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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"/>			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)		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>			

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member, Sponsored Member Service

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 * Kristen Last Name * Lam
 Title * Director and Assistant General Counsel
 E-mail * klam1@dtcc.com
 Telephone * (212) 855-5258 Fax

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 12/27/2019 Managing Director and Deputy General Counsel
 By Nikki Poulos npoulos@dtcc.com
 (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.

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 the Proposed Rule Change

(a) The proposed rule change of Fixed Income Clearing Corporation (“FICC”) is attached hereto as Exhibit 5. The proposed rule change would amend the FICC Government Securities Division (“GSD”) Rulebook (“Rules”)¹ in order to facilitate the submission of repurchase transactions (“repos”) with a scheduled final settlement date beyond the next Business Day after the initial settlement date (“term repo activity”) through the Sponsoring Member/Sponsored Member Service (“Service”)² by: (i) providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member’s positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC and (ii) revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts³ in order to ensure that the calculation does not result in a return of the haircuts until final settlement. In addition, the proposed rule change would make a correction and certain clarifications and conforming changes, as described in greater detail below.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Risk Committee of FICC’s Board of Directors on June 11, 2019.

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

(a) Purpose

The purpose of the proposed rule change is to amend the Rules in order to facilitate the submission of term repo activity through the Service by: (i) providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member’s positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC and (ii) revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that the calculation does not result in a return of the haircuts until final settlement. In addition, the proposed rule change

¹ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

² This Service is primarily governed by Rule 3A. Supra note 1.

³ The term haircut shall refer to the amount of collateral in excess of the value of the cash due to the Sponsored Member client at the Close Leg.

would make a correction and certain clarifications and conforming changes, as described in greater detail below.

(i) Background

Under Rule 3A (Sponsoring Members and Sponsored Members), certain Netting Members are permitted to sponsor, as “Sponsoring Members,” qualified institutional buyers as defined by Rule 144A⁴ under the Securities Act of 1933, as amended (“Securities Act”),⁵ and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A under the Securities Act, satisfy the financial requirements necessary to be qualified institutional buyers as specified in that paragraph (*i.e.*, Sponsored Members) into GSD membership.

Under Rule 3A, a Sponsoring Member is permitted to submit to FICC, for comparison, novation, and netting, certain types of eligible securities transactions between itself and its Sponsored Members (“Sponsored Member Trades”).⁶ The Sponsoring Member is required to establish an omnibus account at FICC for its Sponsored Members’ positions arising from such Sponsored Member Trades (“Sponsoring Member Omnibus Account”),⁷ which is separate from the Sponsoring Member’s regular netting accounts. For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members’ obligations to or from FICC, including their securities and funds-only settlement obligations.⁸ Additionally, for operational convenience, pursuant to Section 8(b) of Rule 3A,⁹ FICC calculates a single Net Settlement Obligation and Fail Net Settlement Obligation in each CUSIP for the Sponsoring Member Omnibus Account and associated Deliver Obligations and Receive Obligations.¹⁰ Such calculations do not affect the Sponsored Member’s obligations, which are calculated in accordance with Section 7 of Rule

⁴ 17 CFR 230.144A.

⁵ 15 U.S.C. 77a *et seq.*

⁶ Rule 1, definition of “Sponsored Member Trade”; Rule 3A, Sections 6(b) and 7(a), *supra* note 1. In March 2019, the Securities and Exchange Commission (the “Commission”) approved FICC rule filing SR-FICC-2018-013, Securities Exchange Act Release No. 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019), which expanded the definition of “Sponsored Member Trade” to include certain types of eligible securities transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member. This proposed rule change would apply only to Sponsored Member Trades between the Sponsoring Member and its Sponsored Member.

⁷ Rule 1, definition of “Sponsoring Member Omnibus Account,” *supra* note 1.

⁸ Rule 3A, Sections 5, 6, 7, 8, and 9, *supra* note 1.

⁹ Rule 3A, Section 8(b), *supra* note 1.

¹⁰ *See* Rule 3A, Section 7(a), *supra* note 1.

3A¹¹ in a manner that is generally consistent with how FICC calculates the obligations of other Members.

Sponsoring Members are also responsible for providing FICC with a Sponsoring Member Guaranty¹² whereby the Sponsoring Member guarantees to FICC the payment and performance by its Sponsored Members of their obligations under the Rules.¹³ Although Sponsored Members are principally liable to FICC for their own settlement obligations under the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails to perform its settlement obligations.

Although Rule 3A currently permits Sponsoring Members to submit term repo activity within the Service,¹⁴ most of the Sponsored Member Trades submitted to FICC by Sponsoring Members have a scheduled settlement date of the next Business Day after the initial settlement date, *i.e.*, overnight repo. FICC believes that certain provisions of the Rules discourage the submission of term repo activity within the Service, as discussed more fully below.

(ii) **Proposed change to facilitate the submission of term repo activity through the Service by providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC**

(A) Existing Close-out Framework

The current Rules allow only FICC to cause the termination and liquidation of a Sponsored Member's positions, even though the relevant Sponsoring Member is responsible for the Sponsored Member's payment and performance in respect of such positions. Rule 22A governs any such termination and liquidation by FICC.¹⁵ That rule provides that, if FICC ceases to act for a Member, including a Sponsored Member, FICC will close-out the Sponsored

¹¹ Rule 3A, Section 7, supra note 1.

¹² Section 2(c) of Rule 3A provides: "Each Netting Member to become a Sponsoring Member shall also sign and deliver to [FICC] a Sponsoring Member Guaranty" A "Sponsoring Member Guaranty" is defined in Rule 1 as "a guaranty ... that a Sponsoring Member delivers to [FICC] whereby the Sponsoring Member guarantees to [FICC] the payment and performance by its Sponsored Members of their obligations under [the] Rules, including, without limitation, all of the securities and funds-only settlement obligations of its Sponsored Members under [the] Rules." Supra note 1.

¹³ Rule 3A, Section 2(c), supra note 1.

¹⁴ Rule 3A, Section 5, supra note 1.

¹⁵ Rule 3A, Sections 13(c) and 15(b), supra note 1.

Member's positions the same way it would close-out the positions of any other Member for which FICC has ceased to act: by (i) establishing a Final Net Settlement Position for each Eligible Netting Security with a distinct CUSIP equal to the net of all outstanding deliver and receive obligations of the Member in respect of the security and (ii) taking market action to liquidate such Final Net Settlement Position.¹⁶

A Sponsoring Member is required to advise FICC if circumstances have arisen that require FICC to cease to act for a Sponsored Member.¹⁷ However, a Sponsoring Member is not unilaterally able to cause the termination or liquidation of any Sponsored Member Trades. This limitation is inconsistent with other intermediated relationships. In the context of those relationships, the clearing member or similar intermediary is typically permitted to terminate and liquidate the positions of its client that the intermediary guarantees if an event of default or other similar circumstance occurs under the customer or similar bilateral agreement between the intermediary and the client.¹⁸ The intermediary's ability to cause such termination and liquidation is not dependent on a third party's determination that a certain circumstance or event has occurred. Rather, the intermediary and the client are able to agree bilaterally to the circumstances and events that give rise to an event of default allowing the intermediary to terminate or liquidate the guaranteed positions.

The inability of a Sponsoring Member to trigger the termination and liquidation of a Sponsored Member's positions, particularly term repo activity, may result in additional capital requirements for Sponsoring Members and their parent organizations under regulatory standards that implement the recommendations of the Basel Committee on Banking Supervision (the "BCBS"). This is because, if a Sponsoring Member cannot trigger the termination and liquidation of a Sponsored Member's positions, it is less able to stop the effective extension of credit to the client under the Sponsoring Member Guaranty.¹⁹ In addition, the inability to

¹⁶ Rule 22A, Section 2(b), supra note 1.

¹⁷ Rule 3A, Section 15(a), supra note 1.

¹⁸ For example, in the context of futures and cleared swaps, a futures commission merchant ("FCM") is generally permitted to terminate and liquidate positions that the FCM carries for a customer at a derivatives clearing organization ("DCO") following the customer's default by either entering into offsetting positions in the FCM's customer account at the DCO or terminating the position in the customer account and establishing an identical position in the FCM's house account at the DCO. See, e.g., ICE Clear Credit Rule 304(c), available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.

¹⁹ More specifically, FICC's understanding is that in order for a Sponsoring Member subject to capital requirements that implement the BCBS standards to apply the favorable capital treatment to its obligations under the Sponsoring Member Guaranty that it currently applies to bilateral repos, the Sponsoring Member must conclude with a well-founded basis that, among other things, it will be able to terminate the Sponsored Member Trades subject to the Sponsoring Member Guaranty. See, e.g., 12 CFR §§ 3.2, 3.3(e), 217.2, 217.3(e), 324.2, and 324.3(e). While a lesser standard applies if the guaranteed Sponsored Member Trades are limited to overnight repos, FICC believes that applying the same

terminate a Sponsored Member's positions limits the extent to which a Sponsoring Member can use certain risk management tools, such as cross-defaults or other early warning triggers, that allow a Sponsoring Member to close-out the Sponsored Member's positions and stem losses before the Sponsored Member becomes subject to insolvency proceedings or is unable to pay its debts as they become due.²⁰

In addition to giving FICC the exclusive ability to cause the termination and liquidation of a Sponsored Member's positions, Rule 22A provides for FICC to control such termination and liquidation of a Sponsored Member's Final Net Settlement Positions.²¹ When FICC ceases to act for a Member, it generally looks to buy, borrow, reverse in, sell, lend, or repo out securities, so as to facilitate its ability to settle the Final Net Settlement Positions.²²

FICC's control of such termination and liquidation of Sponsored Member Trades could expose the Sponsoring Member to certain risks that other intermediaries do not typically face. This is because, in the event FICC ceases to act for a Sponsored Member under Rule 22A,²³ the Sponsoring Member will generally enter into one or more transactions with third parties in order to hedge its performance obligations under the Sponsoring Member Guaranty. In most other intermediated relationships, the price at which the intermediary hedges or closes out the exposure under the customer's defaulted positions typically informs the pricing of those positions and thus the amount of the intermediary's claim against the customer. However, if FICC, rather than the Sponsoring Member, calculates the price of the Sponsored Member's positions, there may be differences arising from the timing of execution or the type of liquidation or hedging transactions used by FICC and/or the use of different pricing sources by FICC, all of which could limit the ability of the Sponsoring Member to recover the losses it incurs in entering into its hedging transactions.

termination and liquidation mechanism to overnight and term repo activity would help to clarify the capital treatment for both types of activity and promote consistency across Sponsored Member Trades. Sponsoring Members interested in such relief should discuss this matter with their regulatory capital experts.

²⁰ A "cross-default" is a provision that allows one party to exercise default rights if its customer or counterparty defaults under another agreement. Other early warning triggers include credit rating downgrades, breaches of representations, and covenants limiting a party's ability to incur debt or suffer liens on its property. If a Sponsoring Member is unable to initiate the termination of a Sponsored Member's Sponsored Member Trades, it cannot use these "early warning triggers," but must instead wait for the occurrence of a circumstance that gives FICC the ability to cease to act for the Sponsored Member. By that point, however, the Sponsoring Member may have significant uncovered exposure to the Sponsored Member.

²¹ Rule 22A, Section 2(b), supra note 1.

²² Id.

²³ Rule 22A, supra note 1.

(B) Proposed Rule Change

FICC is proposing to amend Rule 3A to add a new Section 18. This new section would allow a Sponsoring Member to cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member for which the Sponsoring Member is responsible. The section would not, however, limit the ability of FICC to cease to act for a Sponsored Member.

