

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 009

Amendment No. (req. for Amendments *)

Filing by Fixed Income Clearing Corporation

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

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Section 806(e)(2) *

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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Enhance Capital Requirements and Make Other Changes

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 * [REDACTED] Last Name * [REDACTED]

Title * [REDACTED]

E-mail * RuleFilingAdmin@dtcc.com

Telephone * [REDACTED] Fax [REDACTED]

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Fixed Income Clearing Corporation has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/13/2021

(Title *)

By [REDACTED]

[REDACTED]

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2021.12.13
14:03:23 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

Narrative (FICC) - Membership Stand

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 *

Add Remove View

Exh 1A (FICC) - Membership Standar

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 Advanced 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 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

Add Remove View

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.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exh 3 (FICC) (Redacted) - Membershi

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.

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Exhibit Sent As Paper Document

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

Add Remove View

Exh 5 (FICC) - Membership Standards

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) The text of the proposed changes to the Government Securities Division (“GSD”) Rulebook (the “GSD Rules”) and the Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Rules,” and together with the GSD Rules, the “Rules”) of Fixed Income Clearing Corporation (“FICC”) are attached hereto as Exhibit 5.¹

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Risk Committee of the Board of Directors of FICC (“Board”) at a meeting duly called and held on December 15, 2020.

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

(a) Purpose

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

(i) Background

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

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

In accordance with Section 17A(b)(4)(B) of the Securities Exchange Act of 1934 (“Exchange Act”),² a registered clearing agency such as FICC may, among other things, deny

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the GSD Rules and the MBSD Rules, as applicable, available at <https://www.dtcc.com/legal/rules-and-procedures>.

² 15 U.S.C. 78q-1(b)(4)(B).

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

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

FICC's capital requirements for its members have not been updated in nearly 20 years.³ Since that time, there have been significant changes to the financial markets that warrant FICC revisiting its capital requirements. For example, the regulatory environment within which FICC and its members operate has undergone various changes. The implementation of the Basel III standards,⁴ the designation of many banks as systemically important by the Financial Stability Board,⁵ as well as the designation of FICC as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council,⁶ have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CCPs. Similarly, the Covered Clearing Agency Standards ("CCAS") adopted by the Securities and Exchange Commission ("Commission" or "SEC") have raised the regulatory standards applicable to CCPs such as FICC.⁷

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants (e.g., via the CCIT and Sponsoring Member programs at FICC) have created a diverse FICC membership that has expanded the credit-risk profiles that FICC must manage. For example, post the 2008 financial crisis and subsequent changes in regulatory capital requirements, FICC has seen a shift in certain activity away from highly capitalized firms and, instead, to less capitalized, niche market participants.

³ Although FICC has not updated capital requirements for many of its members in nearly 20 years, during that time FICC has adopted new membership categories with corresponding capital requirements that FICC believes are still appropriate. As such, FICC is not proposing changes to capital requirements for all membership categories.

⁴ Basel Committee on Banking Supervision, The Basel Framework, available at https://www.bis.org/basel_framework/index.htm?export=pdf ("Basel III Standards").

⁵ See Financial Stability Board, 2021 list of global systemically important banks, available at <https://www.fsb.org/wp-content/uploads/P231121.pdf>.

⁶ See U.S. Department of the Treasury, Designations, Financial Market Utility Designations, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations>.

⁷ 17 CFR 240.17Ad-22(e).

Moreover, FICC clearing activity and market volatility, each of which present risk to FICC, also increased significantly over the years.⁸ Although these factors do not directly require FICC to increase capital requirements for its membership (e.g., there is no specific regulation or formula that prescribes a set capital requirement for members of a CCP such as FICC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, FICC has a responsibility to do the same. Enhancing its capital requirements helps meet that responsibility and improve FICC's credit risk management. Enhanced capital requirements also help mitigate other risks posed directly or indirectly by members such as legal risk, operational risk and cyber risk, as better capitalized members have greater financial resources in order to mitigate the effects of these and other risks.

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (i.e., there is no magic number). Instead, FICC considered several factors, including inflation and the capital requirements of other Financial Market Infrastructures, both in the U.S. and abroad, to which the proposed requirements align.⁹

⁸ See, e.g., DTCC Annual Reports, available at <https://www.dtcc.com/about/annual-report>. FICC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). The DTCC Annual Reports highlight and track FICC clearing activity year-over-year. Moreover, interest rates, which are a key risk factor for FICC, experienced a rollercoaster of volatility over the past 14 years, including historic and near-historic peaks in volatility, in response to changing market dynamics (e.g., reduced overall market liquidity, a shift in market liquidity relying on less capitalized market participants, and the advent of electronic trading), the extraordinary monetary policy measures implemented by global central banks, and the multiple financial crises over the past 20 years.

⁹ See The Options Clearing Corporation, OCC Rules, Rule 301(a), available at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules> (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, available at <https://www.cmegroup.com/rulebook/CME/I/9/9.pdf> (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, available at <https://www.lch.com/resources/rulebooks/lch-sa> (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = \$0.8150 as of December 31, 2020; see <https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (last visited January 14, 2021)).

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

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

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

(ii) Current FICC Capital Requirements

The Rules currently specify capital requirements for members based on their membership type and type of entity. The current FICC capital requirements for Members of GSD are set forth in Section 4(b) of GSD Rule 2A (Initial Membership Requirements)¹⁰ for Netting Members, Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members)¹¹ for Sponsoring Members and Section 2(a)(ii) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service)¹² for CCIT Members. The current FICC capital requirements for Clearing Members of MBSD are set forth in Section 2(e) of MBSD Rule 2A (Initial Membership Requirements).¹³

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

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

¹⁰ GSD Rule 2A (Initial Membership Requirements), Section 4(b) (Financial Responsibility), supra note 1.

¹¹ GSD Rule 3A (Sponsoring Members and Sponsored Members), Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards), supra note 1.

¹² GSD Rule 3B (Centrally Cleared Institutional Triparty Service), Section 2(a)(ii), supra note 1.

¹³ MBSD Rule 2A (Initial Membership Requirements), Section 2(e) (Financial Responsibility), supra note 1.

GSD Netting Members

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 4(b) of GSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in

accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

GSD Sponsoring Members

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

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

GSD CCIT Members

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

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

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

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

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

MBSD Clearing Members

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

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

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

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

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

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

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

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

(7) if the applicant is applying to become an Insured Credit Union Clearing Member, it must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million and achieve

the “well capitalized” statutory net worth category classification as defined by the NCUA under 12 C.F.R. Part 702; and

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

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

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

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

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

As was the case for GSD Netting Members, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 2(e) of MBSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

(iii) Current FICC Watch List and Enhanced Surveillance List

FICC's Watch List is a list of members that are deemed by FICC to pose a heightened risk to it and its members based on credit ratings and other factors.¹⁴

Specifically, the Watch List is the list of members with credit ratings derived from FICC's Credit Risk Rating Matrix ("CRRM")¹⁵ of 5, 6 or 7, as well as members that, based on FICC's consideration of relevant factors, including those set forth in Section 12(d) of GSD Rule 3 (Ongoing Membership Requirements)¹⁶ and Section 11(d) of MBSD Rule 3 (Ongoing Membership Requirements),¹⁷ are deemed by FICC to pose a heightened risk to it and its members.

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

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

GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements) specify the ongoing membership requirements and monitoring applicable to members.¹⁸

Section 7 of GSD Rule 3 and Section 6 of MBSD Rule 3 provide that FICC may review the financial responsibility and operational capability of a member and otherwise require from

¹⁴ See GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions), supra note 1.

¹⁵ FICC's CRRM is a matrix of credit ratings of members specified in Section 12 of GSD Rule 3 and Section 11 of MBSD Rule 3. The CRRM is developed by FICC to evaluate the credit risk members pose to FICC and its members and is based on factors determined to be relevant by FICC from time to time, which factors are designed to collectively reflect the financial and operational condition of a member. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. See GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions), supra note 1.

¹⁶ GSD Rule 3 (Ongoing Membership Requirements), Section 12(d), supra note 1.

¹⁷ MBSD Rule 3 (Ongoing Membership Requirements), Section 11(d), supra note 1.

¹⁸ GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements), supra note 1.

the member additional reporting of its financial or operational condition in order to make a determination as to whether such member should be placed on the Watch List and/or be subject to enhanced surveillance by FICC consistent with the provisions of Section 12 of GSD Rule 3 and Section 11 of MBSD Rule 3.

