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Rule 40 (General Provisions), Rule 41 (Cross Guaranty Agreements), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule

47 (Interpretation of Rules) ~~and~~, Rule 48 (Disciplinary Proceedings), and Rule 50 (Market Disruption and Force Majeure) shall apply to CCIT Members with respect to CCIT Transactions in the same way as these provisions apply to Netting Members.

* * *

RULE 13 - FUNDS-ONLY SETTLEMENT

* * *

Section 4 – Funds-Only Settling Bank Members

* * *

(1) In addition to this Rule 13 and applicable provisions of Rule 1, the following Rules and any relevant schedules cited therein shall apply to Funds-Only Settling Bank Members in the same manner as they apply to Netting Members: Rule 22D (Wind-down of the Corporation), Rule 29 (Release of Clearing Data), Rule 32 (Signatures), Rule 33 (Procedures), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule 47 (Interpretation of Rules) ~~and~~, Rule 48 (Disciplinary Proceedings), and Rule 50 (Market Disruption and Force Majeure).

* * *

RULE 22D - WIND-DOWN OF THE CORPORATION

Section 1. Defined Terms

(a) For purposes of this Rule 22D:

“Bridge Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Business” means the Critical Services and any Non-Critical Services of the Corporation included in a Transfer.

“Comparability Period” means a period of time following the Transfer, to be agreed between the Corporation and a Transferee, during which the Business transferred from the Corporation to the Transferee shall be operated by the Transferee in a manner comparable to the manner in which the Business was previously operated by the Corporation, as more specifically set forth in Section 9 of this Rule 22D.

“Corporation Default Rule” means Rule 22B of the Rules of the Government Securities Division of the Corporation.

“Critical Services” means the services of the Corporation described in the Rules and Procedures of the Government Securities Division of the Corporation and the rules, procedures and other regulations of the Mortgage-Backed Securities Division of the Corporation that have been identified as critical services in the Recovery and Wind-down Plan.

“Delinquent Limited Member” means a Limited Member that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).

“Delinquent Member” means a Member that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).

“DTCC” means The Depository Trust & Clearing Corporation.

“Eligible Limited Member” means a Limited Member other than a Non-Eligible Limited Member.

“Eligible Member” means a Member other than a Non-Eligible Member.

“Failover Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Guaranteed Transaction” means a transaction that is processed through the facilities of the Government Securities Division of the Corporation that has been subject to Novation.

“Last Settlement Date” has the meaning given to such term in Section 2(c)(3) of this Rule 22D.

Last Transaction Acceptance Date” has the meaning given to such term in Section 2(c)(2) of this Rule 22D.

“Limited Member” means a Comparison-Only Member, Sponsored Member or CCIT Member of the Government Securities Division of the Corporation or a Comparison-Only Member, Sponsored Member or CCIT Member of the Government Securities Division of the Transferee, as the context requires.

“Limited Member Agreement” means the form of agreement between a Limited Member and the Corporation or between a Limited Member and the Transferee, as the context requires, providing, inter alia, for the Limited Member to be bound by the Rules and Procedures of the Government Securities Division of the Corporation or the Rules and Procedures of the Government Securities Division of the Transferee, as applicable to such Limited Member.

“Member” means a Netting Member or Sponsoring Member of the Government Securities Division of the Corporation or a Netting Member or Sponsoring Member of the Government Securities Division of the Transferee, as the context requires.

“Member Agreement” means the form of agreement between a Member and the Corporation or between a Member and the Transferee, as the context requires, providing, inter alia, for the Member to be bound by the Rules and Procedures of the Government Securities Division of the Corporation or the Rules and Procedures of the Government Securities Division of the Transferee, as applicable to such Member.

“Non-Critical Services” means the services of the Corporation described in the Rules and Procedures of the Government Securities Division of the Corporation and the rules, procedures and other regulations of the Mortgage-Backed Securities Division of the Corporation other than the Critical Services.

“Non-Eligible Limited Member” means a Limited Member that is a Delinquent Limited Member or Withdrawing Limited Member.

“Non-Eligible Member” means a Member that is a Delinquent Member or Withdrawing Member.

“Recovery and Wind-down Plan” means the plan for the recovery and orderly wind-down of the Corporation necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses, adopted by the Corporation pursuant to Rule 17Ad-22(e)(3)(ii) under the Exchange Act.

“Recovery Plan” means the portion of the Recovery and Wind-down Plan addressing recovery.

“Risk Reducing Transaction” means a Guaranteed Transaction that offsets one or more other Guaranteed Transactions, and thereby reduces the potential exposure of the Corporation with respect to such Guaranteed Transactions.

“Rules and Procedures” means the Rules and Procedures of the Government Securities Division of the Corporation or the Rules and Procedures of the Government Securities Division of the Transferee, as the context requires.

“Settling Bank” means a Funds-Only Settling Bank or Funds-Only Settling Bank Member for Members and Limited Members of the Government Securities Division of the Corporation or a Funds-Only Settling Bank or Funds-Only Settling Bank Member for Members and Limited Members of the Government Securities Division of the Transferee, as the context requires.

“Settling Bank Agreement” means the form of agreement between a Settling Bank and the Corporation or between a Settling Bank and the Transferee, as the context requires, providing, inter alia, for the Settling Bank to be bound by the Rules and Procedures of the Government Securities Division of the Corporation or the Rules and Procedures of the Government Securities Division of the Transferee, as applicable to such Settling Bank.

“Third Party Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Transfer” means a transfer of the Business of the Corporation pursuant to the Wind-down Plan.

“Transferee” means an entity to which the Business of the Corporation is transferred pursuant to the Wind-down Plan, and may include (i) a failover entity established by DTCC (a “Failover Entity”), (ii) a then-existing or newly-established third party entity (a “Third Party Entity”) or (iii) a bridge entity formed to operate the Business on an interim basis (a “Bridge Entity”). The Transferee shall be an entity that is legally, financially and operationally qualified to continue to operate the Business that is to be transferred from the Corporation to the Transferee.