In the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) FICC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Trades between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either to or by the Sponsored Member by or to the Sponsoring Member. FICC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave FICC flat. Additionally, the Sponsoring Member would indemnify FICC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

(C) Benefits of the Proposal

By allowing Sponsoring Members to terminate and liquidate a Sponsored Member's positions that arise from Sponsored Member Trades between the Sponsored Member and the Sponsoring Member that have been novated to FICC, FICC believes that the new Section 18 would align the Service to other intermediated relationships and allow Sponsoring Members to more effectively manage the risks of Sponsored Member Trades, particularly term repo activity. Sponsoring Members and their Sponsored Members would be able to agree with one another in their bilateral documentation on the circumstances in which the Sponsoring Member would be permitted to cause the termination of the Sponsored Member's positions. Such agreement would not affect FICC's ability to cease to act for a Sponsored Member in accordance with existing Rules 3A, 21 and 22.²⁴

FICC believes that providing Sponsoring Members with greater ability to manage their risks associated with Sponsored Member Trades would allow Sponsoring Members to submit to FICC more Sponsored Member Trades, including, in particular, term repo activity. FICC believes that having more centrally cleared term repo transactions would promote the prompt and accurate clearance and settlement of securities transactions because more securities transactions would benefit from FICC's risk management and guaranty of settlement.

Further, FICC believes that allowing the Sponsoring Member to take market action would decrease the price risks currently faced by Sponsoring Members (as described in the last

²⁴ Rules 3A, 21 and 22, supra note 1.

paragraph of Item 3(a)(ii)(A) above) without increasing the litigation risk to FICC arising from a Sponsored Member default because the Sponsoring Member would indemnify FICC for any losses or expense arising from a Sponsored Member's claim related to the Sponsoring Member's calculation of any liquidation amount.

(D) Proposed Changes to the Rules

Addition of new Section 18 to Rule 3A (Sponsoring Members and Sponsored Members)

FICC is proposing to add a new Section 18 to Rule 3A, which would (i) permit a Sponsoring Member to cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member and (ii) govern how the termination and liquidation would be effectuated. Section 18 would contain the following subsections.

Subsection (a)

Subsection (a) would clarify the scope of positions to which proposed Section 18 applies. It would state that Section 18 applies only to positions arising from Sponsored Member Trades within the meaning of subsection (a) of the Sponsored Member Trade definition.²⁵ Subsection (a) of the Sponsored Member Trade definition²⁶ encompasses eligible transactions between a Sponsored Member and its Sponsoring Member. Sponsored Member Trades that are between a Sponsored Member and a third-party Member would not be within the scope of Section 18 because, in that instance, there would not be a corresponding Sponsoring Member position to terminate.

Subsection (a) would further state that Section 18 would not apply if either (i) FICC has ceased to act for the relevant Sponsoring Member or (ii) a Corporation Default has occurred. FICC has discretion in the event that it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the defaulting Sponsoring Member was responsible or to allow them to settle.²⁷ If FICC does close-out such positions, it will do so in accordance with Rule 22A.²⁸ If a Corporation Default has occurred in respect of FICC, each Sponsored Member's positions, and all other Members' positions, will be closed out in accordance with the provisions of Rule 22B.²⁹

²⁵ Rule 1, supra note 1.

²⁶ Id.

²⁷ Rule 3A, Section 16, supra note 1.

²⁸ Rule 22A, supra note 1.

²⁹ Rule 22B, supra note 1. In September 2018, the Commission approved FICC rule filing SR-FICC-2018-008, Securities Exchange Act Release No. 84255 (September 21, 2018),

Subsection (b)

Subsection (b) of proposed Section 18 would set out the process by which a Sponsoring Member or FICC may cause the termination of a Sponsored Member's positions. It would provide that the Sponsoring Member or FICC may cause such termination by delivering a notice to FICC or the Sponsoring Member, respectively. FICC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to FICC terminating the Sponsored Member's positions.³⁰

The notice submitted by a Sponsoring Member to FICC (or vice versa) would cause the termination of all of the positions of the Sponsored Member that arose from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member and that have been novated to FICC. The notice would also cause the termination of the corresponding positions of the Sponsoring Member (i.e., the positions of the Sponsoring Member that arose from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member). The effect of such terminations would be to leave FICC flat.

Subsection (b) would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final Net Settlement Position for each Eligible Netting Security with a distinct CUSIP number ("Final Net Settlement Position"). This provision would align with existing Rule 22A,³¹ which provides for FICC to calculate such Final Net Settlement Position when it ceases to act for a Member. As under existing Rule 22A,³² the Final Net Settlement Position would equal the net of all outstanding deliver obligations and receive obligations of the Sponsored Member or Sponsoring Member with respect to the relevant security.

83 FR 48890 (September 27, 2018), which amended the Rules to clarify that Rule 22B (Corporation Default) applies to Sponsored Members.

³⁰ It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. Under Section 2(i) of current Rule 3A, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination does not affect the settlement of the Sponsored Member's existing positions but does restrict the ability of the Sponsored Member to have its future trades accepted for novation to FICC through such Sponsoring Member. The proposed rule change would not affect the functioning of Section 2(i) or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member. Rule 3A, Section 2(i), supra note 1.

³¹ Rule 22A, supra note 1.

³² Id.

Subsection (c)

Subsection (c) of proposed Section 18 would specify how the Final Net Settlement Positions established pursuant to subsection (b) would be liquidated (*i.e.*, how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Subsection (c) would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to subsection (b) by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a "Sponsored Member Liquidation Amount") and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a "Sponsoring Member Liquidation Amount"). The Sponsored Member Liquidation Amount would be owed either by FICC to the Sponsored Member or by the Sponsored Member to FICC because it would relate to the Sponsored Member's Final Net Settlement Positions with FICC, while the Sponsoring Member Liquidation Amount would be owed either by FICC to the Sponsoring Member or by the Sponsoring Member to FICC because it would relate to the Sponsoring Member's Final Net Settlement Positions with FICC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if FICC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would owe the Sponsoring Member Liquidation Amount to FICC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to FICC, FICC would owe the Sponsoring Member the Sponsoring Member Liquidation Amount. In all instances, FICC would owe and be owed the same amount of money.

Subsection (c) would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Subsection (c) would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions. This approach would be broadly consistent with how FICC would calculate an amount owing by a Member in respect of its Final Net Settlement Positions under existing Rule 22A.³³

Subsection (c) would provide that, if a Sponsored Member Liquidation Amount is due to FICC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to FICC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of FICC to pay the

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Id.

corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to FICC would be discharged, as would FICC's obligation to the Sponsoring Member. The Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral documentation. FICC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by FICC to the Sponsored Member, subsection (c) would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the account at the Funds-Only Settling Member Bank at which the Sponsoring Member maintains Funds-Only Settlement Amounts related to its Sponsored Member Omnibus Account. Subsection (c) would state that, to the extent the Sponsoring Member makes such a transfer, it will discharge FICC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to FICC.

Subsection (d)

Under existing Rule 22A,³⁴ FICC is responsible for the liquidation of a Member's Final Net Settlement Positions and calculation of an amount owing by or to the Member. Because proposed Section 18 would provide for the Sponsoring Member, rather than FICC, to liquidate the Sponsored Member's (and the Sponsoring Member's) Final Net Settlement Positions and calculate the corresponding amounts owing, the Sponsoring Member would be required to indemnify FICC in the event the Sponsored Member makes or asserts any claim relating to such calculation. Subsection (d) would set forth such indemnity. It would provide for the Sponsoring Member to indemnify FICC and its officers, directors, employees, shareholders, agents, and Members for any loss, liability, or expenses resulting from any claim by a Sponsored Member relating to the Sponsoring Member's calculation of the Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Subsection (e)

Under Section 8(g) of existing Rule 3A,³⁵ each Sponsored Member grants to FICC a security interest in all assets and property placed by the Sponsored Member in the possession of FICC in order to secure the obligations of the Sponsored Member to FICC. This security interest provides FICC with credit support in the event that it must terminate and liquidate the Sponsored Member's positions and assert a claim against the Sponsored Member. However, if proposed

³⁴ Id.

³⁵ Rule 3A, Section 8(g), supra note 1.

Section 18 were to apply, the obligation of the Sponsored Member to FICC under the terminated positions would be discharged via the setoff provided for under subsection (c).

Subsection (e) of proposed Section 18 would clarify FICC acknowledges that a Sponsoring Member may take a security interest in FICC's obligations to the Sponsored Member. Such security interest would not impose new obligations on FICC, but could allow the Sponsoring Member to direct FICC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member. Subsection (e) additionally would provide that, if Section 18 were to apply, FICC's security interest in the Sponsored Member's assets would be subordinated to the Sponsoring Member's security interest. As noted above, if Section 18 applied, FICC would not need to look to the Sponsored Member or its assets for performance in respect of the positions that are terminated under Section 18.

(iii) **Proposed change to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement**

In light of the intermediary relationship between a Sponsoring Member and its Sponsored Member, a Sponsoring Member may choose to post to its Sponsored Member client a haircut in order to address regulatory and/or investment guideline concerns. Specifically, the regulations and/or investment guidelines to which a Sponsored Member is subject may require that it receive Eligible Securities worth more than the cash that it is due to receive at final settlement of a FICC-cleared reverse repo, i.e., a haircut.³⁶ Similarly, in some circumstances, a Sponsoring Member may choose to collect such haircut from its Sponsored Member client at the Start Leg to mitigate its exposure under the Sponsoring Member Guaranty. In both situations, FICC's understanding is that accounting considerations may favor those postings being facilitated through FICC's systems. Specifically, in light of the fact that the counterparty on a FICC-cleared trade changes after novation—and the Sponsoring Member and Sponsored Member thereafter both face FICC as principal—having an obligation to receive and/or deliver a haircut

³⁶ For example, FICC's understanding is that Investment Company Act Rule 5b-3 requires that a repurchase agreement be "collateralized fully" in order for a registered investment company to apply favorable regulatory treatment to it. The "collateralized fully" definition requires that the value of the securities posted to the investment company at all times equal or exceed the repurchase price, plus any loss of interest or transaction costs that could be incurred in a default. In light of these requirements, FICC understands that many registered investment companies require counterparties to post securities with a value that is equal to the repurchase price, plus a cushion to cover any changes in value of the securities or lost interest or transaction costs associated with a counterparty default.

at final settlement directly to FICC as the post-novation counterparty may be favorable for the Sponsoring Member and the Sponsored Member from an accounting perspective.³⁷

However, under Rule 13, FICC's standard funds-only settlement process involves marking to market twice a day each Business Day all positions associated with term repo activity, including any Sponsored Member Trade with a Close Leg that is scheduled to occur two or more Business Days after the settlement of the Start Leg.³⁸ Specifically, FICC will calculate a "Collateral Mark" equal to the absolute value of the difference between (i) a Sponsored Member Trade's Contract Value (*i.e.*, the dollar value at which it is due to finally settle) and (ii) its Market Value (*i.e.*, FICC's system price of the securities underlying the transaction). This Collateral Mark is incorporated into the calculation of certain of the Funds-Only Settlement Amounts payable under Rule 13.³⁹

When the Market Value exceeds the Contract Value, the Collateral Mark is negative for, and thus payable by, the Member party that has a Net Short Position (*i.e.*, the party required to deliver securities at final settlement). As a result, under FICC's existing funds-only settlement process, a Sponsored Member or Sponsoring Member that has received a haircut at the Start Leg of a Sponsored Member Trade would be required to transfer an amount of cash equal to that haircut (plus or minus any interim mark-to-market movements) on the next Business Day after the Start Leg has settled. This would frustrate the purpose of the haircut as between the Sponsoring Member and Sponsored Member. Specifically, if the haircut is returned before final settlement of a Sponsored Member Trade, the party that was supposed to retain the haircut for the duration of the trade would cease to be overcollateralized, thus defeating the contractual intent of the parties.⁴⁰

In order to ensure that haircuts are not returned until final settlement, FICC proposes to amend Rule 3A and Rule 1. Specifically, FICC proposes to amend Section 9(a) of Rule 3A to provide that, if the parties to a Sponsored Member Trade agree for such Sponsored Member Trade to have a haircut, then any Funds-Only Settlement Amount applicable to such Sponsored Member Trade that includes a Collateral Mark would be calculated without regard for the Collateral Mark. Such Collateral Mark would be replaced by either a Haircut Deficit or Haircut

³⁷ Sponsoring Members interested in such relief should discuss this matter with their accounting experts.