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

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

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

Section 12(d) of GSD Rule 3 and Section 11(d) of MBSD Rule 3 provide that the factors to be considered by FICC in determining whether a member is placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the member, (ii) reasonable concerns around the member’s liquidity arrangements, (iii) material changes to the member’s organizational structure, (iv) reasonable concerns about the member’s financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the member to demonstrate satisfactory financial condition or operational capability or if FICC has a reasonable concern regarding the member’s ability to maintain applicable membership standards, and (vi) failure of the member to provide information required by FICC to assess risk exposure posed by the member’s activity.

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

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

(iv) Proposed Rule Changes

A. Changes to Enhance FICC's Capital Requirements

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

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

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

GSD Netting Members

Bank Netting Members

FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to common equity tier 1 capital ("CET1 Capital"),¹⁹ (2) raise the minimum capital requirements for banks and trust companies, and (3) require U.S. banks and trust companies to be well capitalized ("Well Capitalized") as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation ("FDIC").²⁰

FICC proposes to change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital and raise the minimum capital requirements for banks and trust companies in order to align FICC's capital requirements with banking regulators' changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.²¹ Consistent with these changes by banking regulators, FICC believes that the appropriate

¹⁹ Under the proposal, CET1 Capital would be defined as an entity's common equity tier 1 capital, calculated in accordance with such entity's regulatory and/or statutory requirements.

²⁰ See 12 CFR 324.403(b)(1).

²¹ Compare, e.g., 12 CFR 324.20(b) (FDIC's definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending

capital measure for members that are banks and trust companies should be CET1 Capital and that FICC's capital requirements for members should be enhanced in light of these increased regulatory capital requirements.

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

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

Dealer Netting Members

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

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

Regulation (EU) No 648/2012, Article 26, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575> (European Union's definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, *supra* note 4 (Basel III Standards' definition of CET1 Capital).

Futures Commission Merchant Netting Members

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

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

Inter-Dealer Broker Netting Members

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

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

Foreign Netting Members

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

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

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

by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

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

As described above, under Section 4(b) of GSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).²² As such, FICC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

Accordingly, FICC proposes to delete the language in Section 4(b) of GSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial

²² The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement ([available at https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf](https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf)). Under that agreement, the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board ("IASB") signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum ("ASAF") to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. ([See https://www.ifrs.org/groups/accounting-standards-advisory-forum/](https://www.ifrs.org/groups/accounting-standards-advisory-forum/).) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-based payments. ([Available at https://www.journalofaccountancy.com/issues/2013/feb/20126984.html](https://www.journalofaccountancy.com/issues/2013/feb/20126984.html).) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, FICC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

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

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

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

Government Securities Issuer Netting Members

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

Insurance Company Netting Members

FICC proposes to leave the capital requirements applicable to Insurance Company Netting Members unchanged, however FICC proposes to (i) specify the calculation of the existing risk-based capital ratio and (ii) correct typographical errors and make some clarifying

and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.²³

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

Registered Investment Company Netting Members

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

Other Netting Members

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

GSD Rule 1

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

Other Proposed Changes to GSD Rule 2A

Section 1

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

Sections 2 and 3

FICC proposes to renumber existing Section 3 of GSD Rule 2A as Section 2 and renumber existing Section 2 of GSD Rule 2A as Section 3 in order for the eligibility requirements for Comparison-Only Members set forth in Section 1 of GSD Rule 2A to be

²³ As described below, FICC proposes to add a new Section 3(a)(vii) to GSD Rule 2A describing the eligibility requirements for an Insurance Company Netting Member, which was inadvertently omitted from the list of categories of Netting Members in Section 3.

immediately followed by the membership qualifications and standards for Comparison-Only Members. In connection therewith, FICC proposes to revise the heading of the newly renumbered Section 2 to clarify that such section specifies the membership qualifications and standards for Comparison-Only Members.

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

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

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

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

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

Section 4

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

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

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

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

GSD Funds-Only Settling Bank Members

FICC proposes to require that any Funds-Only Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio²⁴ equal to or greater than the Tier 1 RBC Ratio that would be required for such Funds-Only Settling Bank to be Well Capitalized. FICC does not currently have a capital requirement for Funds-Only Settling Banks.

GSD Sponsoring Members

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

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

GSD CCIT Members

FICC proposes to leave the capital requirements for a CCIT Member unchanged, but delete the language in Section 2(a)(ii) of GSD Rule 3B providing that the minimum capital requirements for a CCIT Member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such CCIT Member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

²⁴ Under the proposal, Tier 1 RBC Ratio is the ratio of an entity's tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

As described above, the multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).²⁵ As such, FICC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

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

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

MBSD Clearing Members

Bank Clearing Members

FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital,²⁶ (2) raise the minimum capital requirements for banks and trust companies, and (3) require U.S. banks and trust companies to be Well Capitalized as defined in the capital adequacy rules and regulations of the FDIC.²⁷

FICC proposes to change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital and raise the minimum capital requirements for banks and trust companies in order to align FICC’s capital requirements with banking regulators’ changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.²⁸ Consistent with these changes by banking regulators, FICC believes that the appropriate capital measure for members that are banks and trust companies should be CET1 Capital and that FICC’s capital requirements for members should be enhanced in light of these increased regulatory capital requirements.

²⁵ Supra note 22.

²⁶ Under the proposal, CET1 Capital would be defined as an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

²⁷ See 12 CFR 324.403(b)(1).

²⁸ See supra note 21.

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

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

Dealer Clearing Members

FICC proposes to leave the capital requirements applicable to Dealer Clearing Members unchanged, however FICC proposes to (i) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital²⁹ and Excess Adjusted Net Capital,³⁰ depending on what the Dealer Clearing Member is required to report on its regulatory filings, and (ii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

²⁹ Under the proposal, Excess Liquid Capital would be defined as the difference between the Liquid Capital of a Government Securities Broker or Government Securities Dealer and the minimum Liquid Capital that such Government Securities Broker or Government Securities Dealer must have to comply with the requirements of 17 CFR Section 402.2(a), (b) and (c), or any successor rule or regulation thereto. FICC also proposes to add to MBSD Rule 1 related defined terms of Liquid Capital, Government Securities Broker and Government Securities Dealer, in each case identical to the definitions of such terms in the GSD Rules.

³⁰ Under the proposal, Excess Adjusted Net Capital would be defined as the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 CFR Section 1.17(a)(1) or (a)(2), or any successor rule or regulation thereto. FICC also proposes to add to MBSD Rule 1 a related defined term of Futures Commission Merchant identical to the definition of such term in the GSD Rules.

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

Inter-Dealer Broker Clearing Members

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

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

Unregistered Investment Pool Clearing Members

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

Government Securities Issuer Clearing Members

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

Insured Credit Union Clearing Members

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

Registered Investment Company Clearing Members

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

Foreign Members

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

- (1) in the case of a Foreign Person that is a broker or dealer (and not applying to become a Dealer Clearing Member or Inter-Dealer Broker Clearing Member), it must have total equity capital of at least \$25 million; and
- (2) in the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Clearing Member through a U.S. branch or agency), it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

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

As described above, under Section 2(e)(ii) of MBSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).³¹ As such, FICC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both FICC and its members.

Accordingly, FICC proposes to delete the language in Section 2(e)(ii) of MBSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

As described above, FICC also proposes that non-U.S. banks and trust companies be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums

³¹ Supra note 22.

for various jurisdictions, these members would be required to provide FICC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction, as described in greater detail below.

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

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

Other Clearing Members

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

Other Proposed Changes to MBSD Rule 2A

Section 1

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

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

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

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

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

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

Section 2

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

At the end of Section 2(e), FICC proposes to clarify its existing policy that the Clearing Member financial responsibility standards set forth in Section 2(e) are only the minimum requirements and make explicit that the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC, and the overall financial condition of the applicant, may, in its sole discretion, impose heightened or different financial responsibility standards on any applicant.

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

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

MBSD Cash Settling Bank Members

FICC proposes to require that any Cash Settling Bank Member that, in accordance with such entity’s regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a

Tier 1 RBC Ratio³² equal to or greater than the Tier 1 RBC Ratio that would be required for such Cash Settling Bank Member to be Well Capitalized. FICC does not currently have a capital requirement for Cash Settling Bank Members. FICC also proposes to revise the title of MBSD Rule 3A to reflect the correct title for this membership category.