“Transferee Documents” means the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Government Securities Division of the Transferee.

“Transfer Notice” has the meaning given to such term in Section 3 of this Rule 22D.

“Transfer Time” has the meaning given to such term in Section 2(c)(1) of this Rule 22D.

“Wind-down Plan” means the portion of the Recovery and Wind-down Plan addressing wind-down.

“Withdrawing Limited Member” means a Limited Member of the Government Securities Division of the Corporation that has given notice to the Corporation of its election to withdraw as a Limited Member but that, at the Transfer Time, has not yet ceased to be a Limited Member (as determined by the Corporation).

“Withdrawing Member” means a Member of the Government Securities Division of the Corporation that has given notice to the Corporation of its election to withdraw as a Member but that, at the Transfer Time, has not yet ceased to be a Member (as determined by the Corporation).

- (b) Capitalized terms that are used in this Rule 22D but not defined in Section 1(a) above shall have the meanings given to such terms in other Rules and Procedures of the Government Securities Division of the Corporation.**

Section 2. Initiation of Wind-down Plan

- (a) The Board of Directors may authorize the initiation of the Wind-down Plan and a transfer of the Business from the Corporation to a Transferee if the Board of Directors determines, in the exercise of its business judgment and subject to its fiduciary duties:**

- (1) that the application of some or all of the recovery tools set forth in the Recovery Plan, necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses:**

- A. has not restored the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Government Securities Division of the Corporation and Mortgage-Backed Securities Division Participants in a safe and efficient manner; or**
- B. will not likely restore the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Government Securities Division of the Corporation and Mortgage-Backed Securities Division Participants in a safe and efficient manner; and**

- (2) that the implementation of the Wind-down Plan and a Transfer of the Business from the Corporation to a Transferee is in the best interests of the Corporation, its shareholders and creditors, Members and Limited Members of the Government Securities Division of the Corporation, Mortgage-Backed Securities Division Participants and the US financial markets.**

- (b) The Board of Directors shall identify:**

- (1) the Critical Services and any Non-Critical Services that shall be transferred from the Corporation to the Transferee at the Transfer Time; and**

- (2) any Non-Critical Services that shall not be transferred from the Corporation to the Transferee.**

The Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee at the Transfer Time shall be provided by the Transferee following the Transfer Time. Any Non-Critical Services that are not transferred from the Corporation to the Transferee shall be terminated at the Transfer Time.

(c) The Board of Directors shall establish:

- (1) the date and time (the “Transfer Time”) of the Transfer;**
- (2) the last day that transactions may be submitted to the Government Securities Division of the Corporation for processing (the “Last Transaction Acceptance Date”); and**
- (3) the last day that transactions submitted to the Government Securities Division of the Corporation for processing will be settled (the “Last Settlement Date”).**

The Government Securities Division of the Corporation shall not accept any transactions (i) for processing after the Last Transaction Acceptance Date or (ii) which have a Scheduled Settlement Date that occurs after the Last Settlement Date. All transactions to be processed and/or settled after the Transfer Time shall be submitted to the Government Securities Division of the Transferee in accordance with the Rules and Procedures of the Government Securities Division of the Transferee, and the Corporation shall have no responsibility for such transactions.

(d) To the extent that the Board of Directors deems it to be practicable based on the available resources of the Corporation, the Board of Directors may provide for pending transactions to be run off and settled prior to the Transfer Time, with the objective of facilitating the settlement of transactions in the ordinary course. In furtherance of this objective, so long as a Corporation Default has not occurred, the Board of Directors may provide for how such transactions accepted by the Government Securities Division of the Corporation on or prior to the Last Transaction Acceptance Date shall be processed and settled, including:

- (1) whether such transactions must be Risk Reducing Transactions; and**
- (2) whether such transactions will be processed (i) in the ordinary course or (ii) in accordance with any special or exception processing procedures that will apply through the close of business on the Last Settlement Date.**

Section 3. Notice of Transfer of the Business

If the Board of Directors determines to implement a Transfer of the Business from the Corporation to a Transferee in accordance with this Rule 22D and the terms and conditions of the Wind-down Plan, the Corporation shall, in such manner as may be provided by the Rules and Procedures of the Government Securities Division of the Corporation and subject to any required regulatory or judicial approval or consent:

- (a) provide Members, Limited Members and Settling Banks with a notice (a “Transfer Notice”) setting forth:**

- (1) the decision taken by the Board of Directors to Transfer the Business from the Corporation to the Transferee and a brief statement of the reasons therefor;
 - (2) the name of the Transferee and basic information about the Transferee;
 - (3) a description of the material financial and operational terms of the Transfer;
 - (4) the (i) Transfer Time, (ii) Last Transaction Acceptance Date and (iii) Last Settlement Date;
 - (5) a summary of the matters described in Sections 4 through 8 of this Rule 22D;
 - (6) a list setting forth (i) which Members and Limited Members are Eligible Members and Limited Members and (ii) which Members and Limited Members are Non-Eligible Members and Limited Members; and
 - (7) a list setting forth (i) the Critical Services and any Non-Critical Services that will be transferred from the Corporation to the Transferee at the Transfer Time and (ii) any Non-Critical Services that will not be transferred from the Corporation to the Transferee; and
- (b) make available to Members, Limited Members and Settling Banks a copy of the Transferee Documents.

No delay or failure on the part of the Corporation to provide a Transfer Notice or make available a copy of the Transferee Documents to any Member, Limited Member or Settling Bank shall alter the timing or effectiveness of the Transfer. The Corporation shall also furnish the Transfer Notice and a copy of the Transferee Documents to its regulators.