³⁸ Rule 13, *supra* note 1.

³⁹ *Id.*

⁴⁰ Because the Schedule of Timeframes in the Rules provides for intraday funds-only settlement amounts to be calculated using each Member's positions as of noon on the relevant Business Day, FICC's existing funds-only settlement process will not materially affect haircuts on overnight Sponsored Member Trades that are submitted for clearing in the afternoon. Nonetheless, FICC believes that applying the same Funds-Only Settlement calculations to overnight and term repo activity would help promote consistency across Sponsored Member Trades.

Surplus. A “Haircut Deficit” would exist if the amount by which the Market Value as of the settlement date of the Start Leg exceeded the Contract Value of the Close Leg (the “Initial Haircut”) is greater than the amount by which the Market Value as of the time of measurement exceeds the Contract Value of the Close Leg (the “Current Haircut”). Any Haircut Deficit would be payable by the Member party with a Net Long Position. A “Haircut Surplus” would exist if the Current Haircut exceeds the Initial Haircut, and any Haircut Surplus would be payable by the Member party with a Net Short Position. FICC also proposes to amend Section 9(a) of Rule 3A to make clear that any Initial Haircut would be as agreed between the parties to the Sponsored Member Trade, and that FICC would not be under any obligation to verify the parties’ agreement with respect to any Initial Haircut, and its calculation of the Initial Haircut would be conclusive and binding on the parties.

For example, if on initial settlement of a Sponsored Member Trade a Sponsored Member transferred \$98 in cash and received Eligible Securities worth \$100,⁴¹ the Initial Haircut for such Sponsored Member Trade would be \$2 (i.e., Market Value as of the settlement date of the Start Leg of \$100 minus Contract Value of the Close Leg of \$98). If on the next Business Day after initial settlement the value of the Eligible Securities increases in value to \$101, then the Current Haircut on the Sponsored Member Trade on such Business Day would be \$3 (i.e., Market Value as of the time of measurement of \$101 minus Contract Value of the Close Leg of \$98), and there would be a Haircut Surplus of \$1 (i.e., Current Haircut of \$3 minus the Initial Haircut of \$2) that would be owing to FICC by the Sponsored Member, as the Member party with the Net Short Position. Similarly, if in the same example, the value of the Eligible Securities decreased from \$100 to \$99 on the next Business Day after initial settlement, then the Current Haircut on the Sponsored Member Trade on such Business Day would be \$1 (i.e., Market Value of \$99 as of the time of measurement minus Contract Value of the Close Leg of \$98) and there would be a Haircut Deficit of \$1 (i.e., Initial Haircut of \$2 minus the Current Haircut of \$1) that would be owing to FICC by the Sponsoring Member, as the Member party with the Net Long Position.

FICC would also revise Rule 1 to add new defined terms; these new defined terms are related to the proposed clarifications to Rule 3A described in the paragraph above. FICC would add the following new defined terms: (i) Current Haircut, (ii) Haircut Deficit, (iii) Haircut Surplus and (iv) Initial Haircut.

FICC believes that the proposed changes to Rule 3A and Rule 1 described above would allow a Sponsoring Member and its Sponsored Member who intend for one of those two parties to remain overcollateralized for the duration of a Sponsored Member Trade to transfer a haircut between each other and allow such haircut to remain with the intended party until final settlement of the Sponsored Member Trade.

⁴¹ For the sake of simplicity, this example excludes accrued interest and thus assumes that the amount of cash transferred at settlement of the Start Leg equals the amount of cash due to be transferred at the Close Leg.

(iv) **Proposed correction, clarifications and conforming changes**

FICC proposes to make a correction as well as certain clarifications and conforming changes to Rule 3A, as further described below.

(A) **Proposed Clarifications to Sections 8(c) and 9(b) of Rule 3A**

FICC proposes to make certain clarifications to Section 8(c) of Rule 3A related to proposed Section 18 described in Item 3(a)(ii) above.

First, FICC is proposing to add a parenthetical to Section 8(c) clarifying that the operational netting provisions of Section 8(b) do not substantively modify a Sponsored Member's obligations to FICC. As noted above, Section 8(b) provides that, for operational convenience, FICC calculates a single Net Settlement Position and Fail Net Settlement Position in each CUSIP for the Sponsoring Member's Sponsoring Member Omnibus Account. Section 8(c), in turn, provides that each Sponsored Member shall satisfy its "allocable portion" of the Deliver Obligations and Receive Obligations established for the Sponsoring Member Omnibus Account.

Neither Section 8(b) nor Section 8(c) modifies the obligations of any Sponsored Member; those provisions are simply designed for operational convenience. Each Sponsored Member still remains responsible for its Deliver Obligations to and Receive Obligations from FICC, which are calculated in accordance with Section 7 of Rule 3A. The Sponsored Member's "allocable portion" of the Deliver Obligations and Receive Obligations of the Sponsoring Member Omnibus Account will always equal its Deliver Obligations to and Receive Obligations from FICC, as calculated under Section 7 of Rule 3A.

Therefore, in order to eliminate doubt regarding the extent of the Sponsored Member's obligations upon a termination and liquidation of a Sponsored Member's positions pursuant to proposed Section 18, FICC is proposing to add a parenthetical to Section 8(c) to make clear that a Sponsored Member's "allocable portion" of the obligations established for the Sponsoring Member Omnibus Account are the obligations of the Sponsored Member, as calculated in Section 7 of Rule 3A.

FICC is also proposing to add language at the end of Sections 8(c) and 9(b) to clarify that, if a Sponsoring Member satisfies the net Deliver Obligations and Receive Obligations or the net Funds-Only Settlement Amount obligations of its Sponsoring Member Omnibus Account, including through the setoff described in proposed Section 18, before the Sponsoring Member receives corresponding performance from the Sponsored Member, such satisfaction would constitute performance by the Sponsoring Member under the Sponsoring Member Guaranty with respect to the relevant Sponsored Member's allocable portion of the Sponsoring Member Omnibus Account Deliver Obligations and Receive Obligations or Funds-Only Settlement Amount obligations.

If a termination and liquidation under proposed Section 18 were to occur, the Sponsoring Member would be required to perform on behalf of the Sponsored Member under the Sponsoring Member Guaranty. The clarification described above is designed to ensure that, when the

Sponsoring Member effects such performance, it would be entitled to reimbursement from the Sponsored Member.

(B) Proposed Correction, Clarifications and Conforming Changes to Section 9 of Rule 3A

FICC also proposes to make a correction as well as certain clarifications and conforming changes to Rule 3A. The proposed correction, clarifications and conforming changes are related to the clarifications described in Item 3(a)(iii) above with respect to the haircut.

To enhance clarity, FICC proposes to make certain structural changes to Rule 3A, Section 9. Specifically, FICC proposes to move language from current subsection (b) of Section 9 and make it subsection (c). This, in turn, would require conforming changes to re-letter original Sections 9(c) and 9(d) to 9(d) and 9(e), respectively. FICC also proposes to make a conforming grammatical change by deleting “such” and replacing it with “the” in the first sentence of proposed subsection (c). FICC also proposes to revise proposed Section 9(c) of Rule 3A to clarify that the Sponsored Member is responsible for satisfying the allocable portion of the Funds-Only Settlement Amount calculated for the Sponsoring Member Omnibus Account.

(b) Statutory Basis

FICC believes these proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the “Act”), and the rules and regulations applicable to a registered clearing agency. Specifically, FICC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act⁴² and Rule 17Ad-22(e)(23)(i),⁴³ as promulgated under the Act, for the reasons stated below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and settlement of securities transactions.⁴⁴

FICC believes that the proposed changes described in Item 3(a)(ii) above, *i.e.*, to facilitate the submission of term repo activity through the Service by providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member’s positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC, are designed to remove certain impediments to and perfect the mechanism of a national settlement system for the prompt and accurate clearance and settlement of securities transactions. In particular, FICC believes that providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member’s positions arising from Sponsored Member Trades between

⁴² 15 U.S.C. 78q-1(b)(3)(F).

⁴³ 17 CFR 240.17Ad-22(e)(23)(i).

⁴⁴ 15 U.S.C. 78q-1(b)(3)(F).

the Sponsoring Member and its Sponsored Member that have been novated to FICC would give Sponsoring Members greater ability to manage the risks associated with Sponsored Member Trades, particularly Sponsored Member Trades with a scheduled final settlement date beyond the next Business Day after the initial settlement date. Such effective risk management would reduce the risk of a Sponsoring Member failure, which could otherwise disrupt the prompt and accurate clearance and settlement of Sponsored Member Trades and other transactions submitted to FICC. As described above, the absence of the ability on the part of Sponsoring Members to terminate and liquidate such Sponsored Member positions is currently an impediment that discourages term repo activity within the Service. The proposal to provide Sponsoring Members with that ability would remove the impediment, consistent with Section 17A(b)(3)(F) of the Act.⁴⁵

FICC also believes the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions. By allowing Sponsoring Members to manage risks associated with Sponsored Member Trades more effectively, FICC believes the proposed changes would enable Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by a central counterparty. In particular, FICC believes Sponsoring Members would be able to submit to FICC more term repo activity. FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement.

FICC believes the proposed changes described in Item 3(a)(iii) above, i.e., to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement, are designed to promote the prompt and accurate clearance and settlement of securities transactions. As described above, FICC believes these clarifications would honor the contractual intent of the Sponsoring Members and their Sponsored Members to transfer haircuts between each other for Sponsored Member Trades. FICC believes that the proposed change to the calculation (resulting in the return of haircuts at final settlement only) may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC, and in particular, term repo activity. As described above, FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Moreover, the current calculation of the funds-only settlement obligations of Sponsored Members and Sponsoring Members is currently an impediment that discourages term repo activity within the Service. The proposal described in Item 3(a)(iii) above would remove the impediment, consistent with Section 17A(b)(3)(F) of the Act.⁴⁶

⁴⁵ Id.

⁴⁶ Id.

FICC believes the proposed correction, clarifications, and conforming changes described in Item 3(a)(iv) above are also designed to promote the prompt and accurate clearance and settlement of securities transactions by enhancing clarity and transparency regarding the Service. Having transparent and clear provisions regarding the Service would enable Members to better understand the operation of the Service and would provide Members with increased predictability and certainty regarding their rights and obligations. FICC believes that this increased predictability and certainty regarding their rights and obligations may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC, and in particular, term repo activity. FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Therefore, FICC believes the proposed correction, clarifications, and conforming changes described in Item 3(a)(iv) above are designed to promote the prompt and accurate clearance and settlement of securities transactions.

Rule 17Ad-22(e)(23)(i) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.⁴⁷ FICC believes that the proposed changes described in Item 3(a)(ii) above would establish a clear and transparent mechanism by which a Sponsoring Member may terminate and liquidate the positions of a Sponsored Member. Having a clear mechanism for such termination and liquidation would allow Sponsoring Members and Sponsored Members to understand the circumstances in which a Sponsored Member's positions may be terminated and liquidated and how such termination and liquidation would occur. FICC also believes that the proposed rule changes described in Item 3(a)(iii) above would enhance clarity and transparency regarding the funds-only settlement obligations of Sponsored Members with respect to any term repo activity. Specifically, the proposed changes would revise how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement. FICC believes that these proposed changes would provide enhanced clarity to Sponsoring Members and Sponsored Members regarding their rights and obligations as well as the rights and obligations of FICC. Additionally, the proposed correction, clarifications, and conforming changes described in Item 3(a)(iv) above would add further clarity to the Rules. FICC believes the proposal would ensure that the Rules remain clear and accurate, and facilitate Members' understanding of the Rules, and provide Members with increased predictability and certainty regarding their obligations. As such, FICC believes that these proposed changes are consistent with Rule 17Ad-22(e)(23)(i) under the Act.⁴⁸

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

FICC believes that the proposed changes in Item 3(a)(ii) above could have an impact on competition by promoting and burdening competition. The proposal to allow a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared

⁴⁷ 17 CFR 240.17Ad-22(e)(23)(i).