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

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

FICC believes that the current system of having both a Watch List and an enhanced surveillance list has confused various FICC stakeholders, while the proposed approach, as FICC understands from its experience, will be more consistent with industry practices and understanding of a "Watch List."

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

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

The proposed change will mean that members with a CRRM rating of 5 would no longer automatically be included on the Watch List. Members with a CRRM rating of 5 represent the largest single CRRM rating category, but FICC does not believe all such members present heightened credit concerns.³³ Nevertheless, FICC would continue to have the authority to place a member on the new Watch List if it is deemed to pose a heightened risk to FICC and its members and/or to downgrade the CRRM rating of a member.

In GSD Rule 1, FICC proposes to update a reference to "members" in the definition of the Watch List to be a reference to the defined term "Members." In Section 12 of GSD Rule 3, FICC proposes to update references to "members" with the defined term "Members." FICC also proposes to clarify in Section 12(f) of GSD Rule 3 and Section 11(f) of MBSD Rule 3 that

³² See supra note 24.

³³ The majority of members with a CRRM rating of 5 are either rated "investment grade" by external rating agencies or, in the absence of external ratings, FICC believes are equivalent to investment grade, as many of these members are primary dealers and large foreign banks. A firm with a rating of "investment grade" is understood to be better able to make its payment obligations compared to a firm with a lesser rating, such as a rating of "speculative." As such, among the total population, firms with investment grade ratings are generally considered good credit risk along a credit risk scale.

members on the Watch List are reported to FICC's management committees and regularly reviewed by FICC's senior management.

C. Certain Other Clarification Changes

In connection with the above-described changes to the Rules to enhance FICC's capital requirements for members and redefine the Watch List and eliminate the enhanced surveillance list, FICC proposes to make certain other clarification changes in order to improve the accessibility and transparency of the Rules including the following:

GSD Rules

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

FICC proposes to add a new defined term of "Government Sponsored Enterprise" in GSD Rule 1 which would be used in the revised definition of "Government Securities Issuer Netting Member" in Section 3 of GSD Rule 2A, from which such term was inadvertently omitted. The proposed definition of "Government Sponsored Enterprise" in GSD Rule 1 is the same as the definition of such term in MBSD Rule 1.³⁴

FICC also proposes to revise the definition of "Excess Capital Differential" in GSD Rule 1 to replace the reference to "Excess Capital" with a reference to "Netting Member Capital." FICC previously deleted the defined term "Excess Capital" from GSD Rule 1 and replaced it with the defined term "Netting Member Capital"³⁵ but inadvertently did not update the reference to "Excess Capital" in the defined term "Excess Capital Differential" with a reference to "Netting Member Capital."

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

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

³⁴ MBSD Rule 1 (Definitions), supra note 1.

³⁵ See Securities Exchange Act Release Nos. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR-FICC-2018-001) and 83223 (May 11, 2018), 83 FR 23020 (May 17, 2018) (SR-FICC-2018-801).

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

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

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

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

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

MBSD Rules

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

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

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

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

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

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

Member Outreach

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

Implementation Timeframe

Pending Commission approval, FICC would implement the proposed changes to enhance its capital requirements for members, as well as the clarification changes to the Rules, one year after the Commission's approval of this proposed rule change. During that one-year period, FICC would periodically provide members with estimates of their capital requirements, based on the approved changes, with more outreach expected for members impacted by the changes. The deferred implementation for all members and the estimated capital requirements for members are designed to give members the opportunity to assess the impact of their enhanced capital requirements on their business profile. All members would be advised of the implementation date of these proposed changes through issuance of an FICC Important Notice, posted to its website. FICC also would inform firms applying for membership of the new capital requirements. Members and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

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

(b) Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act³⁶ and Rules 17Ad-22(b)(7), (e)(4)(i) and (e)(18),³⁷ each as promulgated under the Exchange Act, for the reasons described below.

³⁶ 15 U.S.C. 78q-1(b)(3)(F).

³⁷ 17 CFR 240.17Ad-22(b)(7), (e)(4)(i) and (e)(18).

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.³⁸ As described above, the proposed rule changes would (1) enhance FICC's capital requirements for members, (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. FICC believes that enhancing its capital requirements for members, including continuing to recognize and account for varying members and memberships, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, and would help FICC more effectively manage and mitigate the credit risks posed by its members, which would in turn help FICC be better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. Similarly, FICC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help FICC better allocate its resources for monitoring the credit risks posed by its members, which would in turn help FICC more effectively manage and mitigate such credit risks so that FICC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. FICC believes that making clarification changes to the Rules, including through the use of new defined terms, would help ensure that the Rules remain clear and accurate, which would in turn help facilitate members' understanding of the Rules and provide members with increased predictability and certainty regarding their rights and obligations with respect to FICC's clearance and settlement activities. Therefore, FICC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Rule 17Ad-22(b)(7) under the Exchange Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership at FICC, provided that FICC may provide for a higher net capital requirement as a condition for membership if it demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures.³⁹ As described above, FICC proposes to enhance its capital requirements for members. FICC believes that these proposed rule changes, while referencing capital measures other than net capital, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, and would help FICC more effectively manage and mitigate the credit risks posed by its members while providing fair and open access to membership at FICC. FICC believes that the proposed changes would utilize capital measures that are appropriately matched to the regulatory and other capital requirements applicable to the types of entities that apply for and have membership at FICC, which would in turn help facilitate members' understanding of and compliance with FICC's enhanced capital requirements. FICC also believes that these other capital measures are more appropriate measures of the capital available to members to absorb losses arising out of their clearance and settlement activities at FICC than simply net capital because a member's net capital alone may not be available to absorb losses arising out of such activities. Thus, relying on measures beyond

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 17 CFR 240.17Ad-22(b)(7).

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

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁴⁰ As described above, FICC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. FICC believes that enhancing its capital requirements for members would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, which would in turn help FICC more effectively manage and mitigate its credit exposures to its members and thereby help enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. FICC believes that redefining the Watch List and eliminating the enhanced surveillance list would help FICC better allocate its resources for monitoring its credit exposures to members. By helping to better allocate resources, the proposal would in turn help FICC more effectively manage and mitigate its credit exposures to its members, thereby helping to enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. Therefore, FICC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

Rule 17Ad-22(e)(18) under the Exchange Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.⁴¹ As described above, FICC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. FICC's proposed capital requirements would utilize objective measurements of member capital that would be fully disclosed in the Rules. The proposed capital requirements

⁴⁰ 17 CFR 240.17Ad-22(e)(4)(i).

⁴¹ 17 CFR 240.17Ad-22(e)(18).

also would be risk-based and allow for fair and open access in that they would be based on the credit risks imposed by the member, such as its membership type and type of entity (including whether it is a non-U.S. entity). Accordingly, FICC's proposed capital requirements would establish objective, risk-based and publicly disclosed criteria for membership, which would permit fair and open access by members. The proposed capital requirements also would ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, which would help ensure that they have sufficient financial resources to meet the obligations arising from their membership at FICC. FICC's proposed redefinition of the Watch List and the elimination of the enhanced surveillance list would help FICC better allocate its resources for monitoring the credit risks posed by its members, including their ongoing compliance with FICC's proposed enhancements to its capital requirements. Therefore, FICC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(18) under the Exchange Act.

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

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

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

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

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

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

All prospective commenters should follow the SEC's instructions on *How to Submit Comments*, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

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

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 Exchange Act⁴² 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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

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

Exhibit 2 – Not applicable.

⁴² 15 U.S.C. 78s(b)(2).

Exhibit 3 – Confidential Supporting Information. **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 3 is being requested pursuant to 17 CFR 240.24b-2.**

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[____]; File No. SR-FICC-2021-009)

[DATE]

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

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

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

The proposed rule change consists of amendments to the Government Securities Division (“GSD”) Rulebook (the “GSD Rules”) and the Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Rules,” and together with the GSD Rules, the “Rules”) of FICC in order to (i) enhance FICC’s capital requirements for Members of GSD and Members of MBSD (collectively, “members”), (ii) redefine FICC’s Watch List and eliminate FICC’s enhanced surveillance list, and (iii) make

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.³

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

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

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

1. Purpose

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

(i) Background

Central counterparties ("CCPs") play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. CCPs achieve this by

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

providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses.

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

In accordance with Section 17A(b)(4)(B) of the Exchange Act,⁴ a registered clearing agency such as FICC may, among other things, deny participation to, or condition the participation of, any person on such person meeting such standards of financial responsibility prescribed by the rules of the registered clearing agency.