Section 4. Transfer of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, at the Transfer Time, by operation of this Rule 22D and with no further action required by any party;

- (a) each Eligible Member of the Government Securities Division of the Corporation shall become (i) a Member of the Government Securities Division of the Transferee and (ii) a party to a Member Agreement with the Transferee;

- (b) each Eligible Limited Member of the Government Securities Division of the Corporation shall become (i) a Limited Member of the Government Securities Division of the Transferee and (ii) a party to a Limited Member Agreement with the Transferee; and
- (c) each Settling Bank for Members and Limited Members of the Government Securities Division of the Corporation shall become (i) a Settling Bank for Members and Limited Members of the Government Securities Division of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.

Section 5. Status of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, from and after the Transfer Time:

- (a) An Eligible Member of the Government Securities Division of the Corporation that has become a Member of the Government Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Member set forth in the Rules and Procedures of the Government Securities Division of the Transferee, including the legal, financial, operational and collateral requirements of the Government Securities Division of the Transferee applicable to such Member.
- (b) An Eligible Limited Member of the Government Securities Division of the Corporation that has become a Limited Member of the Government Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Limited Member set forth in the Rules and Procedures of the Government Securities Division of the Transferee, including the legal, financial and operational requirements of the Government Securities Division of the Transferee applicable to such Limited Member.
- (c) A Settling Bank for Members and Limited Members of the Government Securities Division of the Corporation that has become a Settling Bank for Members and Limited Members of the Government Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Settling Bank set forth in the Rules and Procedures of the Government Securities Division of the Transferee, including the operational requirements of the Government Securities Division of the Transferee applicable to such Settling Bank.

Section 6. Right of Non-Eligible Members and Limited Members to Apply to the Transferee

Nothing contained in this Rule 22D shall:

- (a) preclude a Non-Eligible Member of the Government Securities Division of the Corporation from applying after the Transfer Time to become a Member of the Government Securities Division of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Member shall not have the benefit of the automatic admission arrangements provided in Section 4(a) of this Rule 22D; or
- (b) preclude a Non-Eligible Limited Member of the Government Securities Division of the Corporation from applying after the Transfer Time to become a Limited Member of the Government Securities Division of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Limited Member shall not have the benefit of the automatic admission arrangements provided in Section 4(b) of this Rule 22D.

Section 7. Right to Withdraw from the Transferee

Nothing contained in this Rule 22D shall:

- (a) preclude an Eligible Member of the Government Securities Division of the Corporation that has become a Member of the Government Securities Division of the Transferee pursuant to Section 4(a) of this Rule 22D from electing to withdraw as a Member from the Government Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Government Securities Division of the Transferee;
- (b) preclude an Eligible Limited Member of the Government Securities Division of the Corporation that has become a Limited Member of the Government Securities Division of the Transferee pursuant to Section 4(b) of this Rule 22D from electing to withdraw as a Limited Member from the Government Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Government Securities Division of the Transferee; or
- (c) preclude a Settling Bank for Members and Limited Members of the Government Securities Division of the Corporation that has become a Settling Bank for Members and Limited Members of the Government Securities Division of the Transferee pursuant to Section 4(c) of this Rule 22D from electing to withdraw as a Settling Bank from the Government Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Government Securities Division of the Transferee.

Section 8. Disposition of Pending Transactions

At the Transfer Time, any pending transactions shall be treated as provided in the Corporation Default Rule.

Section 9. Certain Ex Ante Matters

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, with respect to the Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee, for at least the duration of the Comparability Period, in order to facilitate a smooth Transfer of the Business from the Corporation to the Transferee:

- (a) the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Government Securities Division of the Transferee shall be comparable in substance and effect to the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Government Securities Division of the Corporation;**
- (b) the rights and obligations of Members, Limited Members and Settling Banks under the Rules and Procedures of the Government Securities Division of the Transferee shall be comparable in substance and effect to the rights and obligations of Members, Limited Members and Settling Banks under the Rules and Procedures of the Government Securities Division of the Corporation; and**
- (c) the Critical Services and any Non-Critical Services provided by the Transferee shall be provided in a manner that is comparable in substance and effect to the manner in which such Critical Services and Non-Critical Services were provided by the Corporation.**

Section 10. Subordination of Claims

In the event of any insolvency of the Corporation following the commencement of any Event Period (as defined in Rule 4 of the Rules of the Government Securities Division of the Corporation), the unsecured claims (if any) of Members and Limited Members of the Government Securities Division of the Corporation that failed to pay or perform any obligation to the Corporation or elected to withdraw as Members or Limited Members from and after such time shall (i) rank pari passu with each other and (ii) be subordinate to the claims of other unsecured creditors of the Corporation.

Section 11. Further Assurances; Additional Powers; Miscellaneous Matters

- (a) Members, Limited Members and Settling Banks of the Government Securities Division of the Corporation shall assist and cooperate with the Corporation to effectuate any Transfer of the Business from the Corporation to a Transferee, including without limitation (i) by complying with the terms and conditions of this Rule 22D and their obligations hereunder and (ii) by providing the Corporation and the Transferee with such financial and operational information as they may request. The Corporation may provide to a Transferee any financial and operational information it has with respect**

to Members, Limited Members and Settling Banks of the Government Securities Division of the Corporation as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to the Transferee.

- (b) The Corporation may take such other actions and enter into such other arrangements (on behalf of itself and Members, Limited Members and Settling Banks of the Government Securities Division of the Corporation) as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to a Transferee, and otherwise accomplish the purposes of the Wind-down Plan.**
- (c) As a condition to receiving, and by virtue of accepting, the continuing benefits of being Members, Limited Members and Settling Banks of the Government Securities Division of the Corporation, such Members, Limited Members and Settling Banks (i) hereby expressly agree to the arrangements set forth in this Rule 22D relating to their becoming Members, Limited Members and Settling Banks, as the case may be, of the Government Securities Division of the Transferee in the circumstances described herein and (ii) hereby expressly grant to the Corporation an irrevocable power of attorney to execute and deliver on their behalf such documents and instruments as the Transferee may request for this purpose. As Members, Limited Members and Settling Banks of the Government Securities Division of the Corporation, such Members, Limited Members and Settling Banks are subject to the Rules and Procedures.**
- (d) No actions taken or omitted to be taken by the Corporation pursuant to this Rule 22D shall be deemed to constitute a default by the Corporation in the performance of any of its other obligations to Members, Limited Members and Settling Banks pursuant to any other Rules and Procedures.**
- (e) The Corporation shall have no liability to any Members, Limited Members or Settling Banks for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 22D.**
- (f) The Corporation shall have no liability to any third parties, including any customers or clients of any Members, Limited Members or Settling Banks, for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 22D.**
- (g) In connection with the Transfer of the Business from the Corporation to the Transferee, (i) the Corporation shall assign all of its Member Agreements, Limited Member Agreements and Settling Bank Agreements to the Transferee and (ii) the Transferee shall assume such Member Agreements, Limited Member Agreements and Settling Bank Agreements.**