⁴⁸ Id.

positions could promote competition by increasing the ability of Sponsoring Members to more effectively manage the risks of Sponsored Member Trades, particularly Sponsored Member Trades with a scheduled final settlement date beyond the next Business Day after the initial settlement date. Such increased risk management ability, in turn, could cause more institutions to become Sponsoring Members, and existing and future Sponsoring Members to accept a greater number and variety of Sponsored Members and Sponsored Member Trades, including, in particular, term repo activity. FICC also believes the proposed changes in Item 3(a)(ii) above could promote competition by allowing Sponsoring Members and Sponsored Members to negotiate the circumstances in which the Sponsoring Member could cause the termination and liquidation of the Sponsored Member's positions. The prospect of negotiation could allow Sponsored Members to consider various Sponsoring Members and the terms they offer.

Conversely, the proposed changes described in Item 3(a)(ii) above to allow a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions could burden competition by applying a different standard for the termination and liquidation of Sponsored Members' FICC-cleared positions than the standard that applies to other Members under Rule 22A.⁴⁹ However, FICC does not believe that the proposed changes described in Item 3(a)(ii) above would result in a significant burden on competition because the Sponsored Member would have the ability to negotiate with possible Sponsoring Members the circumstances in which the Sponsoring Member may effectuate a termination and the methodology it would use in calculating the liquidation amount.

Regardless of whether the potential burden on competition discussed in the previous paragraph is significant, FICC believes that any burden on competition that may be created by these proposed changes would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵⁰

FICC believes that any burden on competition created by the proposed changes described in Item 3(a)(ii) above is necessary in furtherance of the purposes of the Act to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and settlement of securities transactions.⁵¹ Specifically, FICC believes that any burden on competition resulting from allowing a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions would be necessary in order to provide Sponsoring Members with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity. As described in detail in Item 3(b) above, FICC believes that providing Sponsoring Members with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity, would (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and

⁴⁹ Rule 22A, supra note 1.

⁵⁰ 15 U.S.C. 78q-1(b)(3)(I).

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

settlement of securities transactions. Therefore, FICC believes any burden that is created by these proposed changes would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵²

Furthermore, FICC believes that any burden on competition resulting from allowing a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,⁵³ because the proposed changes would remove the current impediment whereby the Sponsoring Member is not unilaterally able to cause the termination or liquidation of any Sponsored Member Trades. As stated above, there is an intermediary relationship between a Sponsoring Member and its Sponsored Member, including the Sponsoring Member's liability to FICC for the Sponsored Member's performance under the Sponsoring Member Guaranty, which does not apply to other Members. FICC believes this unique relationship warrants the Sponsoring Member having control over the termination and liquidation of its Sponsored Member's FICC-cleared positions. Moreover, the proposed changes would be more consistent with other intermediated relationships where the intermediary is typically permitted to terminate and liquidate the positions of its client that the intermediary guarantees if an event of default or other similar circumstance occurs under the bilateral agreement between the intermediary and the client. The current inability to effectuate such termination and liquidation is inconsistent with other intermediated relationships and discourages term repo activity within the Service. The proposed changes would enable the Sponsoring Member to cause the termination and liquidation of the Sponsored Member's positions for which the Sponsoring Member is responsible, thereby providing it with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity. Therefore, FICC believes any burden that is created by these proposed changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵⁴

FICC believes that the proposed changes described in Item 3(a)(iii) above to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades with haircuts could promote competition. This is because the proposed changes would honor the parties' contractual intent (as described in Item 3(a)(iii) above) and, thus, encourage more term repo activity within the Service. As such, FICC believes that these proposed changes could promote competition.

In addition, FICC does not believe that the proposed correction, clarifications, and conforming changes in Item 3(a)(iv) above would have an impact on competition. These changes would simply provide additional clarity, transparency and consistency to the Rules and

⁵² 15 U.S.C. 78q-1(b)(3)(I)

⁵³ Id.

⁵⁴ Id.

not affect Members' rights and obligations. As such, FICC believes that these proposed changes would not have any impact on competition.

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

FICC reviewed the proposed rule change with its Sponsoring Members in order to benefit from their expertise. Written comments relating to this proposed rule change have not been received from the Sponsoring Members or any other person. 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 Act⁵⁵ for Commission action.

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

The proposed rule changes are not based on the rules of another self-regulatory organization or the Commission.

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

Not applicable.

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

Not applicable.

⁵⁵ 15 U.S.C. 78s(b)(2).

11. Exhibits

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-FICC-2019-007)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member/Sponsored Member Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December __, 2019, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the FICC Government Securities Division (“GSD”) Rulebook (“Rules”)³ in order to facilitate the submission of repurchase transactions (“repos”) with a scheduled final settlement date beyond the next Business Day after the initial settlement date (“term repo activity”) through the Sponsoring Member/Sponsored Member Service (“Service”)⁴ by: (i) providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁴ This Service is primarily governed by Rule 3A. Supra note 3.

a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC and (ii) revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts⁵ in order to ensure that the calculation does not result in a return of the haircuts until final settlement. In addition, the proposed rule change would make a correction and certain clarifications and conforming changes, as described in greater detail 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

The purpose of the proposed rule change is to amend the Rules in order to facilitate the submission of term repo activity through the Service by: (i) providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the

⁵ The term haircut shall refer to the amount of collateral in excess of the value of the cash due to the Sponsored Member client at the Close Leg.

Sponsoring Member and its Sponsored Member that have been novated to FICC and (ii) revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that the calculation does not result in a return of the haircuts until final settlement. In addition, the proposed rule change would make a correction and certain clarifications and conforming changes, as described in greater detail below.

*(i) **Background***

Under Rule 3A (Sponsoring Members and Sponsored Members), certain Netting Members are permitted to sponsor, as “Sponsoring Members,” qualified institutional buyers as defined by Rule 144A⁶ under the Securities Act of 1933, as amended (“Securities Act”),⁷ and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A under the Securities Act, satisfy the financial requirements necessary to be qualified institutional buyers as specified in that paragraph (*i.e.*, Sponsored Members) into GSD membership.

Under Rule 3A, a Sponsoring Member is permitted to submit to FICC, for comparison, novation, and netting, certain types of eligible securities transactions

⁶ 17 CFR 230.144A.

⁷ 15 U.S.C. 77a *et seq.*

between itself and its Sponsored Members (“Sponsored Member Trades”).⁸ The Sponsoring Member is required to establish an omnibus account at FICC for its Sponsored Members’ positions arising from such Sponsored Member Trades (“Sponsoring Member Omnibus Account”),⁹ which is separate from the Sponsoring Member’s regular netting accounts. For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members’ obligations to or from FICC, including their securities and funds-only settlement obligations.¹⁰ Additionally, for operational convenience, pursuant to Section 8(b) of Rule 3A,¹¹ FICC calculates a single Net Settlement Obligation and Fail Net Settlement Obligation in each CUSIP for the Sponsoring Member Omnibus Account and associated Deliver Obligations and Receive Obligations.¹² Such calculations do not affect the Sponsored Member’s obligations,

⁸ Rule 1, definition of “Sponsored Member Trade”; Rule 3A, Sections 6(b) and 7(a), supra note 3. In March 2019, the Commission approved FICC rule filing SR-FICC-2018-013, Securities Exchange Act Release No. 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019), which expanded the definition of “Sponsored Member Trade” to include certain types of eligible securities transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member. This proposed rule change would apply only to Sponsored Member Trades between the Sponsoring Member and its Sponsored Member.

⁹ Rule 1, definition of “Sponsoring Member Omnibus Account,” supra note 3.

¹⁰ Rule 3A, Sections 5, 6, 7, 8, and 9, supra note 3.

¹¹ Rule 3A, Section 8(b), supra note 3.

¹² See Rule 3A, Section 7(a), supra note 3.

which are calculated in accordance with Section 7 of Rule 3A¹³ in a manner that is generally consistent with how FICC calculates the obligations of other Members.

Sponsoring Members are also responsible for providing FICC with a Sponsoring Member Guaranty¹⁴ whereby the Sponsoring Member guarantees to FICC the payment and performance by its Sponsored Members of their obligations under the Rules.¹⁵

Although Sponsored Members are principally liable to FICC for their own settlement obligations under the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails to perform its settlement obligations.

Although Rule 3A currently permits Sponsoring Members to submit term repo activity within the Service,¹⁶ most of the Sponsored Member Trades submitted to FICC by Sponsoring Members have a scheduled settlement date of the next Business Day after the initial settlement date, *i.e.*, overnight repo. FICC believes that certain provisions of the Rules discourage the submission of term repo activity within the Service, as discussed more fully below.

¹³ Rule 3A, Section 7, supra note 3.

¹⁴ Section 2(c) of Rule 3A provides: “Each Netting Member to become a Sponsoring Member shall also sign and deliver to [FICC] a Sponsoring Member Guaranty” A “Sponsoring Member Guaranty” is defined in Rule 1 as “a guaranty . . . that a Sponsoring Member delivers to [FICC] whereby the Sponsoring Member guarantees to [FICC] the payment and performance by its Sponsored Members of their obligations under [the] Rules, including, without limitation, all of the securities and funds-only settlement obligations of its Sponsored Members under [the] Rules.” Supra note 3.

¹⁵ Rule 3A, Section 2(c), supra note 3.

¹⁶ Rule 3A, Section 5, supra note 3.

(ii) **Proposed change to facilitate the submission of term repo activity through the Service by providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC**

(A) Existing Close-out Framework

The current Rules allow only FICC to cause the termination and liquidation of a Sponsored Member's positions, even though the relevant Sponsoring Member is responsible for the Sponsored Member's payment and performance in respect of such positions. Rule 22A governs any such termination and liquidation by FICC.¹⁷ That rule provides that, if FICC ceases to act for a Member, including a Sponsored Member, FICC will close-out the Sponsored Member's positions the same way it would close-out the positions of any other Member for which FICC has ceased to act: by (i) establishing a Final Net Settlement Position for each Eligible Netting Security with a distinct CUSIP equal to the net of all outstanding deliver and receive obligations of the Member in respect of the security and (ii) taking market action to liquidate such Final Net Settlement Position.¹⁸

A Sponsoring Member is required to advise FICC if circumstances have arisen that require FICC to cease to act for a Sponsored Member.¹⁹ However, a Sponsoring Member is not unilaterally able to cause the termination or liquidation of any Sponsored Member Trades. This limitation is inconsistent with other intermediated relationships. In

¹⁷ Rule 3A, Sections 13(c) and 15(b), supra note 3.

¹⁸ Rule 22A, Section 2(b), supra note 3.

¹⁹ Rule 3A, Section 15(a), supra note 3.

the context of those relationships, the clearing member or similar intermediary is typically permitted to terminate and liquidate the positions of its client that the intermediary guarantees if an event of default or other similar circumstance occurs under the customer or similar bilateral agreement between the intermediary and the client.²⁰ The intermediary's ability to cause such termination and liquidation is not dependent on a third party's determination that a certain circumstance or event has occurred. Rather, the intermediary and the client are able to agree bilaterally to the circumstances and events that give rise to an event of default allowing the intermediary to terminate or liquidate the guaranteed positions.

The inability of a Sponsoring Member to trigger the termination and liquidation of a Sponsored Member's positions, particularly term repo activity, may result in additional capital requirements for Sponsoring Members and their parent organizations under regulatory standards that implement the recommendations of the Basel Committee on Banking Supervision (the "BCBS"). This is because, if a Sponsoring Member cannot trigger the termination and liquidation of a Sponsored Member's positions, it is less able to stop the effective extension of credit to the client under the Sponsoring Member Guaranty.²¹ In addition, the inability to terminate a Sponsored Member's positions limits

²⁰ For example, in the context of futures and cleared swaps, a futures commission merchant ("FCM") is generally permitted to terminate and liquidate positions that the FCM carries for a customer at a derivatives clearing organization ("DCO") following the customer's default by either entering into offsetting positions in the FCM's customer account at the DCO or terminating the position in the customer account and establishing an identical position in the FCM's house account at the DCO. See, e.g., ICE Clear Credit Rule 304(c), available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.