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

FICC's capital requirements for its members have not been updated in nearly 20 years.⁵ Since that time, there have been significant changes to the financial markets that warrant FICC revisiting its capital requirements. For example, the regulatory environment within which FICC and its members operate has undergone various changes.

⁴ 15 U.S.C. 78q-1(b)(4)(B).

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

The implementation of the Basel III standards,⁶ the designation of many banks as systemically important by the Financial Stability Board,⁷ as well as the designation of FICC as a systemically important financial market utility (“SIFMU”) by the Financial Stability Oversight Council,⁸ have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CCPs. Similarly, the Covered Clearing Agency Standards (“CCAS”) adopted by the Commission have raised the regulatory standards applicable to CCPs such as FICC.⁹

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants (e.g., via the CCIT and Sponsoring Member programs at FICC) have created a diverse FICC membership that has expanded the credit-risk profiles that FICC must manage. For example, post the 2008 financial crisis and subsequent changes in regulatory capital requirements, FICC has seen a shift in certain activity away from highly capitalized firms and, instead, to less capitalized, niche market participants.

⁶ Basel Committee on Banking Supervision, The Basel Framework, available at https://www.bis.org/basel_framework/index.htm?export=pdf (“Basel III Standards”).

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

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

⁹ 17 CFR 240.17Ad-22(e).

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

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (i.e., there is no magic number). Instead, FICC considered several factors, including inflation and the capital

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

requirements of other Financial Market Infrastructures, both in the U.S. and abroad, to which the proposed requirements align.¹¹

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

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

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

(ii) Current FICC Capital Requirements

The Rules currently specify capital requirements for members based on their membership type and type of entity. The current FICC capital requirements for Members of GSD are set forth in Section 4(b) of GSD Rule 2A (Initial Membership

¹¹ See The Options Clearing Corporation, OCC Rules, Rule 301(a), [available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules](https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules) (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, [available at https://www.cmegroup.com/rulebook/CME/I/9/9.pdf](https://www.cmegroup.com/rulebook/CME/I/9/9.pdf) (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, [available at https://www.lch.com/resources/rulebooks/lch-sa](https://www.lch.com/resources/rulebooks/lch-sa) (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = \$0.8150 as of December 31, 2020; see <https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (last visited January 14, 2021)).

Requirements)¹² for Netting Members, Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members)¹³ for Sponsoring Members and Section 2(a)(ii) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service)¹⁴ for CCIT Members. The current FICC capital requirements for Clearing Members of MBSD are set forth in Section 2(e) of MBSD Rule 2A (Initial Membership Requirements).¹⁵

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

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

GSD Netting Members

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

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

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

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

¹⁵ MBSD Rule 2A (Initial Membership Requirements), Section 2(e) (Financial Responsibility), supra note 3.

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

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

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

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

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

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

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

(7) if the applicant is a Foreign Person that is applying to become a Foreign Netting Member, it must satisfy the minimum financial requirements (defined by reference to regulatory capital as defined by the applicant's home country regulator) that are applicable to the Netting System membership category that FICC determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other political subdivision thereof subject to subsections (B), (C) and (D) below if the

entity's financial statements are not prepared in accordance with U.S. GAAP;

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

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

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

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

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

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 4(b) of GSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

GSD Sponsoring Members

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

Holding Company Act of 1956, as amended, have a bank holding company that is also “well-capitalized” as defined by the applicable regulations of the Board of Governors of the Federal Reserve System.

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

GSD CCIT Members

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

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

(B) For applicants whose financial statements are prepared in accordance with IFRS, U.K. GAAP or Canadian generally accepted accounting principles, the minimum financial requirements shall be one

and one-half times the applicable requirements set forth in subsection (A) above.

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

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

MBSD Clearing Members

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

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

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

Member were a member bank of the Federal Reserve System and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);

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

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

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

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

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

(7) if the applicant is applying to become an Insured Credit Union Clearing Member, it must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million and achieve the “well capitalized” statutory net worth category classification as defined by the NCUA under 12 C.F.R. Part 702; and

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

If the applicant in sections (1) through (8) above is a Foreign Person that is applying to become a Foreign Clearing Member, it must satisfy the minimum financial requirements: (i) defined by reference to regulatory capital as defined by the applicant’s home country regulator, or (ii) in the case of unregulated entities, as defined by FICC in its discretion, that are applicable to the Clearing System membership category that FICC determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other political

subdivision thereof, subject to subsections (B), (C) and (D) below if the entity's financial statements are not prepared in accordance with U.S. GAAP. For Unregistered Investment Pools, subsections (B), (C) and (D) shall apply to the following figures cited in subsection (A)(4) above: the \$250 million in Net Assets and the \$100 million in Net Assets.

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

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

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

As was the case for GSD Netting Members, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the

financial responsibility requirements generally require a member to have a certain level of capital, subsections (B), (C) and (D) of Section 2(e) of MBSD Rule 2A have the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

(iii) Current FICC Watch List and Enhanced Surveillance List

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

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

¹⁶ See GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions), supra note 3.

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

¹⁸ GSD Rule 3 (Ongoing Membership Requirements), Section 12(d), supra note 3.

¹⁹ MBSD Rule 3 (Ongoing Membership Requirements), Section 11(d), supra note 3.

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

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

GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements) specify the ongoing membership requirements and monitoring applicable to members.²⁰

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

Section 12(b) of GSD Rule 3 and Section 11(b) of MBSD Rule 3 provide that a member that is (1) a U.S. bank or trust company that files the Consolidated Report of Condition and Income (“Call Report”), (2) a U.S. broker-dealer that files the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent

²⁰ GSD Rule 3 (Ongoing Membership Requirements) and MBSD Rule 3 (Ongoing Membership Requirements), supra note 3.

with its regulator, or (3) a non-U.S. bank or trust company that has audited financial data that is publicly available, will be assigned a credit rating by FICC in accordance with the CRRM. A member's credit rating is reassessed each time the member provides FICC with requested information pursuant to Section 7 of GSD Rule 3, Section 6 of MBSD Rule 3 or as may be otherwise required under the Rules.

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

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

Section 12(d) of GSD Rule 3 and Section 11(d) of MBSD Rule 3 provide that the factors to be considered by FICC in determining whether a member is placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the member, (ii) reasonable concerns around the member's liquidity arrangements, (iii) material changes to the member's organizational structure, (iv) reasonable concerns about the member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the member to demonstrate

satisfactory financial condition or operational capability or if FICC has a reasonable concern regarding the member's ability to maintain applicable membership standards, and (vi) failure of the member to provide information required by FICC to assess risk exposure posed by the member's activity.

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

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

(iv) Proposed Rule Changes

A. Changes to Enhance FICC's Capital Requirements

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

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

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

GSD Netting Members

Bank Netting Members

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

FICC proposes to change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital and raise the minimum capital requirements for banks and trust companies in order to align FICC’s capital requirements with banking regulators’ changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.²³ Consistent with these changes by banking

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

²² See 12 CFR 324.403(b)(1).

²³ Compare, e.g., 12 CFR 324.20(b) (FDIC’s definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 26, available at

regulators, FICC believes that the appropriate capital measure for members that are banks and trust companies should be CET1 Capital and that FICC's capital requirements for members should be enhanced in light of these increased regulatory capital requirements.

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

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575> (European Union's definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, supra note 6 (Basel III Standards' definition of CET1 Capital).

Supervision and (iii) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

Dealer Netting Members

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

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

Futures Commission Merchant Netting Members

FICC proposes to leave the capital requirements applicable to Futures Commission Merchant Netting Members unchanged, however FICC proposes to (i) expressly provide for equivalence among measures of Excess Adjusted Net Capital, Excess Net Capital and Excess Liquid Capital, depending on what the Futures

Commission Merchant Netting Member is required to report on its regulatory filings, and (ii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

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

Inter-Dealer Broker Netting Members

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

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

Foreign Netting Members

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

- (1) in the case of a Foreign Person that is a broker or dealer, it must have total equity capital of at least \$25 million; and
- (2) in the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Netting Member through a U.S. branch or agency), it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

FICC may, based on information provided by or concerning an applicant applying to become a Foreign Netting Member, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles another existing category

of Netting Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

As described above, under Section 4(b) of GSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

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

²⁴ The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement (available at <https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf>). Under that agreement, the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board ("IASB") signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum ("ASAF") to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (See <https://www.ifrs.org/groups/accounting-standards-advisory-forum/>.) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-based payments. (Available at <https://www.journalofaccountancy.com/issues/2013/feb/20126984.html>.) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, FICC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

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

Accordingly, FICC proposes to delete the language in Section 4(b) of GSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

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

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

applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

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

Government Securities Issuer Netting Members

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

Insurance Company Netting Members

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

²⁵ As described below, FICC proposes to add a new Section 3(a)(vii) to GSD Rule 2A describing the eligibility requirements for an Insurance Company Netting

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

Registered Investment Company Netting Members

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

Other Netting Members

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

Member, which was inadvertently omitted from the list of categories of Netting Members in Section 3.