- (h) All rights of the Corporation that are not assigned to the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee, including any claims of the Corporation against Members, Limited Members and Settling Banks arising at any time prior to the Transfer Time, shall remain rights of the Corporation, enforceable by the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**
- (i) All obligations and liabilities of the Corporation that are not assigned to and assumed by the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee shall remain obligations and liabilities of the Corporation, enforceable against the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**
- (j) In the event of any conflict between the provisions of this Rule 22D and any other Rules and Procedures, the provisions of this Rule 22D shall prevail.**

* * *

RULE 50 - MARKET DISRUPTION AND FORCE MAJEURE

Section 1. Market Disruption Events

On the happening of any one or more of the events or circumstances set out below (each a “Market Disruption Event”) which, in any case, is likely to materially affect or has materially affected the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, including performance by the Corporation of any obligations under the Rules and Procedures, the Corporation shall be entitled to take such action as is set out in this Rule 50:

- (a) a general suspension or limitation of trading on the New York Stock Exchange, NASDAQ, or any other exchange or market relevant to the pricing or trading of securities cleared and settled through the Corporation;**
- (b) the declaration of a trading or banking moratorium in the United States or New York State;**
- (c) any international organization, the government of any nation, state, or territory, or any institution or agency thereof, or any self-regulatory organization taking action of a nature likely to affect the normal course of business, including performance by the Corporation of obligations under the Rules and Procedures;**
- (d) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any payment, bank transfer or wire, or securities settlement system;**

- (e) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any cash or securities depository, custodian or clearing bank, or any material variation of such depository's, custodian's or clearing bank's processing or turnaround times, whether or not occasioned by action of such depository, custodian or clearing bank; or
- (f) any Force Majeure, which shall include (without limitation) any terrorist or other criminal action, war or hostilities between any nations, national emergency, riot, civil unrest, acts of God or the public enemy, fire or other casualty, flood, accident, disaster (including any nuclear, atomic, environmental, or natural disaster), sabotage, bomb threat, labor dispute, embargo, the unavailability, failure, malfunction, or restriction of communication, computer, or data processing systems or facilities, or of software or technology, cyber attack, lack of transportation facilities, interruption (whether partial or total) of power supplies or other utility or service, or any event, situation, or circumstance beyond the reasonable control of the parties (whether or not similar to any of the foregoing), including those imminent or threatened.

Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 50. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, or the General Counsel, or by any management committee on which all of the foregoing officers serves (an "Officer Market Disruption Event Action"), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.

Section 3. Authority to take Actions

Upon the determination that there is a Market Disruption Event, the Corporation shall be entitled, during the pendency of such Market Disruption Event, to:

- (a) suspend the provision of any or all services of the Corporation; and
- (b) take, or refrain from taking, or require Members (whether or not they are affected by the Market Disruption Event) to take or refrain from taking, any and all action which the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to Members.

Section 4. Notifications

4.1 Each Member shall notify the Corporation immediately upon becoming aware of any Market Disruption Event.

4.2 The Corporation shall promptly notify Members of any action the Corporation takes or intends to take pursuant to Section 3 of this Rule 50.

4.3 The Corporation shall attempt to consult with officials of the SEC prior to the Corporation taking any action pursuant to Section 3 of this Rule 50; provided, however, that the authority contained herein shall not be conditioned by such consultation.

The Corporation shall advise the SEC as soon as practicable by telephone, and confirmed in writing, of any action taken by the Corporation pursuant to Section 3 of this Rule 50, and a record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member during regular business hours on Business Days.

The Corporation shall also advise the SEC as soon as practicable by telephone, and confirmed in writing, at such time it determines that there is no longer a Market Disruption Event and the Corporation terminates the actions taken by the Corporation pursuant to Section 3 of this Rule 50. A record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member during regular business hours on Business Days.

Section 5. Certain Miscellaneous Matters

(a) Without limiting any other provisions in the Rules and Procedures concerning limitations on liability, none of the Corporation, its directors, officers, employees, agents, or contractors shall be liable to a Member or any other person (including any customer or client thereof) for:

(i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Market Disruption Event; or

(ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 50.

(b) The power of the Corporation to take any action pursuant to this Rule 50 also includes the power to repeal, rescind, revoke, amend, or vary any such action.

(c) The powers of the Corporation pursuant to this Rule 50 shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules and Procedures to take action as specified therein.

(d) In the event of any conflict between the provisions of this Rule 50 and any other Rules or Procedures, the provisions of this Rule 50 shall prevail.

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MORTGAGE-BACKED SECURITIES DIVISION

CLEARING RULES

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RULE 3A - CASH SETTLEMENT BANK MEMBERS

* * *

(1) In addition to the applicable provisions of these Rules where Cash Settling Bank Members are mentioned, the following Rules and any relevant schedules cited therein shall apply to Cash Settling Bank Members in the same manner as they apply to Members: **Rule 17B, “Wind-down of the Corporation,”** Rule 22, “Release of Clearing Data,” Rule 24, “Signatures,” Rule 27, “Rule Changes,” Rule 28, “Hearing Procedures,” Rule 29, “Governing Law and Captions,” Rule 30, “Limitations of Liability,” Rule 33, “Suspension of Rules in Emergency Circumstances,” Rule 34, “Action by the Corporation,” Rule 35, “Notices,” Rule 36, “Interpretation of Terms,” Rule 37, “Interpretation of Rules,” ~~and~~ Rule 38 “Disciplinary Proceedings,” **and Rule 40 “Market Disruption and Force Majeure.”**

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RULE 17B - WIND-DOWN OF THE CORPORATION

Section 1. Defined Terms

(a) For purposes of this Rule 17B:

“Bridge Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Business” means the Critical Services and any Non-Critical Services of the Corporation included in a Transfer.