²¹ More specifically, FICC's understanding is that in order for a Sponsoring Member subject to capital requirements that implement the BCBS standards to apply the favorable capital treatment to its obligations under the Sponsoring Member

the extent to which a Sponsoring Member can use certain risk management tools, such as cross-defaults or other early warning triggers, that allow a Sponsoring Member to close-out the Sponsored Member's positions and stem losses before the Sponsored Member becomes subject to insolvency proceedings or is unable to pay its debts as they become due.²²

In addition to giving FICC the exclusive ability to cause the termination and liquidation of a Sponsored Member's positions, Rule 22A provides for FICC to control such termination and liquidation of a Sponsored Member's Final Net Settlement Positions.²³ When FICC ceases to act for a Member, it generally looks to buy, borrow,

Guaranty that it currently applies to bilateral repos, the Sponsoring Member must conclude with a well-founded basis that, among other things, it will be able to terminate the Sponsored Member Trades subject to the Sponsoring Member Guaranty. See, e.g., 12 CFR §§ 3.2, 3.3(e), 217.2, 217.3(e), 324.2, and 324.3(e). While a lesser standard applies if the guaranteed Sponsored Member Trades are limited to overnight repos, FICC believes that applying the same termination and liquidation mechanism to overnight and term repo activity would help to clarify the capital treatment for both types of activity and promote consistency across Sponsored Member Trades. Sponsoring Members interested in such relief should discuss this matter with their regulatory capital experts.

²² A "cross-default" is a provision that allows one party to exercise default rights if its customer or counterparty defaults under another agreement. Other early warning triggers include credit rating downgrades, breaches of representations, and covenants limiting a party's ability to incur debt or suffer liens on its property. If a Sponsoring Member is unable to initiate the termination of a Sponsored Member's Sponsored Member Trades, it cannot use these "early warning triggers," but must instead wait for the occurrence of a circumstance that gives FICC the ability to cease to act for the Sponsored Member. By that point, however, the Sponsoring Member may have significant uncovered exposure to the Sponsored Member.

²³ Rule 22A, Section 2(b), supra note 3.

reverse in, sell, lend, or repo out securities, so as to facilitate its ability to settle the Final Net Settlement Positions.²⁴

FICC's control of such termination and liquidation of Sponsored Member Trades could expose the Sponsoring Member to certain risks that other intermediaries do not typically face. This is because, in the event FICC ceases to act for a Sponsored Member under Rule 22A,²⁵ the Sponsoring Member will generally enter into one or more transactions with third parties in order to hedge its performance obligations under the Sponsoring Member Guaranty. In most other intermediated relationships, the price at which the intermediary hedges or closes out the exposure under the customer's defaulted positions typically informs the pricing of those positions and thus the amount of the intermediary's claim against the customer. However, if FICC, rather than the Sponsoring Member, calculates the price of the Sponsored Member's positions, there may be differences arising from the timing of execution or the type of liquidation or hedging transactions used by FICC and/or the use of different pricing sources by FICC, all of which could limit the ability of the Sponsoring Member to recover the losses it incurs in entering into its hedging transactions.

(B) Proposed Rule Change

FICC is proposing to amend Rule 3A to add a new Section 18. This new section would allow a Sponsoring Member to cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member for which the Sponsoring Member is

²⁴ Id.

²⁵ Rule 22A, supra note 3.

responsible. The section would not, however, limit the ability of FICC to cease to act for a Sponsored Member.

In the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) FICC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Trades between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either to or by the Sponsored Member by or to the Sponsoring Member. FICC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave FICC flat. Additionally, the Sponsoring Member would indemnify FICC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

(C) Benefits of the Proposal

By allowing Sponsoring Members to terminate and liquidate a Sponsored Member's positions that arise from Sponsored Member Trades between the Sponsored Member and the Sponsoring Member that have been novated to FICC, FICC believes that the new Section 18 would align the Service to other intermediated relationships and allow Sponsoring Members to more effectively manage the risks of Sponsored Member Trades, particularly term repo activity. Sponsoring Members and their Sponsored Members

would be able to agree with one another in their bilateral documentation on the circumstances in which the Sponsoring Member would be permitted to cause the termination of the Sponsored Member's positions. Such agreement would not affect FICC's ability to cease to act for a Sponsored Member in accordance with existing Rules 3A, 21 and 22.²⁶

FICC believes that providing Sponsoring Members with greater ability to manage their risks associated with Sponsored Member Trades would allow Sponsoring Members to submit to FICC more Sponsored Member Trades, including, in particular, term repo activity. FICC believes that having more centrally cleared term repo transactions would promote the prompt and accurate clearance and settlement of securities transactions because more securities transactions would benefit from FICC's risk management and guaranty of settlement.

Further, FICC believes that allowing the Sponsoring Member to take market action would decrease the price risks currently faced by Sponsoring Members (as described in the last paragraph of Item II(A)1(ii)(A) above) without increasing the litigation risk to FICC arising from a Sponsored Member default because the Sponsoring Member would indemnify FICC for any losses or expense arising from a Sponsored Member's claim related to the Sponsoring Member's calculation of any liquidation amount.

²⁶ Rules 3A, 21 and 22, supra note 3.

(D) Proposed Changes to the Rules

Addition of new Section 18 to Rule 3A (Sponsoring Members and Sponsored Members)

FICC is proposing to add a new Section 18 to Rule 3A, which would (i) permit a Sponsoring Member to cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member and (ii) govern how the termination and liquidation would be effectuated. Section 18 would contain the following subsections.

Subsection (a)

Subsection (a) would clarify the scope of positions to which proposed Section 18 applies. It would state that Section 18 applies only to positions arising from Sponsored Member Trades within the meaning of subsection (a) of the Sponsored Member Trade definition.²⁷ Subsection (a) of the Sponsored Member Trade definition²⁸ encompasses eligible transactions between a Sponsored Member and its Sponsoring Member. Sponsored Member Trades that are between a Sponsored Member and a third-party Member would not be within the scope of Section 18 because, in that instance, there would not be a corresponding Sponsoring Member position to terminate.

Subsection (a) would further state that Section 18 would not apply if either (i) FICC has ceased to act for the relevant Sponsoring Member or (ii) a Corporation Default has occurred. FICC has discretion in the event that it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the

²⁷ Rule 1, supra note 3.

²⁸ Id.

defaulting Sponsoring Member was responsible or to allow them to settle.²⁹ If FICC does close-out such positions, it will do so in accordance with Rule 22A.³⁰ If a Corporation Default has occurred in respect of FICC, each Sponsored Member's positions, and all other Members' positions, will be closed out in accordance with the provisions of Rule 22B.³¹

Subsection (b)

Subsection (b) of proposed Section 18 would set out the process by which a Sponsoring Member or FICC may cause the termination of a Sponsored Member's positions. It would provide that the Sponsoring Member or FICC may cause such termination by delivering a notice to FICC or the Sponsoring Member, respectively. FICC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to FICC terminating the Sponsored Member's positions.³²

²⁹ Rule 3A, Section 16, supra note 3.

³⁰ Rule 22A, supra note 3.

³¹ Rule 22B, supra note 3. In September 2018, the Commission approved FICC rule filing SR-FICC-2018-008, Securities Exchange Act Release No. 84255 (September 21, 2018), 83 FR 48890 (September 27, 2018), which amended the Rules to clarify that Rule 22B (Corporation Default) applies to Sponsored Members.

³² It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. Under Section 2(i) of current Rule 3A, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination does not affect the settlement of the Sponsored Member's existing positions but does restrict the ability of the Sponsored Member to have its future trades accepted for novation to FICC through such Sponsoring Member. The proposed rule change would not

The notice submitted by a Sponsoring Member to FICC (or vice versa) would cause the termination of all of the positions of the Sponsored Member that arose from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member and that have been novated to FICC. The notice would also cause the termination of the corresponding positions of the Sponsoring Member (i.e., the positions of the Sponsoring Member that arose from Sponsored Member Trades between the Sponsoring Member and the Sponsored Member). The effect of such terminations would be to leave FICC flat.

Subsection (b) would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final Net Settlement Position for each Eligible Netting Security with a distinct CUSIP number ("Final Net Settlement Position"). This provision would align with existing Rule 22A,³³ which provides for FICC to calculate such Final Net Settlement Position when it ceases to act for a Member. As under existing Rule 22A,³⁴ the Final Net Settlement Position would equal the net of all outstanding deliver obligations and receive obligations of the Sponsored Member or Sponsoring Member with respect to the relevant security.

affect the functioning of Section 2(i) or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member. Rule 3A, Section 2(i), supra note 3.

³³ Rule 22A, supra note 3.

³⁴ Id.

Subsection (c)

Subsection (c) of proposed Section 18 would specify how the Final Net Settlement Positions established pursuant to subsection (b) would be liquidated (i.e., how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Subsection (c) would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to subsection (b) by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a "Sponsored Member Liquidation Amount") and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a "Sponsoring Member Liquidation Amount"). The Sponsored Member Liquidation Amount would be owed either by FICC to the Sponsored Member or by the Sponsored Member to FICC because it would relate to the Sponsored Member's Final Net Settlement Positions with FICC, while the Sponsoring Member Liquidation Amount would be owed either by FICC to the Sponsoring Member or by the Sponsoring Member to FICC because it would relate to the Sponsoring Member's Final Net Settlement Positions with FICC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if FICC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would

owe the Sponsoring Member Liquidation Amount to FICC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to FICC, FICC would owe the Sponsoring Member the Sponsoring Member Liquidation Amount. In all instances, FICC would owe and be owed the same amount of money.

Subsection (c) would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Subsection (c) would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions. This approach would be broadly consistent with how FICC would calculate an amount owing by a Member in respect of its Final Net Settlement Positions under existing Rule 22A.³⁵

Subsection (c) would provide that, if a Sponsored Member Liquidation Amount is due to FICC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to FICC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of FICC to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to FICC would be discharged, as would FICC's obligation to the Sponsoring Member. The

³⁵

Id.

Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral documentation. FICC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by FICC to the Sponsored Member, subsection (c) would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the account at the Funds-Only Settling Member Bank at which the Sponsoring Member maintains Funds-Only Settlement Amounts related to its Sponsored Member Omnibus Account. Subsection (c) would state that, to the extent the Sponsoring Member makes such a transfer, it will discharge FICC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to FICC.

Subsection (d)

Under existing Rule 22A,³⁶ FICC is responsible for the liquidation of a Member's Final Net Settlement Positions and calculation of an amount owing by or to the Member. Because proposed Section 18 would provide for the Sponsoring Member, rather than FICC, to liquidate the Sponsored Member's (and the Sponsoring Member's) Final Net

³⁶ Id.

Settlement Positions and calculate the corresponding amounts owing, the Sponsoring Member would be required to indemnify FICC in the event the Sponsored Member makes or asserts any claim relating to such calculation. Subsection (d) would set forth such indemnity. It would provide for the Sponsoring Member to indemnify FICC and its officers, directors, employees, shareholders, agents, and Members for any loss, liability, or expenses resulting from any claim by a Sponsored Member relating to the Sponsoring Member's calculation of the Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Subsection (e)

Under Section 8(g) of existing Rule 3A,³⁷ each Sponsored Member grants to FICC a security interest in all assets and property placed by the Sponsored Member in the possession of FICC in order to secure the obligations of the Sponsored Member to FICC. This security interest provides FICC with credit support in the event that it must terminate and liquidate the Sponsored Member's positions and assert a claim against the Sponsored Member. However, if proposed Section 18 were to apply, the obligation of the Sponsored Member to FICC under the terminated positions would be discharged via the setoff provided for under subsection (c).