GSD Rule 1

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

Other Proposed Changes to GSD Rule 2A

Section 1

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

Sections 2 and 3

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

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

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

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

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

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

Section 4

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

superseded by the proposed revisions to the Netting Member capital requirements set forth in Section 4(b).

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

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

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

GSD Funds-Only Settling Bank Members

FICC proposes to require that any Funds-Only Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio

must have a Tier 1 RBC Ratio²⁶ equal to or greater than the Tier 1 RBC Ratio that would be required for such Funds-Only Settling Bank to be Well Capitalized. FICC does not currently have a capital requirement for Funds-Only Settling Banks.

GSD Sponsoring Members

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

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

GSD CCIT Members

FICC proposes to leave the capital requirements for a CCIT Member unchanged, but delete the language in Section 2(a)(ii) of GSD Rule 3B providing that the minimum capital requirements for a CCIT Member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such CCIT Member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

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

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

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

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

MBSD Clearing Members

Bank Clearing Members

FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to CET1 Capital,²⁸ (2) raise the minimum capital requirements for banks and trust companies, and (3) require U.S. banks and trust

²⁷ Supra note 24.

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

companies to be Well Capitalized as defined in the capital adequacy rules and regulations of the FDIC.²⁹

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

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

Under the proposal, a Bank Clearing Member that is a U.S. bank or trust company must have and maintain at least \$500 million in CET1 Capital and be Well Capitalized.

Under the proposal, a Bank Clearing Member that is a bank or trust company established

²⁹ See 12 CFR 324.403(b)(1).

³⁰ See supra note 23.

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

Dealer Clearing Members

FICC proposes to leave the capital requirements applicable to Dealer Clearing Members unchanged, however FICC proposes to (i) expressly provide for equivalence among measures of Excess Net Capital, Excess Liquid Capital³¹ and Excess Adjusted Net Capital,³² depending on what the Dealer Clearing Member is required to report on its

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

³² Under the proposal, Excess Adjusted Net Capital would be defined as the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 CFR Section 1.17(a)(1) or

regulatory filings, and (ii) make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.

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

Inter-Dealer Broker Clearing Members

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

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

(a)(2), or any successor rule or regulation thereto. FICC also proposes to add to MBSD Rule 1 a related defined term of Futures Commission Merchant identical to the definition of such term in the GSD Rules.

Unregistered Investment Pool Clearing Members

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

Government Securities Issuer Clearing Members

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

Insured Credit Union Clearing Members

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

Registered Investment Company Clearing Members

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

Foreign Members

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

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

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

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

As described above, under Section 2(e)(ii) of MBSD Rule 2A, the current minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

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

Accordingly, FICC proposes to delete the language in Section 2(e)(ii) of MBSD Rule 2A providing that the minimum capital requirements for a member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

As described above, FICC also proposes that non-U.S. banks and trust companies be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various

³³

Supra note 24.

regulatory minimums for various jurisdictions, these members would be required to provide FICC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction, as described in greater detail below.

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

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

Other Clearing Members

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

Other Proposed Changes to MBSD Rule 2A

Section 1

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

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

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

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

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

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

Section 2

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

At the end of Section 2(e), FICC proposes to clarify its existing policy that the Clearing Member financial responsibility standards set forth in Section 2(e) are only the minimum requirements and make explicit that the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC, and the overall financial condition of the applicant, may, in its sole discretion, impose heightened or different financial responsibility standards on any applicant.

FICC also proposes to clarify its existing practice that if an applicant does not itself satisfy the required minimum financial responsibility standards, the Board may include for such purposes the financial resources of the parent company of the applicant

(including, in the case of an applicant that is a U.S. branch or agency, its parent bank) if the parent company has delivered to FICC a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to FICC.

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

MBSD Cash Settling Bank Members

FICC proposes to require that any Cash Settling Bank Member that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio³⁴ equal to or greater than the Tier 1 RBC Ratio that would be required for such Cash Settling Bank Member to be Well Capitalized. FICC does not currently have a capital requirement for Cash Settling Bank Members. FICC also proposes to revise the title of MBSD Rule 3A to reflect the correct title for this membership category.

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

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

³⁴ See supra note 26.

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

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

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

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

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

heightened risk to FICC and its members and/or to downgrade the CRRM rating of a member.

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

C. Certain Other Clarification Changes

In connection with the above-described changes to the Rules to enhance FICC’s capital requirements for members and redefine the Watch List and eliminate the enhanced surveillance list, FICC proposes to make certain other clarification changes in order to improve the accessibility and transparency of the Rules including the following:

GSD Rules

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

FICC proposes to add a new defined term of “Government Sponsored Enterprise” in GSD Rule 1 which would be used in the revised definition of “Government Securities

Issuer Netting Member” in Section 3 of GSD Rule 2A, from which such term was inadvertently omitted. The proposed definition of “Government Sponsored Enterprise” in GSD Rule 1 is the same as the definition of such term in MBSD Rule 1.³⁶

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

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

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

³⁶ MBSD Rule 1 (Definitions), supra note 3.

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

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

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

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

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

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

MBSD Rules

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

In MBSD Rule 2, FICC proposes to clarify that FICC will make its services available to applicants that meet the eligibility, qualifications and standards specified in

the MBSD Rules, and to reflect that FICC, in addition to the Board, has the existing authority to approve certain membership applications.

In MBSD Rule 3, FICC proposes to clarify existing language that the eligibility, qualifications and standards set forth in MBSD Rule 2A in respect of an applicant shall continue to be met upon an applicant's admission as a Member and at all times while a Member. FICC also proposes to fix incorrect usages of certain defined terms, incorrect references to certain Exchange Act Rules, a reference to a "domestic" bank or trust company rather than a "U.S." bank or trust company, as well as make other typographical and clarifying changes.

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

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

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

Member Outreach

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

Implementation Timeframe

Pending Commission approval, FICC would implement the proposed changes to enhance its capital requirements for members, as well as the clarification changes to the Rules, one year after the Commission's approval of this proposed rule change. During that one-year period, FICC would periodically provide members with estimates of their capital requirements, based on the approved changes, with more outreach expected for members impacted by the changes. The deferred implementation for all members and the estimated capital requirements for members are designed to give members the opportunity to assess the impact of their enhanced capital requirements on their business profile. All members would be advised of the implementation date of these proposed changes through issuance of an FICC Important Notice, posted to its website. FICC also would inform firms applying for membership of the new capital requirements. Members and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

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

2. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act³⁸ and Rules 17Ad-22(b)(7), (e)(4)(i) and (e)(18),³⁹ each as promulgated under the Exchange Act, for the reasons described below.

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

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 17 CFR 240.17Ad-22(b)(7), (e)(4)(i) and (e)(18).

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

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

Rule 17Ad-22(b)(7) under the Exchange Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership at FICC, provided that FICC may provide for a higher net capital requirement as a condition for membership if it demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures.⁴¹ As described above, FICC proposes to enhance its capital requirements for members. FICC believes that these proposed rule changes,

⁴¹ 17 CFR 240.17Ad-22(b)(7).

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

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁴² As described above, FICC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. FICC believes that enhancing its capital requirements for members would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at FICC and otherwise, which would in turn help FICC more effectively manage and mitigate its credit exposures to its members and thereby help enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. FICC believes that redefining the Watch List and eliminating the enhanced surveillance list would help FICC better allocate its resources for monitoring its credit exposures to members. By helping to better allocate resources, the proposal would in turn help FICC more effectively manage and mitigate its credit exposures to its members, thereby helping to enhance the ability of FICC's financial resources to cover fully FICC's credit exposures to members with a high degree of confidence. Therefore, FICC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

⁴² 17 CFR 240.17Ad-22(e)(4)(i).