“Comparability Period” means a period of time following the Transfer, to be agreed between the Corporation and a Transferee, during which the Business transferred from the Corporation to the Transferee shall be

operated by the Transferee in a manner comparable to the manner in which the Business was previously operated by the Corporation, as more specifically set forth in Section 9 of this Rule 17B.

“Corporation Default Rule” means Rule 17A of the Clearing Rules of the Mortgage-Backed Securities Division of the Corporation.

“Critical Services” means the services of the Corporation described in the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation and the rules, procedures and other regulations of the Government Securities Division of the Corporation that have been identified as critical services in the Recovery and Wind-down Plan.

“Delinquent Member” means a Member that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).

“DTCC” means The Depository Trust & Clearing Corporation.

“Eligible Member” means a Member other than a Non-Eligible Member.

“Failover Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Guaranteed Transaction” means a transaction that is processed through the facilities of the Mortgage-Backed Securities Division of the Corporation that has been subject to Novation.

“Last Settlement Date” has the meaning given to such term in Section 2(c)(3) of this Rule 17B.

“Last Transaction Acceptance Date” has the meaning given to such term in Section 2(c)(2) of this Rule 17B.

“Limited Member” means a user of the EPN Service of the Mortgage-Backed Securities Division of the Corporation that does not use any other services of the Mortgage-Backed Securities Division of the Corporation or a user of the EPN Service of the Mortgage-Backed Securities Division of the Transferee that does not use any other services of the Mortgage-Backed Securities Division of the Transferee, as the context requires.

“Limited Member Agreement” means the form of agreement between a Limited Member and the Corporation or between a Limited Member and the Transferee, as the context requires, providing, *inter alia*, for the Limited Member to be bound by the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation or the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, as applicable to such Limited Member.

“Member” means a Member of the Mortgage-Backed Securities Division of the Corporation (other than a Limited Member or Cash Settling Bank Member) or a Member of the Mortgage-Backed Securities Division of the Transferee (other than a Limited Member or Cash Settling Bank Member), as the context requires.

“Member Agreement” means the form of agreement between a Member and the Corporation or between a Member and the Transferee, as the context requires, providing, *inter alia*, for the Member to be bound by the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation or the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, as applicable to such Member.

“Non-Critical Services” means the services of the Corporation described in the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation and the rules, procedures and other regulations of the Government Securities Division of the Corporation other than the Critical Services.

“Non-Eligible Member” means a Member that is a Delinquent Member or Withdrawing Member.

“Recovery and Wind-down Plan” means the plan for the recovery and orderly wind-down of the Corporation necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses, adopted by the Corporation pursuant to Rule 17Ad-22(e)(3)(ii) under the Exchange Act.

“Recovery Plan” means the portion of the Recovery and Wind-down Plan addressing recovery.

“Risk Reducing Transaction” means a Guaranteed Transaction that offsets one or more other Guaranteed Transactions, and thereby reduces the potential exposure of the Corporation with respect to such Guaranteed Transactions.

“Rules and Procedures” means the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation or the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, as the context requires.

“Settling Bank” means a Cash Settling Bank or Cash Settling Bank Member for Members of the Mortgage-Backed Securities Division of the Corporation or a Cash Settling Bank or Cash Settling Bank Member for Members of the Mortgage-Backed Securities Division of the Transferee, as the context requires.

“Settling Bank Agreement” means the form of agreement between a Settling Bank and the Corporation or between a Settling Bank and the Transferee, as

the context requires, providing, *inter alia*, for the Settling Bank to be bound by the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation or the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, as applicable to such Settling Bank.

“Third Party Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Transfer” means a transfer of the Business of the Corporation pursuant to the Wind-down Plan.

“Transferee” means an entity to which the Business of the Corporation is transferred pursuant to the Wind-down Plan, and may include (i) a failover entity established by DTCC (a “Failover Entity”), (ii) a then-existing or newly-established third party entity (a “Third Party Entity”) or (iii) a bridge entity formed to operate the Business on an interim basis (a “Bridge Entity”). The Transferee shall be an entity that is legally, financially and operationally qualified to continue to operate the Business that is to be transferred from the Corporation to the Transferee.

“Transferee Documents” means the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Mortgage-Backed Securities Division of the Transferee.

“Transfer Notice” has the meaning given to such term in Section 3 of this Rule 17B.

“Transfer Time” has the meaning given to such term in Section 2(c)(1) of this Rule 17B.

“Wind-down Plan” means the portion of the Recovery and Wind-down Plan addressing wind-down.

“Withdrawing Member” means a Member of the Mortgage-Backed Securities Division of the Corporation that has given notice to the Corporation of its election to withdraw as a Member but that, at the Transfer Time, has not yet ceased to be a Member (as determined by the Corporation).

- (b) Capitalized terms that are used in this Rule 17B but not defined in Section 1(a) above shall have the meanings given to such terms in other Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation.