Subsection (e) of proposed Section 18 would clarify FICC acknowledges that a Sponsoring Member may take a security interest in FICC's obligations to the Sponsored Member. Such security interest would not impose new obligations on FICC, but could allow the Sponsoring Member to direct FICC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such

³⁷ Rule 3A, Section 8(g), supra note 3.

amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member. Subsection (e) additionally would provide that, if Section 18 were to apply, FICC's security interest in the Sponsored Member's assets would be subordinated to the Sponsoring Member's security interest. As noted above, if Section 18 applied, FICC would not need to look to the Sponsored Member or its assets for performance in respect of the positions that are terminated under Section 18.

(iii) **Proposed change to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement**

In light of the intermediary relationship between a Sponsoring Member and its Sponsored Member, a Sponsoring Member may choose to post to its Sponsored Member client a haircut in order to address regulatory and/or investment guideline concerns. Specifically, the regulations and/or investment guidelines to which a Sponsored Member is subject may require that it receive Eligible Securities worth more than the cash that it is due to receive at final settlement of a FICC-cleared reverse repo, *i.e.*, a haircut.³⁸ Similarly, in some circumstances, a Sponsoring Member may choose to collect such haircut from its Sponsored Member client at the Start Leg to mitigate its exposure under

³⁸ For example, FICC's understanding is that Investment Company Act Rule 5b-3 requires that a repurchase agreement be "collateralized fully" in order for a registered investment company to apply favorable regulatory treatment to it. The "collateralized fully" definition requires that the value of the securities posted to the investment company at all times equal or exceed the repurchase price, plus any loss of interest or transaction costs that could be incurred in a default. In light of these requirements, FICC understands that many registered investment companies require counterparties to post securities with a value that is equal to the repurchase price, plus a cushion to cover any changes in value of the securities or lost interest or transaction costs associated with a counterparty default.

the Sponsoring Member Guaranty. In both situations, FICC’s understanding is that accounting considerations may favor those postings being facilitated through FICC’s systems. Specifically, in light of the fact that the counterparty on a FICC-cleared trade changes after novation—and the Sponsoring Member and Sponsored Member thereafter both face FICC as principal—having an obligation to receive and/or deliver a haircut at final settlement directly to FICC as the post-novation counterparty may be favorable for the Sponsoring Member and the Sponsored Member from an accounting perspective.³⁹

However, under Rule 13, FICC’s standard funds-only settlement process involves marking to market twice a day each Business Day all positions associated with term repo activity, including any Sponsored Member Trade with a Close Leg that is scheduled to occur two or more Business Days after the settlement of the Start Leg.⁴⁰ Specifically, FICC will calculate a “Collateral Mark” equal to the absolute value of the difference between (i) a Sponsored Member Trade’s Contract Value (i.e., the dollar value at which it is due to finally settle) and (ii) its Market Value (i.e., FICC’s system price of the securities underlying the transaction). This Collateral Mark is incorporated into the calculation of certain of the Funds-Only Settlement Amounts payable under Rule 13.⁴¹

When the Market Value exceeds the Contract Value, the Collateral Mark is negative for, and thus payable by, the Member party that has a Net Short Position (i.e., the party required to deliver securities at final settlement). As a result, under FICC’s

³⁹ Sponsoring Members interested in such relief should discuss this matter with their accounting experts.

⁴⁰ Rule 13, supra note 3.

⁴¹ Id.

existing funds-only settlement process, a Sponsored Member or Sponsoring Member that has received a haircut at the Start Leg of a Sponsored Member Trade would be required to transfer an amount of cash equal to that haircut (plus or minus any interim mark-to-market movements) on the next Business Day after the Start Leg has settled. This would frustrate the purpose of the haircut as between the Sponsoring Member and Sponsored Member. Specifically, if the haircut is returned before final settlement of a Sponsored Member Trade, the party that was supposed to retain the haircut for the duration of the trade would cease to be overcollateralized, thus defeating the contractual intent of the parties.⁴²

In order to ensure that haircuts are not returned until final settlement, FICC proposes to amend Rule 3A and Rule 1. Specifically, FICC proposes to amend Section 9(a) of Rule 3A to provide that, if the parties to a Sponsored Member Trade agree for such Sponsored Member Trade to have a haircut, then any Funds-Only Settlement Amount applicable to such Sponsored Member Trade that includes a Collateral Mark would be calculated without regard for the Collateral Mark. Such Collateral Mark would be replaced by either a Haircut Deficit or Haircut Surplus. A “Haircut Deficit” would exist if the amount by which the Market Value as of the settlement date of the Start Leg exceeded the Contract Value of the Close Leg (the “Initial Haircut”) is greater than the amount by which the Market Value as of the time of measurement exceeds the Contract

⁴² Because the Schedule of Timeframes in the Rules provides for intraday funds-only settlement amounts to be calculated using each Member’s positions as of noon on the relevant Business Day, FICC’s existing funds-only settlement process will not materially affect haircuts on overnight Sponsored Member Trades that are submitted for clearing in the afternoon. Nonetheless, FICC believes that applying the same Funds-Only Settlement calculations to overnight and term repo activity would help promote consistency across Sponsored Member Trades.

Value of the Close Leg (the “Current Haircut”). Any Haircut Deficit would be payable by the Member party with a Net Long Position. A “Haircut Surplus” would exist if the Current Haircut exceeds the Initial Haircut, and any Haircut Surplus would be payable by the Member party with a Net Short Position. FICC also proposes to amend Section 9(a) of Rule 3A to make clear that any Initial Haircut would be as agreed between the parties to the Sponsored Member Trade, and that FICC would not be under any obligation to verify the parties’ agreement with respect to any Initial Haircut, and its calculation of the Initial Haircut would be conclusive and binding on the parties.

For example, if on initial settlement of a Sponsored Member Trade a Sponsored Member transferred \$98 in cash and received Eligible Securities worth \$100,⁴³ the Initial Haircut for such Sponsored Member Trade would be \$2 (i.e., Market Value as of the settlement date of the Start Leg of \$100 minus Contract Value of the Close Leg of \$98). If on the next Business Day after initial settlement the value of the Eligible Securities increases in value to \$101, then the Current Haircut on the Sponsored Member Trade on such Business Day would be \$3 (i.e., Market Value as of the time of measurement of \$101 minus Contract Value of the Close Leg of \$98), and there would be a Haircut Surplus of \$1 (i.e., Current Haircut of \$3 minus the Initial Haircut of \$2) that would be owing to FICC by the Sponsored Member, as the Member party with the Net Short Position. Similarly, if in the same example, the value of the Eligible Securities decreased from \$100 to \$99 on the next Business Day after initial settlement, then the Current Haircut on the Sponsored Member Trade on such Business Day would be \$1

⁴³ For the sake of simplicity, this example excludes accrued interest and thus assumes that the amount of cash transferred at settlement of the Start Leg equals the amount of cash due to be transferred at the Close Leg.

(i.e., Market Value of \$99 as of the time of measurement minus Contract Value of the Close Leg of \$98) and there would be a Haircut Deficit of \$1 (i.e., Initial Haircut of \$2 minus the Current Haircut of \$1) that would be owing to FICC by the Sponsoring Member, as the Member party with the Net Long Position.

FICC would also revise Rule 1 to add new defined terms; these new defined terms are related to the proposed clarifications to Rule 3A described in the paragraph above.

FICC would add the following new defined terms: (i) Current Haircut, (ii) Haircut Deficit, (iii) Haircut Surplus and (iv) Initial Haircut.

FICC believes that the proposed changes to Rule 3A and Rule 1 described above would allow a Sponsoring Member and its Sponsored Member who intend for one of those two parties to remain overcollateralized for the duration of a Sponsored Member Trade to transfer a haircut between each other and allow such haircut to remain with the intended party until final settlement of the Sponsored Member Trade.

(iv) Proposed correction, clarifications and conforming changes

FICC proposes to make a correction as well as certain clarifications and conforming changes to Rule 3A, as further described below.

(A) Proposed Clarifications to Sections 8(c) and 9(b) of Rule 3A

FICC proposes to make certain clarifications to Section 8(c) of Rule 3A related to proposed Section 18 described in Item II(A)1(ii) above.

First, FICC is proposing to add a parenthetical to Section 8(c) clarifying that the operational netting provisions of Section 8(b) do not substantively modify a Sponsored Member's obligations to FICC. As noted above, Section 8(b) provides that, for operational convenience, FICC calculates a single Net Settlement Position and Fail Net

Settlement Position in each CUSIP for the Sponsoring Member's Sponsoring Member Omnibus Account. Section 8(c), in turn, provides that each Sponsored Member shall satisfy its "allocable portion" of the Deliver Obligations and Receive Obligations established for the Sponsoring Member Omnibus Account.

Neither Section 8(b) nor Section 8(c) modifies the obligations of any Sponsored Member; those provisions are simply designed for operational convenience. Each Sponsored Member still remains responsible for its Deliver Obligations to and Receive Obligations from FICC, which are calculated in accordance with Section 7 of Rule 3A. The Sponsored Member's "allocable portion" of the Deliver Obligations and Receive Obligations of the Sponsoring Member Omnibus Account will always equal its Deliver Obligations to and Receive Obligations from FICC, as calculated under Section 7 of Rule 3A.

Therefore, in order to eliminate doubt regarding the extent of the Sponsored Member's obligations upon a termination and liquidation of a Sponsored Member's positions pursuant to proposed Section 18, FICC is proposing to add a parenthetical to Section 8(c) to make clear that a Sponsored Member's "allocable portion" of the obligations established for the Sponsoring Member Omnibus Account are the obligations of the Sponsored Member, as calculated in Section 7 of Rule 3A.

FICC is also proposing to add language at the end of Sections 8(c) and 9(b) to clarify that, if a Sponsoring Member satisfies the net Deliver Obligations and Receive Obligations or the net Funds-Only Settlement Amount obligations of its Sponsoring Member Omnibus Account, including through the setoff described in proposed Section 18, before the Sponsoring Member receives corresponding performance from the

Sponsored Member, such satisfaction would constitute performance by the Sponsoring Member under the Sponsoring Member Guaranty with respect to the relevant Sponsored Member's allocable portion of the Sponsoring Member Omnibus Account Deliver Obligations and Receive Obligations or Funds-Only Settlement Amount obligations.

If a termination and liquidation under proposed Section 18 were to occur, the Sponsoring Member would be required to perform on behalf of the Sponsored Member under the Sponsoring Member Guaranty. The clarification described above is designed to ensure that, when the Sponsoring Member effects such performance, it would be entitled to reimbursement from the Sponsored Member.

(B) Proposed Correction, Clarifications and Conforming Changes to Section 9 of Rule 3A

FICC also proposes to make a correction as well as certain clarifications and conforming changes to Rule 3A. The proposed correction, clarifications and conforming changes are related to the clarifications described in Item II(A)1(iii) above with respect to the haircut.

To enhance clarity, FICC proposes to make certain structural changes to Rule 3A, Section 9. Specifically, FICC proposes to move language from current subsection (b) of Section 9 and make it subsection (c). This, in turn, would require conforming changes to re-letter original Sections 9(c) and 9(d) to 9(d) and 9(e), respectively. FICC also proposes to make a conforming grammatical change by deleting "such" and replacing it with "the" in the first sentence of proposed subsection (c). FICC also proposes to revise proposed Section 9(c) of Rule 3A to clarify that the Sponsored Member is responsible for satisfying the allocable portion of the Funds-Only Settlement Amount calculated for the Sponsoring Member Omnibus Account.

2. Statutory Basis

FICC believes these proposed changes are consistent with the requirements of the Act, and the rules and regulations applicable to a registered clearing agency.

Specifically, FICC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act⁴⁴ and Rule 17Ad-22(e)(23)(i),⁴⁵ as promulgated under the Act, for the reasons stated below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and settlement of securities transactions.⁴⁶

FICC believes that the proposed changes described in Item II(A)1(ii) above, i.e., to facilitate the submission of term repo activity through the Service by providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC, are designed to remove certain impediments to and perfect the mechanism of a national settlement system for the prompt and accurate clearance and settlement of securities transactions. In particular, FICC believes that providing a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's

⁴⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁵ 17 CFR 240.17Ad-22(e)(23)(i).