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

⁴³ 17 CFR 240.17Ad-22(e)(18).

with FICC's proposed enhancements to its capital requirements. Therefore, FICC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(18) under the Exchange Act.

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

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

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

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

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, FICC will amend this filing to publicly file such

comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

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

All prospective commenters should follow the SEC's instructions on *How to Submit Comments*, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

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

Paper Comments:

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

All submissions should refer to File Number SR-FICC-2021-009. This file number should be included on the subject line if 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-2021-009 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.⁴⁴

Secretary

⁴⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

Confidential Supporting Information

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EXHIBIT 5

Bold, underlined text indicates proposed additions.

~~Bold, strikethrough~~ text indicates proposed deletions.

**FIXED INCOME CLEARING CORPORATION
GOVERNMENT SECURITIES DIVISION RULEBOOK**

RULE 1 – DEFINITIONS

* * *

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Bank Netting Member

The term “Bank Netting Member” shall have the meaning given that term in Section ~~2~~ **3** of Rule 2A.

* * *

Centrally Cleared Institutional Triparty Service or CCIT Service

The terms “Centrally Cleared Institutional Triparty Service” and “CCIT Service” mean the service offered by the Corporation to clear institutional triparty repurchase agreement transactions, as more fully described in Rule 3B.

CET1 Capital

The term “CET1 Capital” means an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

* * *

Dealer Netting Member

The term “Dealer Netting Member” shall have the meaning given that term in Section ~~2~~ **3** of Rule 2A.

* * *

Excess Capital Differential

The term “Excess Capital Differential” means the amount by which a Netting Member’s VaR Charge exceeds its ~~Excess~~ **Netting Member** Capital.

* * *

Foreign Netting Member

The term “Foreign Netting Member” (also referred to as “Non-U.S. Netting Member” or “Non-domestic Netting Member”) shall have the meaning given that term in Section **2 3** of Rule 2A.

* * *

Futures Commission Merchant Netting Member

The term “Futures Commission Merchant Netting Member” shall have the meaning given that term in Section **2 3** of Rule 2A.

* * *

Government Securities Issuer Netting Member

The term “Government Securities Issuer Netting Member” shall have the meaning given that term in Section **2 3** of Rule 2A.

Government Sponsored Enterprise

The term “Government Sponsored Enterprise” shall mean Fannie Mae, Ginnie Mae, Federal Home Loan Banks, or Freddie Mac.

* * *

Insurance Company Netting Member

The term “Insurance Company Netting Member” shall have the meaning given that term in Section **2 3** of Rule 2A.

* * *

Inter-Dealer Broker Netting Member

The term “Inter-Dealer Broker Netting Member” shall have the meaning set forth in Section **2 3** of Rule 2A.

* * *

Registered Clearing Agency Netting Member

The term “Registered Clearing Agency Netting Member” shall have the meaning given that term in Section **2 3** of Rule 2A.

* * *

Registered Investment Company Netting Member

The term “Registered Investment Company Netting Member” shall have the meaning given that term in Section ~~2~~ **3** of Rule 2A.

* * *

Termination Date

The term “Termination Date” shall have the meaning given that term in Section 13 of Rule 3.

Tier 1 RBC Ratio

The term “Tier 1 RBC Ratio” means the ratio of an entity’s tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity’s regulatory and/or statutory requirements.

* * *

Watch List^π[1]****

The term “Watch List” means, at any time and from time to time, the list of Members whose credit ratings derived from the Credit Risk Rating Matrix are ~~5~~-6 or 7, as well as ~~members~~ **Members** that, based on the Corporation’s consideration of relevant factors, including those set forth in Section 12(d) of Rule 3, are deemed by the Corporation to pose a heightened risk to the Corporation and its Members.

Well Capitalized

The term “Well Capitalized” shall have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation.

* * *

^π Being placed on the Watch List may result in Clearing Fund-related consequences as well as other consequences under the Rules. Please refer to the Interpretive Guidance with Respect to Watch List Consequences in this rulebook.

[1] The changes to the defined term “Watch List” will not be subject to the 12-month implementation delay; rather, the changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this footnote will automatically be removed from this Rule.]

RULE 2 – MEMBERS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

(a) The Corporation shall make its services, or certain of its services, available to Persons which (i) apply for membership to the Corporation for the use of its services, (ii) meet the **eligibility**, qualifications **and standards** specified in these Rules, (iii) are approved by the Corporation or the Board, as applicable, and (iv) if required, have contributed to the Clearing Fund as provided in Rule 4.

(b) The Corporation shall have the following membership types:

- (i) Comparison-Only Members;
- (ii) Netting Members;
- (iii) Sponsoring Members and Sponsored Members;
- (iv) CCIT Members; and
- (v) Funds-Only Settling Bank Members.

With respect to item (ii) above, there shall be the following categories of Netting Members: Bank Netting Members, Dealer Netting Members, Inter-Dealer Broker Netting Members, Futures Commission Merchant Netting Members, Foreign Netting Members, Government Securities Issuer Netting Members, Insurance Company Netting Members, Registered Clearing Agency Netting Members and Registered Investment Company Netting Members.

With respect to ~~items item~~ (iii), ~~(iv)~~ and ~~(v)~~ above, Sponsored Members and Sponsoring Members shall be governed by Rule 3A.

With respect to item (iv) above, CCIT Members shall be governed by Rule 3B, ~~and~~

With respect to item (v) above, Funds-Only Settling Bank Members shall be governed by Rule 13.

(c) Except as otherwise provided in these Rules, a Member that compares and nets through the Corporation any contract or transaction on behalf of a Non-Member shall, so far as the rights of the Corporation and all other Members are concerned, be liable as a principal.

* * *

RULE 2A – INITIAL MEMBERSHIP REQUIREMENTS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 - Eligibility for Membership: Comparison-Only Members

- (a) A Person shall be eligible to apply to become a Comparison-Only Member if it:
- (i) is a legal entity that is eligible to apply for membership in the Netting System; or
 - (ii) has demonstrated to the Corporation that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

(b) A Person may not be a Comparison-Only Member and a Netting Member at the same time. The Corporation may require that a Person be a Comparison-Only Member for a time period deemed necessary by the Corporation before the Person becomes eligible to apply to become a Netting Member, if, in order to protect itself and its Members, the Corporation believes that it is necessary to assess the operational soundness of the Person prior to permitting it to apply **for netting membership to become a Netting Member**. The Corporation's determination to apply such ~~comparison-only~~ requirement shall be based on ~~the presence of whether~~ one or more of the following conditions **exist**: (i) the Person is a newly formed entity with little or no **functional operational** history, (ii) the Person's operational staff lacks significant experience, (iii) if one **or both** of the ~~above prior~~ two conditions ~~is present exists~~, the Person has not engaged a service bureau or correspondent clearing member with which the Corporation has a relationship, or (iv) any other factor **exists** that ~~management the Corporation~~ believes might suggest **that the Person has** insufficient operational ~~functions~~ **capability**.

Section 2 – Membership Qualifications and Standards for Comparison-Only Members

The Corporation may approve an application to become a Comparison-Only Member by a Person that is eligible to apply to become a Comparison-Only Member pursuant to this Rule upon a determination that such applicant meets the following requirements:

(a) Operational Capability - The applicant must be able to satisfactorily communicate with the Corporation, fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy, and conform to any operational condition and requirement that the Corporation reasonably deems necessary for its protection or that of its Members. The applicant agrees that it must fulfill, within the timeframes established by the Corporation, operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to ensure the continuing operational capability of the applicant.

(b) Fees - The applicant agrees to make, and has sufficient financial ability to make, all anticipated fee payments required to be made to the Corporation that may be set forth in these Rules or in the Procedures.

(c) Required Capital - If a regulated entity, the applicant represents and warrants to the Corporation that it is in compliance (as an applicant) with the capital requirements imposed by its Designated Examining Authority, Appropriate Regulatory Agency, or other examining authority or regulator, and any other Self-Regulatory Organizations or self-regulatory organizations to which it is subject by statute, regulation or agreement.