Section 2. Initiation of Wind-down Plan

- (a) The Board of Directors may authorize the initiation of the Wind-down Plan and a transfer of the Business from the Corporation to a Transferee if the

Board of Directors determines, in the exercise of its business judgment and subject to its fiduciary duties:

- (1) that the application of some or all of the recovery tools set forth in the Recovery Plan, necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses:**
 - (A) has not restored the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Mortgage-Backed Securities Division of the Corporation and Government Securities Division Members in a safe and efficient manner; or**
 - (B) will not likely restore the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Mortgage-Backed Securities Division of the Corporation and Government Securities Division Members in a safe and efficient manner; and**
- (2) that the implementation of the Wind-down Plan and a Transfer of the Business from the Corporation to a Transferee is in the best interests of the Corporation, its shareholders and creditors, Members and Limited Members of the Mortgage-Backed Securities Division of the Corporation, Government Securities Division Members and the US financial markets.**

(b) The Board of Directors shall identify:

- (1) the Critical Services and any Non-Critical Services that shall be transferred from the Corporation to the Transferee at the Transfer Time; and**
- (2) any Non-Critical Services that shall not be transferred from the Corporation to the Transferee.**

The Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee at the Transfer Time shall be provided by the Transferee following the Transfer Time. Any Non-Critical Services that are not transferred from the Corporation to the Transferee shall be terminated at the Transfer Time.

(c) The Board of Directors shall establish:

- (1) the date and time (the “Transfer Time”) of the Transfer;**

- (2) the last day that transactions may be submitted to the Mortgage-Backed Securities Division of the Corporation for processing (the “Last Transaction Acceptance Date”); and
- (3) the last day that transactions submitted to the Mortgage-Backed Securities Division of the Corporation for processing will be settled (the “Last Settlement Date”).

The Mortgage-Backed Securities Division of the Corporation shall not accept any transactions (i) for processing after the Last Transaction Acceptance Date or (ii) which have a Contractual Settlement Date that occurs after the Last Settlement Date. All transactions to be processed and/or settled after the Transfer Time shall be submitted to the Mortgage-Backed Securities Division of the Transferee in accordance with the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, and the Corporation shall have no responsibility for such transactions.

- (d) To the extent that the Board of Directors deems it to be practicable based on the available resources of the Corporation, the Board of Directors may provide for pending transactions to be run off and settled prior to the Transfer Time, with the objective of facilitating the settlement of transactions in the ordinary course. In furtherance of this objective, so long as a Corporation Default has not occurred, the Board of Directors may provide for how such transactions accepted by the Mortgage-Backed Securities Division of the Corporation on or prior to the Last Transaction Acceptance Date shall be processed and settled, including:
 - (1) whether such transactions must be Risk Reducing Transactions; and
 - (2) whether such transactions will be processed (i) in the ordinary course or (ii) in accordance with any special or exception processing procedures that will apply through the close of business on the Last Settlement Date.

Section 3. Notice of Transfer of the Business

If the Board of Directors determines to implement a Transfer of the Business from the Corporation to a Transferee in accordance with this Rule 17B and the terms and conditions of the Wind-down Plan, the Corporation shall, in such manner as may be provided by the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation and subject to any required regulatory or judicial approval or consent:

- (a) provide Members, Limited Members and Settling Banks with a notice (a “Transfer Notice”) setting forth:
 - (1) the decision taken by the Board of Directors to Transfer the Business from the Corporation to the Transferee and a brief statement of the reasons therefor;

- (2) the name of the Transferee and basic information about the Transferee;
 - (3) a description of the material financial and operational terms of the Transfer;
 - (4) the (i) Transfer Time, (ii) Last Transaction Acceptance Date and (iii) Last Settlement Date;
 - (5) a summary of the matters described in Sections 4 through 8 of this Rule 17B;
 - (6) a list setting forth (i) which Members are Eligible Members and (ii) which Members are Non-Eligible Members; and
 - (7) a list setting forth (i) the Critical Services and any Non-Critical Services that will be transferred from the Corporation to the Transferee at the Transfer Time and (ii) any Non-Critical Services that will not be transferred from the Corporation to the Transferee; and
- (b) make available to Members, Limited Members and Settling Banks a copy of the Transferee Documents.

No delay or failure on the part of the Corporation to provide a Transfer Notice or make available a copy of the Transferee Documents to any Member, Limited Member or Settling Bank shall alter the timing or effectiveness of the Transfer. The Corporation shall also furnish the Transfer Notice and a copy of the Transferee Documents to its regulators.

Section 4. Transfer of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, at the Transfer Time, by operation of this Rule 17B and with no further action required by any party:

- (a) each Eligible Member of the Mortgage-Backed Securities Division of the Corporation shall become (i) a Member of the Mortgage-Backed Securities Division of the Transferee and (ii) a party to a Member Agreement with the Transferee;
- (b) each Limited Member of the Mortgage-Backed Securities Division of the Corporation shall become (i) a Limited Member of the Mortgage-Backed Securities Division of the Transferee and (ii) a party to a Limited Member Agreement with the Transferee; and

- (c) each Settling Bank for Members of the Mortgage-Backed Securities Division of the Corporation shall become (i) a Settling Bank for Members of the Mortgage-Backed Securities Division of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.**

Section 5. Status of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, from and after the Transfer Time:

- (a) An Eligible Member of the Mortgage-Backed Securities Division of the Corporation that has become a Member of the Mortgage-Backed Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Member set forth in the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, including the legal, financial, operational and collateral requirements of the Mortgage-Backed Securities Division of the Transferee applicable to such Member.**
- (b) A Limited Member of the Mortgage-Backed Securities Division of the Corporation that has become a Limited Member of the Mortgage-Backed Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Limited Member set forth in the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, including the operational requirements of the Mortgage-Backed Securities Division of the Transferee applicable to such Limited Member.**
- (c) A Settling Bank for Members of the Mortgage-Backed Securities Division of the Corporation that has become a Settling Bank for Members of the Mortgage-Backed Securities Division of the Transferee shall have all of the rights and be subject to all of the obligations of a Settling Bank set forth in the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee, including the operational requirements of the Mortgage-Backed Securities Division of the Transferee applicable to such Settling Bank.**

Section 6. Right of Non-Eligible Members to Apply to the Transferee

Nothing contained in this Rule 17B shall preclude a Non-Eligible Member of the Mortgage-Backed Securities Division of the Corporation from applying after the Transfer Time to become a Member of the Mortgage-Backed Securities Division of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Member shall not have the benefit of the automatic admission arrangements provided in Section 4(a) of this Rule 17B.