⁴⁶ 15 U.S.C. 78q-1(b)(3)(F).

positions arising from Sponsored Member Trades between the Sponsoring Member and its Sponsored Member that have been novated to FICC would give Sponsoring Members greater ability to manage the risks associated with Sponsored Member Trades, particularly Sponsored Member Trades with a scheduled final settlement date beyond the next Business Day after the initial settlement date. Such effective risk management would reduce the risk of a Sponsoring Member failure, which could otherwise disrupt the prompt and accurate clearance and settlement of Sponsored Member Trades and other transactions submitted to FICC. As described above, the absence of the ability on the part of Sponsoring Members to terminate and liquidate such Sponsored Member positions is currently an impediment that discourages term repo activity within the Service. The proposal to provide Sponsoring Members with that ability would remove the impediment, consistent with Section 17A(b)(3)(F) of the Act.⁴⁷

FICC also believes the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions. By allowing Sponsoring Members to manage risks associated with Sponsored Member Trades more effectively, FICC believes the proposed changes would enable Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by a central counterparty. In particular, FICC believes Sponsoring Members would be able to submit to FICC more term repo activity. FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities

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Id.

transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement.

FICC believes the proposed changes described in Item II(A)1(iii) above, i.e., to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement, are designed to promote the prompt and accurate clearance and settlement of securities transactions. As described above, FICC believes these clarifications would honor the contractual intent of the Sponsoring Members and their Sponsored Members to transfer haircuts between each other for Sponsored Member Trades. FICC believes that the proposed change to the calculation (resulting in the return of haircuts at final settlement only) may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC, and in particular, term repo activity. As described above, FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Moreover, the current calculation of the funds-only settlement obligations of Sponsored Members and Sponsoring Members is currently an impediment that discourages term repo activity within the Service. The proposal described in Item

II(A)1(iii) above would remove the impediment, consistent with Section 17A(b)(3)(F) of the Act.⁴⁸

FICC believes the proposed correction, clarifications, and conforming changes described in Item II(A)1(iv) above are also designed to promote the prompt and accurate clearance and settlement of securities transactions by enhancing clarity and transparency regarding the Service. Having transparent and clear provisions regarding the Service would enable Members to better understand the operation of the Service and would provide Members with increased predictability and certainty regarding their rights and obligations. FICC believes that this increased predictability and certainty regarding their rights and obligations may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC, and in particular, term repo activity. FICC's clearance and settlement of such term repo activity would promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of transactions subject to FICC's risk management and guaranty of settlement. Therefore, FICC believes the proposed correction, clarifications, and conforming changes described in Item II(A)1(iv) above are designed to promote the prompt and accurate clearance and settlement of securities transactions.

Rule 17Ad-22(e)(23)(i) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.⁴⁹ FICC believes that the proposed

⁴⁸ Id.

⁴⁹ 17 CFR 240.17Ad-22(e)(23)(i).

changes described in Item II(A)1(ii) above would establish a clear and transparent mechanism by which a Sponsoring Member may terminate and liquidate the positions of a Sponsored Member. Having a clear mechanism for such termination and liquidation would allow Sponsoring Members and Sponsored Members to understand the circumstances in which a Sponsored Member's positions may be terminated and liquidated and how such termination and liquidation would occur. FICC also believes that the proposed rule changes described in Item II(A)1(iii) above would enhance clarity and transparency regarding the funds-only settlement obligations of Sponsored Members with respect to any term repo activity. Specifically, the proposed changes would revise how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades that have haircuts in order to ensure that such calculation does not result in a return of the haircuts until final settlement. FICC believes that these proposed changes would provide enhanced clarity to Sponsoring Members and Sponsored Members regarding their rights and obligations as well as the rights and obligations of FICC. Additionally, the proposed correction, clarifications, and conforming changes described in Item II(A)1(iv) above would add further clarity to the Rules. FICC believes the proposal would ensure that the Rules remain clear and accurate, and facilitate Members' understanding of the Rules, and provide Members with increased predictability and certainty regarding their obligations. As such, FICC believes that these proposed changes are consistent with Rule 17Ad-22(e)(23)(i) under the Act.⁵⁰

⁵⁰

Id.

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

FICC believes that the proposed changes in Item II(A)1(ii) above could have an impact on competition by promoting and burdening competition. The proposal to allow a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions could promote competition by increasing the ability of Sponsoring Members to more effectively manage the risks of Sponsored Member Trades, particularly Sponsored Member Trades with a scheduled final settlement date beyond the next Business Day after the initial settlement date. Such increased risk management ability, in turn, could cause more institutions to become Sponsoring Members, and existing and future Sponsoring Members to accept a greater number and variety of Sponsored Members and Sponsored Member Trades, including, in particular, term repo activity. FICC also believes the proposed changes in Item II(A)1(ii) above could promote competition by allowing Sponsoring Members and Sponsored Members to negotiate the circumstances in which the Sponsoring Member could cause the termination and liquidation of the Sponsored Member's positions. The prospect of negotiation could allow Sponsored Members to consider various Sponsoring Members and the terms they offer.

Conversely, the proposed changes described in Item II(A)1(ii) above to allow a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions could burden competition by applying a different standard for the termination and liquidation of Sponsored Members' FICC-cleared positions than the standard that applies to other Members under Rule 22A.⁵¹ However,

⁵¹ Rule 22A, supra note 3.

FICC does not believe that the proposed changes described in Item II(A)1(ii) above would result in a significant burden on competition because the Sponsored Member would have the ability to negotiate with possible Sponsoring Members the circumstances in which the Sponsoring Member may effectuate a termination and the methodology it would use in calculating the liquidation amount.

Regardless of whether the potential burden on competition discussed in the previous paragraph is significant, FICC believes that any burden on competition that may be created by these proposed changes would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵²

FICC believes that any burden on competition created by the proposed changes described in Item II(A)1(ii) above is necessary in furtherance of the purposes of the Act to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and settlement of securities transactions.⁵³

Specifically, FICC believes that any burden on competition resulting from allowing a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions would be necessary in order to provide Sponsoring Members with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity. As described in detail in Item II(A)2 above, FICC believes that providing Sponsoring Members with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity, would

⁵² 15 U.S.C. 78q-1(b)(3)(I).

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

(i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) promote the prompt and accurate clearance and settlement of securities transactions. Therefore, FICC believes any burden that is created by these proposed changes would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵⁴

Furthermore, FICC believes that any burden on competition resulting from allowing a Sponsoring Member to control the termination and liquidation of its Sponsored Member's FICC-cleared positions would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,⁵⁵ because the proposed changes would remove the current impediment whereby the Sponsoring Member is not unilaterally able to cause the termination or liquidation of any Sponsored Member Trades. As stated above, there is an intermediary relationship between a Sponsoring Member and its Sponsored Member, including the Sponsoring Member's liability to FICC for the Sponsored Member's performance under the Sponsoring Member Guaranty, which does not apply to other Members. FICC believes this unique relationship warrants the Sponsoring Member having control over the termination and liquidation of its Sponsored Member's FICC-cleared positions. Moreover, the proposed changes would be more consistent with other intermediated relationships where the intermediary is typically permitted to terminate and liquidate the positions of its client that the intermediary guarantees if an event of default or other similar circumstance occurs under the bilateral agreement between the intermediary and the client. The current

⁵⁴ 15 U.S.C. 78q-1(b)(3)(I)

⁵⁵ Id.

inability to effectuate such termination and liquidation is inconsistent with other intermediated relationships and discourages term repo activity within the Service. The proposed changes would enable the Sponsoring Member to cause the termination and liquidation of the Sponsored Member's positions for which the Sponsoring Member is responsible, thereby providing it with greater ability to manage the risks associated with Sponsored Member Trades, particularly term repo activity. Therefore, FICC believes any burden that is created by these proposed changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵⁶

FICC believes that the proposed changes described in Item II(A)1(iii) above to facilitate the submission of term repo activity through the Service by revising how FICC calculates the funds-only settlement obligations of Sponsored Members and Sponsoring Members with respect to Sponsored Member Trades with haircuts could promote competition. This is because the proposed changes would honor the parties' contractual intent (as described in Item II(A)1(iii) above) and, thus, encourage more term repo activity within the Service. As such, FICC believes that these proposed changes could promote competition.

In addition, FICC does not believe that the proposed correction, clarifications, and conforming changes in Item II(A)1(iv) above would have an impact on competition. These changes would simply provide additional clarity, transparency and consistency to the Rules and not affect Members' rights and obligations. As such, FICC believes that these proposed changes would not have any impact on competition.

⁵⁶ Id.

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

FICC reviewed the proposed rule change with its Sponsoring Members in order to benefit from their expertise. Written comments relating to this proposed rule change have not been received from the Sponsoring Members or any other person. 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 self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2019-007 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-2019-007. 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-2019-007 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.⁵⁷

Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).

FIXED INCOME CLEARING CORPORATION

GOVERNMENT SECURITIES DIVISION RULEBOOK

TEXT OF PROPOSED RULE CHANGE

Bold and underlined text indicates proposed added language

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

RULE 1 – DEFINITIONS

* * *

Cross-Margining Repayment Deposit

The term “Cross-Margining Repayment Deposit” means the deposit to the Clearing Fund required to be made by a Cross-Margining Beneficiary Participant pursuant to Section 6 of Rule 43.

Current Haircut

The term “Current Haircut” means, as regards any Sponsored Member Trade, the Market Value of the Sponsored Member Trade, as of the time of the Corporation’s determination of the relevant Funds-Only Settlement Amount, minus the Contract Value of the Close Leg of the Sponsored Member Trade.

* * *

GSD Margin Group

The term “GSD Margin Group” means the GSD Accounts within a Margin Portfolio of a Member.

Haircut Deficit

The term “Haircut Deficit” means, as regards any Sponsored Member Trade, the amount, if any, by which the Initial Haircut exceeds the Current Haircut.

Haircut Surplus

The term “Haircut Surplus” means, as regards any Sponsored Member Trade, the amount, if any, by which the Current Haircut exceeds the Initial Haircut.

* * *

Individual Total Amount

The term “Individual Total Amount” means the sum of a Netting Member’s Individual Regular Amount plus such Netting Member’s Individual Supplemental Amount.

Initial Haircut

The term “Initial Haircut” means, as regards any Sponsored Member Trade, the absolute value of the dollar difference between the Market Value of the Sponsored Member Trade, as of the settlement date of the Start Leg, and the Contract Value of the Close Leg of the Sponsored Member Trade.

* * *

RULE 3A—SPONSORING MEMBERS AND SPONSORED MEMBERS

* * *

Section 8—Securities Settlement

(a) A Sponsored Member shall appoint its Sponsoring Member to act as processing agent with respect to the Sponsored Member's satisfaction of its securities settlement obligations and for performing all functions and receiving Reports and information set forth in the Sections of the Rules cited in Section 8(c) below. The Corporation's provision of such Reports and information to the Sponsoring Member shall constitute satisfaction of the Corporation's obligations to provide such Reports and information to the affected Sponsored Members. Notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be principally obligated to the Corporation with respect to all securities settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

(b) Netting at the Sponsored Member level shall occur as stated in Section 7 of this Rule 3A. The Corporation shall then, for operational purposes, calculate a single Net Settlement Position and Fail Net Settlement Position in each CUSIP for the Sponsoring Member Omnibus Account and associated Deliver Obligations and Receive Obligations.