(d) Disqualification Criteria - The Corporation must have received no substantial information that would reasonably and adversely reflect on the applicant, or its Controlling Management, if applicable, to such an extent that the applicant should be denied membership in the Corporation. The Corporation, in its sole discretion, shall determine whether any of the following criteria should be the basis for denial of the membership application:

(i) the applicant is subject to Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act), or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including non-U.S. examining authority or regulator;

(ii) the applicant or its Controlling Management has been responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation, in connection with its application to become a Member or thereafter, or (B) fraudulent acts or violation of the Securities Act of 1933, the Exchange Act, the Investment Company Act, the Investment Advisers Act or the Government Securities Act of 1986, or any rule or regulation promulgated thereunder;

(iii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of the application or at any time thereafter of (A) any criminal offense involving the purchase, sale or delivery of any security, or bribery, or perjury, or burglary, or conspiracy to commit any offense referred to in this subparagraph (iii), (B) the larceny, theft, robbery, embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property, (C) any violation of Sections 1341, 1342 or 1343 of Title 18, United States Code, or (D) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company or other financial institution;

(iv) the applicant or its Controlling Management has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as, a broker, dealer, investment company, advisor or underwriter, bank, trust company, fiduciary, insurance company or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with

the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed; or

(v) the applicant has been expelled or suspended from or had its participation terminated by a national securities association or exchange registered under the Exchange Act, a Self-Regulatory Organization or a Corporation that engages in clearance and settlement activities or a securities depository, or has been barred or suspended from being associated with any member of such an exchange, association, organization, Corporation, or securities depository.

The Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Member of the Corporation.

Section 23 – Eligibility for Membership: Netting Members

(a) Eligibility for **each category of** Netting ~~membership~~ **Member** shall be as follows:

(i) **Bank Netting Member** – A Person shall be eligible to apply to become a Bank Netting Member if it is a bank or trust company chartered as such under the laws of the United States, or a State thereof, or is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and participates in the Corporation through its U.S. branch or agency. A bank or trust company that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be a Bank Netting Member.

(ii) **Dealer Netting Member** – A Person shall be eligible to apply to become a Dealer Netting Member if it is a Dealer and is not a bank or trust company. A Dealer that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be a Dealer Netting Member.

(iii) **Futures Commission Merchant Netting Member** – A Person shall be eligible to apply to become a Futures Commission Merchant Netting Member if it is a Futures Commission Merchant. A Futures Commission Merchant that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be a Futures Commission Merchant Netting Member.

(iv) **Inter-Dealer Broker Netting Member** – A Person shall be eligible to apply to become an Inter-Dealer Broker Netting Member if it is an Inter-Dealer Broker. An Inter-Dealer Broker that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be an Inter-Dealer Broker Netting Member.

(v) **Foreign Netting Member** – A Person shall be eligible to apply to become a Foreign Netting Member if it is a Foreign Person that the Corporation, in its sole

discretion, has determined: (i) has a home country regulator that has entered into a memorandum of understanding with the SEC regarding the sharing or exchange of information, and (ii) maintains a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable in the Foreign Person's business and can assist the Corporation's representatives as necessary, and ensures that the Foreign Person will be able to meet its data submission, settlement, and other obligations to the Corporation as a Member in a timely manner. The Person applying to become a Foreign Netting Member must represent and certify to the Corporation that it is in compliance with the financial reporting and responsibility standards of its home country and that it is regulated in its home country by a financial regulatory authority in the areas of maintenance of relevant books and records, regular inspections and examinations, and minimum capital standards, and make such other representations, certifications or assurances as the Corporation deems necessary to address jurisdictional and tax concerns. Without limiting the generality of the foregoing, the Corporation shall require each applicant that shall be an FFI Member to certify and periodically recertify to the Corporation that it is FATCA Compliant under such procedures as are set forth under FATCA, unless such requirements have been explicitly waived in writing by the Corporation, provided, however, that no such waiver will be issued if it shall cause the Corporation to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. In addition, as part of its membership application, each applicant that shall be an FFI Member must agree that it shall indemnify the Corporation for any loss, liability or expense sustained by the Corporation as a result of its failing to be FATCA Compliant. Except as with respect to FATCA, a foreign Bank Netting Member that participates in the Corporation through its U.S. branch or agency shall not be deemed a Foreign Netting Member for purposes of ~~the Corporation's~~ these Rules and ~~procedures~~ the Procedures, unless otherwise stated by the Corporation.

(vi) **Government Securities Issuer Netting Member** – A Person shall be eligible to apply to become a Government Securities Issuer Netting Member if it is a Government Securities Issuer **or a Government Sponsored Enterprise**. A Government Securities Issuer **or a Government Sponsored Enterprise** that is admitted to membership in the Netting System pursuant to these Rules, **and whose membership in the Netting System has not been terminated**, shall be a Government Securities Issuer Netting Member.

(vii) **Insurance Company Netting Member** – A Person shall be eligible to **apply to become an Insurance Company Netting Member if it is an Insurance Company in good standing with its primary regulator. An Insurance Company that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be an Insurance Company Netting Member.**

~~(vii)~~ (viii) **Registered Clearing Agency Netting Member** – A Person shall be eligible to apply to become a Registered Clearing Agency Netting Member if it is a Registered Clearing Agency. A Registered Clearing Agency that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the

Netting System has not been terminated, shall be a Registered Clearing Agency Netting Member.

~~(viii)~~ **(ix)** **Registered Investment Company Netting Member** – A Person shall be eligible to apply to become a Registered Investment Company Netting Member if it is a Registered Investment Company. A Registered Investment Company that is admitted to membership in the Netting System pursuant to these Rules, and whose membership in the Netting System has not been terminated, shall be a Registered Investment Company Netting Member.

~~(ix)~~ **(x)** The Corporation shall make its services available to Persons in such other categories as the Corporation may from time to time determine, subject to approval of such categories and their minimum membership standards by the SEC.

Applicants in categories (i) through ~~(vii)~~ **(viii)** above that are admitted into membership shall be Tier One Netting Members. Applicants in category ~~(viii)~~ **(ix)** above that are admitted into membership shall be Tier Two Members. With respect to applicants in category ~~(ix)~~ **(x)**, the Corporation shall make a determination as to whether such applicant shall be a Tier One Netting Member or Tier Two Member.

(b) A Person may be only one ~~type~~ **category** of Netting Member at a time. Notwithstanding anything to the contrary in this Rule, if a Person qualifies for more than one category of Netting ~~System membership~~ **Member**, the Corporation, in its sole discretion, may determine ~~which the~~ category of Netting ~~System membership~~ **Member for which** that Person will **be** considered ~~for~~.

Section 3 – Admission Criteria Membership Qualifications and Standards for Comparison-Only Members

~~—The Corporation may approve an application to become a Comparison-Only Member by a Person that is eligible to apply to become a Comparison-Only Member pursuant to this Rule upon a determination that such applicant meets the following requirements:~~

~~(a) — Operational Capability — The applicant must be able to satisfactorily communicate with the Corporation, fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy, and conform to any operational condition and requirement that the Corporation reasonably deems necessary for its protection or that of its Members. The applicant agrees that it must fulfill, within the timeframes established by the Corporation, operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to ensure the continuing operational capability of the applicant.~~

~~(b) — Fees — The applicant agrees to make, and has sufficient financial ability to make, all anticipated fee payments required to be made to the Corporation that may be set forth in these Rules or in the Procedures.~~

~~(c) — Required Capital — If a regulated entity, the applicant represents and warrants to the Corporation that it is in compliance (as an applicant) with the capital requirements imposed by its Designated Examining Authority, Appropriate Regulatory Agency, or other examining authority or regulator, and any other Self-Regulatory Organizations or self-regulatory organizations to which it is subject by statute, regulation or agreement.~~

~~(d) — Disqualification Criteria — The Corporation must have received no substantial information that would reasonably and adversely reflect on the applicant, or its Controlling Management, if applicable, to such an extent that the applicant should be denied membership in the Corporation. The Corporation, in its sole discretion, shall determine whether any of the following criteria should be the basis for denial of the membership application:~~

~~(i) — the applicant is subject to Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act), or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including non-U.S. examining authority or regulator;~~

~~(ii) — the applicant or its Controlling Management has been responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation, in connection with its application to become a Member or thereafter, or (B) fraudulent acts or violation of the Securities Act of 1933, the Exchange Act, the Investment Company Act, the Investment Advisers Act or the Government Securities Act of 1986, or any rule or regulation promulgated thereunder;~~

~~(iii) — the applicant or its Controlling Management has been convicted within the ten years preceeding the filing of the application or at any time thereafter of (A) any criminal offense involving the purchase, sale or delivery of any security, or bribery, or perjury, or burglary, or conspiracy to commit any offense referred to in this subparagraph (iii), (B) the larceny, theft, robbery, embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property, (C) any violation of Sections 1341, 1342 or 1343 of Title 18, United States Code, or (D) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company or other financial institution;~~