Section 7. Right to Withdraw from the Transferee

Nothing contained in this Rule 17B shall:

- (a) preclude an Eligible Member of the Mortgage-Backed Securities Division of the Corporation that has become a Member of the Mortgage-Backed Securities Division of the Transferee pursuant to Section 4(a) of this Rule 17B from electing to withdraw as a Member from the Mortgage-Backed Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee;**
- (b) preclude a Limited Member of the Mortgage-Backed Securities Division of the Corporation that has become a Limited Member of the Mortgage-Backed Securities Division of the Transferee pursuant to Section 4(b) of this Rule 17B from electing to withdraw as a Limited Member from the Mortgage-Backed Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee; or**
- (c) preclude a Settling Bank for Members of the Mortgage-Backed Securities Division of the Corporation that has become a Settling Bank for Members of the Mortgage-Backed Securities Division of the Transferee pursuant to Section 4(c) of this Rule 17B from electing to withdraw as a Settling Bank from the Mortgage-Backed Securities Division of the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee.**

Section 8. Disposition of Pending Transactions

At the Transfer Time, any pending transactions shall be treated as provided in the Corporation Default Rule.

Section 9. Certain Ex Ante Matters

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, with respect to the Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee, for at least the duration of the Comparability Period, in order to facilitate a smooth Transfer of the Business from the Corporation to the Transferee:

- (a) the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Mortgage-Backed Securities Division of the Transferee shall be comparable in substance and effect to the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling**

Bank Agreement of the Mortgage-Backed Securities Division of the Corporation;

- (b) the rights and obligations of Members, Limited Members and Settling Banks under the Rules and Procedures of the Mortgage-Backed Securities Division of the Transferee shall be comparable in substance and effect to the rights and obligations of Members, Limited Members and Settling Banks under the Rules and Procedures of the Mortgage-Backed Securities Division of the Corporation; and**
- (c) the Critical Services and any Non-Critical Services provided by the Transferee shall be provided in a manner that is comparable in substance and effect to the manner in which such Critical Services and Non-Critical Services were provided by the Corporation.**

Section 10. Subordination of Claims

In the event of any insolvency of the Corporation following the commencement of any Event Period (as defined in Rule 4 of the Clearing Rules of the Mortgage-Backed Securities Division of the Corporation), the unsecured claims (if any) of Members of the Mortgage-Backed Securities Division of the Corporation that failed to pay or perform any obligation to the Corporation or elected to withdraw as Members from and after such time shall (i) rank *pari passu* with each other and (ii) be subordinate to the claims of other unsecured creditors of the Corporation.

Section 11. Further Assurances; Additional Powers; Miscellaneous Matters

- (a) Members, Limited Members and Settling Banks of the Mortgage-Backed Securities Division of the Corporation shall assist and cooperate with the Corporation to effectuate any Transfer of the Business from the Corporation to a Transferee, including without limitation (i) by complying with the terms and conditions of this Rule 17B and their obligations hereunder and (ii) by providing the Corporation and the Transferee with such financial and operational information as they may request. The Corporation may provide to a Transferee any financial and operational information it has with respect to Members, Limited Members and Settling Banks of the Mortgage-Backed Securities Division of the Corporation as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to the Transferee.**
- (b) The Corporation may take such other actions and enter into such other arrangements (on behalf of itself and Members, Limited Members and Settling Banks of the Mortgage-Backed Securities Division of the Corporation) as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to a Transferee, and otherwise accomplish the purposes of the Wind-down Plan.**

- (c) As a condition to receiving, and by virtue of accepting, the continuing benefits of being Members, Limited Members and Settling Banks of the Mortgage-Backed Securities Division of the Corporation, such Members, Limited Members and Settling Banks (i) hereby expressly agree to the arrangements set forth in this Rule 17B relating to their becoming Members, Limited Members and Settling Banks, as the case may be, of the Mortgage-Backed Securities Division of the Transferee in the circumstances described herein and (ii) hereby expressly grant to the Corporation an irrevocable power of attorney to execute and deliver on their behalf such documents and instruments as the Transferee may request for this purpose. As Members, Limited Members and Settling Banks of the Mortgage-Backed Securities Division of the Corporation, such Members, Limited Members and Settling Banks are subject to the Rules and Procedures.**
- (d) No actions taken or omitted to be taken by the Corporation pursuant to this Rule 17B shall be deemed to constitute a default by the Corporation in the performance of any of its other obligations to Members, Limited Members and Settling Banks pursuant to any other Rules and Procedures.**
- (e) The Corporation shall have no liability to any Members, Limited Members or Settling Banks for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 17B.**
- (f) The Corporation shall have no liability to any third parties, including any customers or clients of any Members, Limited Members or Settling Banks, for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 17B.**
- (g) In connection with the Transfer of the Business from the Corporation to the Transferee, (i) the Corporation shall assign all of its Member Agreements, Limited Member Agreements and Settling Bank Agreements to the Transferee and (ii) the Transferee shall assume such Member Agreements, Limited Member Agreements and Settling Bank Agreements.**
- (h) All rights of the Corporation that are not assigned to the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee, including any claims of the Corporation against Members, Limited Members and Settling Banks arising at any time prior to the Transfer Time, shall remain rights of the Corporation, enforceable by the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**
- (i) All obligations and liabilities of the Corporation that are not assigned to and assumed by the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee shall remain obligations and liabilities of the Corporation, enforceable against the Corporation in**

accordance with their terms and subject to applicable law (including insolvency law).

- (j) In the event of any conflict between the provisions of this Rule 17B and any other Rules and Procedures, the provisions of this Rule 17B shall prevail.