(c) Each Sponsored Member shall be responsible for satisfying its allocable portion **(calculated for such Sponsored Member as stated in Section 7 of this Rule 3A)** of the Deliver Obligations and Receive Obligations established for the Sponsoring Member Omnibus Account, using its Sponsoring Member as a processing agent, in the same manner set forth in Sections 9 through 12 of Rule 11 and Sections 1 through 5, 7, 9 and 10 of Rule 12 for Netting Members. With respect to Section 5 of Rule 12, the Sponsoring Member shall inform the Corporation as to the manner in which a partial delivery, if any, was allocated among the Sponsored Members. **Notwithstanding anything to the contrary in these Rules or any Sponsoring Member Guaranty, a Sponsoring Member's satisfaction of the net Deliver Obligations and Receive Obligations to the Corporation with respect to the Sponsoring Member Omnibus Account of such Sponsoring Member prior to such Sponsoring Member's receipt of any Sponsored Member's payment or delivery of its allocable portion of such Deliver Obligations or Receive Obligations shall constitute performance by the Sponsoring Member under its Sponsoring Member Guaranty with respect to such Sponsored Member's allocable portion of the Sponsoring Member Omnibus Account Deliver Obligations and Receive Obligations, regardless of the manner or capacity in which the Sponsoring Member satisfies such net Deliver Obligations and Receive Obligations.**

(d) On each Business Day, each Deliver Obligation and Receive Obligation of the Sponsoring Member Omnibus Account shall be settled at Settlement Value reported on such Business Day for such Obligations. The Corporation's satisfaction of its securities settlement obligations with the Sponsoring Member Omnibus Account shall constitute satisfaction of the Corporation's obligation to settle with an individual Sponsored Member whose securities settlement obligations constitute an allocable portion of the Deliver Obligation or Receive Obligation of the Sponsoring Member Omnibus Account.

(e) Any financing costs incurred as described in Section 6 of Rule 12 due to Sponsored Member activity shall be the responsibility of the applicable Sponsoring Member. Section 8 of Rule 12 shall apply to Sponsoring Members and Sponsored Members in the same manner in which it applies to Netting Members.

(f) The Corporation's buy-in provisions set forth in Section 13 of Rule 11 shall apply, the same manner in which they apply to Netting Member positions, to the Receive Obligations and Deliver Obligations established at the level of the Sponsoring Member Omnibus Account pursuant to subsection (b) of this Section 8.

(g) As security for any and all obligations and liabilities of a Sponsored Member to the Corporation under the Rules, including, without limitation, all of the securities and funds-only settlement obligations of such Sponsored Member under the Rules, each such Sponsored Member grants to the Corporation a first priority perfected security interest in all assets and property placed by a Sponsored Member in the possession of the Corporation (or its agents acting on its behalf), including all securities and cash on deposit with the Corporation or its agents.

Section 9—Funds-Only Settlement

(a) A Sponsored Member shall have the same Funds-Only Settlement Amount obligations as a Netting Member pursuant to Rule 13. **However, if the parties to a Sponsored Member Trade agree for such Sponsored Member Trade to have an Initial Haircut, any Funds-Only Settlement Amount that is applicable to such Sponsored Member Trade and that includes a Collateral Mark shall, in lieu of such Collateral Mark, include any Haircut Deficit or Haircut Surplus. Any Haircut Deficit shall be a negative amount for the Member with a Net Long Position, and a positive amount for the Member with a Net Short Position. Any Haircut Surplus shall be a negative amount for the Member with a Net Short Position, and a positive amount for the Member with a Net Long Position. The Corporation shall not be under any obligation to verify the parties' agreement in respect of an Initial Haircut, and its calculation of any Initial Haircut shall be conclusive and binding on the parties.** A Sponsored Member shall appoint its Sponsoring Member to act as processing agent for performing all functions and receiving Reports and information set forth in Rule 13. The Corporation's provision of such Reports and information to the Sponsoring Member shall constitute satisfaction of the Corporation's obligations to provide such Reports and information to the affected Sponsored Members. Notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be principally obligated to the Corporation with respect to all funds-only settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

(b) The Corporation shall, for operational purposes, calculate a single Funds-Only Settlement Amount obligation for the Sponsoring Member Omnibus Account. **Notwithstanding anything to the contrary in these Rules or any Sponsoring Member Guaranty, a Sponsoring Member's satisfaction of the net Funds-Only Settlement Amount obligation to the Corporation with respect to the Sponsoring Member Omnibus Account of such Sponsoring Member prior to such Sponsoring Member's receipt of any Sponsored Member's payment of its allocable portion of such Funds-Only Settlement Amount obligation shall constitute**

performance by the Sponsoring Member under its Sponsoring Member Guaranty with respect to such Sponsored Member's allocable portion of the Sponsoring Member Omnibus Account Funds-Only Settlement Amount obligation, regardless of the manner or capacity in which the Sponsoring Member satisfies such net Funds-Only Settlement Amount obligation.

(c) Each Sponsored Member shall be responsible for satisfying its allocable portion of ~~such~~**the Funds-Only Settlement Amount calculated for the Sponsoring Member Omnibus Account**, using its Sponsoring Member as a processing agent, in the same manner set forth in Rule 13 for Netting Members. The Corporation's satisfaction of its funds-only settlement obligations with the Sponsoring Member Omnibus Account shall constitute satisfaction of the Corporation's obligation to settle with an individual Sponsored Member whose Funds-Only Settlement obligations constitute an allocable portion of the Funds-Only Settlement Amount of the Sponsoring Member Omnibus Account.

(e)(d) A Sponsoring Member shall be subject to a fine pursuant to the Fine Schedule for Late Payment of Funds Settlement Debit in these Rules for any late payment of a Funds-Only Settlement Amount that is a debit obligation of any of its Sponsored Members.

(d)(e) Section 7 of Rule 13 shall apply to the Sponsored Member activity in the same manner in which it applies to Netting Member activity, except that the Sponsoring Member shall have all obligations arising thereunder even if caused by its Sponsored Members.

* * *

Section 18 – Liquidation of Sponsored Member and Related Sponsoring Member Positions

(a) **The provisions of this Section 18, which shall supersede any conflicting provisions of this Rule 3A and Rule 22A, shall only apply (i) with respect to the liquidation of positions resulting from Sponsored Member Trades within the meaning of subsection (a) of the Sponsored Member Trade definition, (ii) in the event a Sponsoring Member is not a Defaulting Member and the Corporation has not ceased to act for the Sponsoring Member and (iii) if a Corporation Default has not occurred. In addition, the Corporation may only cause the termination described in subsection (b) below if it has ceased to act for the Sponsored Member at issue and the Sponsoring Member has not performed the obligations of the Sponsored Member in respect of all positions guaranteed by such Sponsoring Member.**

(b) **Subject to the provisions of subsection (a) of this Section 18, on any Business Day, the Sponsoring Member or the Corporation may by written notice to the other cause the immediate termination of all, but not fewer than all, of the long and short Net Settlement Positions, Fail Net Settlement Positions and Forward Net Settlement Positions of the Sponsored Member established in the Sponsoring Member's Sponsoring Member Omnibus Account. Any such notice shall also cause the immediate termination of all of the corresponding, offsetting long and short Net Settlement Positions, Fail Net Settlement Positions and Forward Net Settlement Positions of the Sponsoring Member established in the Sponsoring Member's Netting System Account(s). Each such termination shall be effected by the Sponsoring Member's establishment of a final Net Settlement Position for each Eligible Netting Security with a distinct CUSIP number that shall equal the net of all**

outstanding deliver obligations and receive obligations of the parties thereto in each such Eligible Netting Security including those that arise from Fail Net Settlement Positions and Forward Net Settlement Positions (the “Final Net Settlement Position”).

(c) To liquidate the Final Net Settlement Positions of any Sponsored Member and the corresponding, offsetting Final Net Settlement Positions of the Sponsoring Member established pursuant to subsection (b) of this Section 18, a Sponsoring Member shall calculate a liquidation amount, which may be equal to zero and shall be deemed a Funds-Only Settlement Amount. The liquidation amount in respect of the Final Net Settlement Positions of a Sponsored Member (the “Sponsored Member Liquidation Amount”) shall be due to or from the Corporation from or to the Sponsored Member. The liquidation amount in respect of the corresponding, offsetting Final Net Settlement Positions of the Sponsoring Member (the “Sponsoring Member Liquidation Amount”) shall be due to or from the Corporation from or to the Sponsoring Member. If the Sponsored Member Liquidation Amount in respect of the Final Net Settlement Positions of a Sponsored Member is due to the Corporation, the Sponsoring Member Liquidation Amount in respect of the corresponding Final Net Settlement Positions of the Sponsoring Member shall be due to the Sponsoring Member. If the Sponsored Member Liquidation Amount in respect of the Final Net Settlement Positions of a Sponsored Member is due to the Sponsored Member, the Sponsoring Member Liquidation Amount in respect of the Final Net Settlement Positions of the Sponsoring Member shall be due to the Corporation.

Any Sponsoring Member Liquidation Amount calculated by a Sponsoring Member pursuant to this subsection (c) may be based on prices obtained from a generally recognized source or the most recent closing bid or offer quotation from such a source and may include the losses (including costs such as fees, expenses and commissions) and/or gains realized by the Sponsoring Member in entering into replacement transactions and/or entering into or terminating hedge transactions in connection with or as a result of, and any other loss, damage, cost or expense directly arising or resulting from, the liquidation of the Sponsoring Member’s Final Net Settlement Positions. The Sponsored Member Liquidation Amount in respect of Final Net Settlement Positions of a Sponsored Member shall equal the Sponsoring Member Liquidation Amount in respect of the corresponding Final Net Settlement Positions of the Sponsoring Member. The Sponsoring Member’s calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount shall be conclusive and binding on all relevant parties, absent manifest error and subject to any right of the Corporation to indemnification under the Rules.

If a Sponsored Member Liquidation Amount is due to the Corporation from the Sponsored Member, the Sponsoring Member shall be obligated to pay such Sponsored Member Liquidation Amount under its Sponsoring Member Guaranty, which obligation shall, notwithstanding anything to the contrary in the Sponsoring Member Guaranty, be payable without demand and (automatically and without further action by any Person) be set off against the obligation of the Corporation to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member.

If a Sponsored Member Liquidation Amount is due to the Sponsored Member from the Corporation, the Corporation’s sole obligation in respect of any such Sponsored Member

Liquidation Amount shall be to transfer such amount to the applicable account of the Sponsoring Member at the Funds-Only Settling Bank Member acting on behalf of a Sponsoring Member (the “Funds-Only Omnibus Account”). The Corporation hereby instructs the Sponsoring Member to discharge its obligation to pay the Corporation any Sponsoring Member Liquidation Amount by transferring such amount to the Sponsoring Member’s Funds-Only Omnibus Account for application to the Corporation’s obligation to pay the corresponding Sponsored Member Liquidation Amount to the Sponsored Member. To the extent that the Sponsoring Member transfers such funds to the Fund-Only Omnibus Account as provided in this paragraph, (i) the obligations of the Corporation in respect of the Sponsored Member Liquidation Amount shall be discharged and (ii) the obligations of the Sponsoring Member in respect of the corresponding Sponsoring Member Liquidation Amount shall be discharged. The Sponsored Member agrees to accept the transfer of such funds to the Funds-Only Omnibus Account in full satisfaction of the obligation of the Corporation to pay the Sponsored Member Liquidation Amount to the Sponsored Member.

(d) The Sponsoring Member shall indemnify the Corporation, and its employees, officers, directors, shareholders, agents, and Members (collectively, the “SMP Indemnified Parties”), for any and all losses, liability, or expenses of an SMP Indemnified Party arising from any claim by an affected Sponsored Member disputing the Sponsoring Member’s calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount pursuant to this Section 18.

(e) The Corporation hereby acknowledges that a Sponsoring Member may take a security interest in the deliver, receive, and related payment obligations owed by the Corporation to a Sponsored Member in respect of its transactions that have been novated to the Corporation by such Sponsoring Member and established in its Sponsoring Member Omnibus Account, including, but not limited to, such Sponsored Member’s rights to receive payment of any Sponsored Member Liquidation Amount pursuant to this Section 18 (the “Sponsored Member Rights”), and agrees that, if the provisions of this Section 18 apply, the Corporation’s security interest in all assets and property placed by a Sponsored Member in the possession of the Corporation (or its agents acting on its behalf), including all securities and cash on deposit with the Corporation or its agents, granted in Section 8(g) of this Rule 3A, shall be subordinated to the security interest of the Sponsoring Member in the Sponsored Member Rights.

* * *