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RULE 40 - MARKET DISRUPTION AND FORCE MAJEURE

Section 1. Market Disruption Events

On the happening of any one or more of the events or circumstances set out below (each a “Market Disruption Event”) which, in any case, is likely to materially affect or has materially affected the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, including performance by the Corporation of any obligations under the Rules and the procedures and other regulations (“Procedures”) of the Corporation, the Corporation shall be entitled to take such action as is set out in this Rule 40:

- (a) a general suspension or limitation of trading on the New York Stock Exchange, NASDAQ, or any other exchange or market relevant to the pricing or trading of securities cleared and settled through the Corporation;
- (b) the declaration of a trading or banking moratorium in the United States or New York State;
- (c) any international organization, the government of any nation, state, or territory, or any institution or agency thereof, or any self-regulatory organization taking action of a nature likely to affect the normal course of business, including performance by the Corporation of obligations under the Rules and Procedures;
- (d) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any payment, bank transfer or wire, or securities settlement system;
- (e) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any cash or securities depository, custodian or clearing bank, or any material variation of such depository’s, custodian’s or clearing bank’s processing or turnaround times, whether or not occasioned by action of such depository, custodian or clearing bank; or
- (g) any Force Majeure, which shall include (without limitation) any terrorist or other criminal action, war or hostilities between any nations, national emergency, riot, civil unrest, acts of God or the public enemy, fire or other casualty, flood, accident, disaster (including any nuclear, atomic, environmental, or natural disaster), sabotage, bomb threat, labor dispute, embargo, the unavailability, failure, malfunction, or restriction of communication, computer, or data processing systems

or facilities, or of software or technology, cyber attack, lack of transportation facilities, interruption (whether partial or total) of power supplies or other utility or service, or any event, situation, or circumstance beyond the reasonable control of the parties (whether or not similar to any of the foregoing), including those imminent or threatened.

Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 40. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, or the General Counsel, or by any management committee on which all of the foregoing officers serves (an "Officer Market Disruption Event Action"), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.

Section 3. Authority to take Actions

Upon the determination that there is a Market Disruption Event, the Corporation shall be entitled, during the pendency of such Market Disruption Event, to:

- (a) suspend the provision of any or all services of the Corporation; and
- (c) take, or refrain from taking, or require Members (whether or not they are affected by the Market Disruption Event) to take or refrain from taking, any and all action which the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to Members.

Section 4. Notifications

4.1 Each Member shall notify the Corporation immediately upon becoming aware of any Market Disruption Event.

4.2 The Corporation shall promptly notify Members of any action the Corporation takes or intends to take pursuant to Section 3 of this Rule 40.

4.3 The Corporation shall attempt to consult with officials of the SEC prior to the Corporation taking any action pursuant to Section 3 of this Rule 40; provided, however, that the authority contained herein shall not be conditioned by such consultation.

The Corporation shall advise the SEC as soon as practicable by telephone, and confirmed in writing, of any action taken by the Corporation pursuant to Section 3 of this Rule 40, and a record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member during regular business hours on Business Days.

The Corporation shall also advise the SEC as soon as practicable by telephone, and confirmed in writing, at such time it determines that there is no longer a Market Disruption Event and the Corporation terminates the actions taken by the Corporation pursuant to Section 3 of this Rule 40. A record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member during regular business hours on Business Days.

Section 5. Certain Miscellaneous Matters

- (a) Without limiting any other provisions in the Rules and Procedures concerning limitations on liability, none of the Corporation, its directors, officers, employees, agents, or contractors shall be liable to a Member or any other person (including any customer or client thereof) for:**
- (i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Market Disruption Event; or**
 - (ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 40.**
- (b) The power of the Corporation to take any action pursuant to this Rule 40 also includes the power to repeal, rescind, revoke, amend, or vary any such action.**
- (c) The powers of the Corporation pursuant to this Rule 40 shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules and Procedures to take action as specified therein.**
- (d) In the event of any conflict between the provisions of this Rule 40 and any other Rules or Procedures, the provisions of this Rule 40 shall prevail.**

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MORTGAGE-BACKED SECURITIES DIVISION

EPN RULES

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**ARTICLE III
EPN USERS**

Rule 1. Requirements Applicable to EPN Users

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Sec. 5. EPN Users Bound by EPN Rules, EPN Procedures and Applicable Laws

Subject to the provisions of Rule 12 of Article V, the use of the facilities of the Corporation by an EPN User shall constitute such EPN User's agreement with the Corporation and with all other EPN Users to be bound by the provisions of, and by any action taken or order issued by the Corporation pursuant to, **(i) these EPN Rules and any amendment thereto, and to (ii) such EPN Procedures as the Corporation from time to time may adopt, (iii) Rule 17B of the Clearing Rules of the Mortgage-Backed Securities Division (Wind-down of the Corporation), to the extent specified therein, and (iv) Rule 40 of the Clearing Rules of the Mortgage-Backed Securities Division (Market Disruption and Force Majeure), as if references to "Members", "Rules" and "Procedures" therein were references to "EPN Users", "EPN Rules" and "EPN Procedures", respectively (items (iii) and (iv), as the same may be amended from time to time, collectively being referred to in these EPN Rules as the "Incorporated Clearing Rules")**. In addition, in connection with their use of the Corporation's services, an EPN User must comply with all applicable laws, including applicable laws relating to securities, taxation, and money laundering.

Sec. 6. EPN Rules and EPN Procedures Incorporated in EPN User Messages

These EPN Rules, ~~and~~ the EPN Procedures adopted from time to time by the Corporation, **and the Incorporated Clearing Rules** shall be deemed incorporated in each Message that occurs through the EPN Service. To the extent that the terms contained in any other agreement between EPN Users are inconsistent with the provisions of these EPN Rules or the EPN Procedures, these EPN Rules and the EPN Procedures shall be controlling. **In the event of any inconsistency between the Incorporated Clearing Rules and any EPN Rules or EPN Procedures, the Incorporated Clearing Rules shall be controlling.**

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