~~(iv) — the applicant or its Controlling Management has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as, a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed; or~~

~~(v) — the applicant has been expelled or suspended from or had its participation terminated by a national securities association or exchange registered under the Exchange Act, a Self-Regulatory Organization or a Corporation that engages in clearance and settlement activities or a securities depository, or has been barred or suspended from being associated with any member of such an exchange, association, organization, Corporation, or securities depository.~~

~~In addition to items (a) through (d) above, the Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Member of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act).~~

Section 4 - Membership Qualifications and Standards for Netting Members

Subject to the limitations set forth in this Rule, the Board shall approve an application to become a Netting Member by a Person that is eligible to apply to become a Netting Member pursuant to this Rule upon a determination that such applicant meets the following requirements:

(a) Comparison System Admission Standards - ~~The~~ **For an applicant that is already a Comparison-Only Member, the** applicant continues to meet the requirements for becoming a Comparison-Only Member set forth in this Rule. ~~Notwithstanding the previous sentence, the applicant shall meet the admission criterion on required capital in subsection (c) of Section 3 of this Rule if the applicant is in compliance with the capital requirements imposed by its Designated Examining Authority, Appropriate Regulatory Agency, or other examining authority or regulator, and any other Self-Regulatory Organizations or self-regulatory organizations to which it is subject by statute, regulation or agreement.~~

(b) Financial Responsibility - The applicant shall:

(i) have sufficient financial ability to make anticipated required deposits to the Clearing Fund as provided for in Rule 4 and anticipated Funds-Only Settlement Amounts, and to meet all of its other obligations to the Corporation in a timely manner; and

(ii) satisfy the following minimum financial requirements:

(A) ~~for applicants whose Financial Statements are prepared in accordance with U.S. generally accepted accounting principles:~~ **Bank Netting Member**

(1) if the applicant is **a bank or trust company chartered under the laws of the United States, or a State thereof,** applying to become a Bank Netting Member, it must (i) **have a level of equity capital as of the end of the month prior to the effective date of its membership CET1 Capital** of at least \$~~100~~ **500** million **and (ii) be Well Capitalized; and,**

~~and its capital levels and ratios must meet the applicable minimum levels for such as required by its Appropriate Regulatory Agency (or, if the applicant's Appropriate Regulatory Agency does not specify any such minimum levels, such minimum levels as would be required if the Member were a member bank of the Federal Reserve System and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);~~

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

- (B) Dealer Netting Member - If the applicant is** registered with the SEC pursuant to Section 15 or 15C of the Exchange Act and is applying to become a Dealer Netting Member, it must have, ~~as of the end of the calendar month prior to the effective date of its membership,~~ (1) Net Worth of at least \$25 million and (2) Excess Net Capital or an equivalent to Excess Net Capital (e.g., Excess Liquid Capital or Excess Adjusted Net Capital), depending on what the applicant is required to report on its regulatory filings, of at least \$10 million;

- (3)** ~~if the applicant is registered with the SEC pursuant to Section 15C of the Exchange Act and is applying to become a Dealer Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (1) Net Worth of at least \$25 million and (2) Excess Liquid Capital of at least \$10 million;~~

- (C)** ~~(4)—Futures Commission Merchant Netting Member - If~~ if the applicant is applying to become a Futures Commission Merchant Netting Member, it must have, ~~as (1) Net Worth of the end of the calendar month prior to the effective date of its membership, at least \$25 million in Net Worth and \$10 million in (2) Excess Adjusted Net Capital or an equivalent to~~ Excess Adjusted Net Capital ~~(e.g., Excess Net Capital or Excess Liquid Capital), depending on what the applicant is required to report on its regulatory filings, of at least \$10 million;~~
- (D)** ~~(5)—if Inter-Dealer Broker Netting Member - If~~ if the applicant is registered with the SEC pursuant to Section 15 ~~or 15C~~ of the Exchange Act and is applying to become an Inter-Dealer Broker Netting Member, it must have, ~~as of the end of the calendar month prior to the effective date of its membership, (1) Net Worth of at least \$25 million and (2) Excess Net Capital or an equivalent to~~ Excess Net Capital ~~(e.g., Excess Liquid Capital or Excess Adjusted Net Capital), depending on what the applicant is required to report on its regulatory filings, of at least \$10 million;~~
- (6)** ~~if the applicant is registered with the SEC pursuant to Section 15C of the Exchange Act and is applying to become an Inter-Dealer Broker Netting Member, it must have, as of the end of the calendar month prior to the effective date of its membership, (1) Net Worth of at least \$25 million and (2) Excess Liquid Capital of at least \$10 million;~~
- (E)** ~~(7)—Foreign Netting Member - If~~ if the applicant is a Foreign Person that is applying to become a Foreign Netting Member, it must, at a minimum, satisfy the its home country regulator's minimum financial requirements, in addition to the following: ~~(defined by reference to regulatory capital as defined by the applicant's home country regulator) that are applicable to the Netting System membership category that the Corporation determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other political subdivision thereof subject to subsections (B), (C) and (D) below if the entity's financial statements are not prepared in accordance with U.S. generally accepted accounting principles;~~
- (1)** In the case of a Foreign Person that is a broker or dealer, it must have total equity capital of at least \$25 million; and
- (2)** In the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Netting

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

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

(F) Government Securities Issuer Netting Member - If the applicant is applying to become a Government Securities Issuer Netting Member, it must have equity capital of at least \$100 million.

(G) (8)—Insurance Company Netting Member - If if the applicant is applying to become an Insurance Company Netting Member, it must have, as of the end of the month prior to the effective date of its membership: (1) an A.M. Best ("Best") rating of "A-" or better, (2) a rating by at least one of the other three major rating agencies (Standard & Poor's ("S&P"), Moody's, and Fitch Ratings ("Fitch")) of at least "A-" or "A3", as applicable, (3) no rating by S&P, Moody's, and Fitch of less than "A-" or "A", as applicable, (4) a risk-based capital ratio, as applicable to Insurance Companies, (the ratio of the applicant's adjusted capital to its risk-based capital) of at least 200 percent, and (5) statutory capital (consisting of adjusted policyholders' surplus plus the company applicant's asset valuation reserve) of no less than \$500 million; and

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

- (I) Other - If the applicant is not otherwise addressed in this Section 4(b)(ii), it must be in compliance with its regulator's minimum financial requirements. The Corporation may, based on information provided by or concerning an applicant, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles an existing category of Netting Member and (ii) the applicant's risk profile, which assigned minimum financial requirements will be promptly communicated to, and discussed with, the applicant.**
- ~~(B) — for applicants whose Financial Statements are prepared in accordance with International Financial Reporting Standards, the Companies Act of 1985 (UK generally accepted accounting principles), or Canadian generally accepted accounting principles, the minimum financial requirements shall be one and one-half times the applicable requirements set forth in subsection (A) above.~~
- ~~(C) — for applicants whose Financial Statements are prepared in accordance with the generally accepted accounting principles of a European Union country other than the United Kingdom, the minimum financial requirements shall be five times the applicable requirements set forth in subsection (A) above.~~
- ~~(D) — for applicants whose financial statements are prepared in accordance with any other type of generally accepted accounting principles, the minimum financial requirements shall be seven times the requirements set forth in subsection (A) above.~~

~~(e) — Business History — The applicant must have an established, profitable business history of a minimum of six months or personnel with sufficient operational background and experience to ensure, in the judgment of the Board, the ability of the firm to conduct its business.~~

The foregoing financial responsibility standards are only **the** minimum requirements, ~~and the.~~ **The** Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through the Corporation, and the overall financial condition of the applicant, may, **in its sole discretion**, impose ~~greater~~ **heightened or different financial responsibility** standards **on any applicant**. If an applicant does not itself satisfy the ~~above required~~ minimum ~~capital requirements financial responsibility standards~~, the Board may include for such purposes the ~~capital of an Affiliate~~ **financial resources of the parent company** of the applicant **(including, in the case of an applicant that is a U.S. branch or agency, its parent bank)**, if the ~~Affiliate parent company~~ has delivered to the Corporation a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to the Corporation.

(c) Business History - The applicant must have an established, profitable business history of a minimum of six months or personnel with sufficient operational background and experience to ensure, in the judgment of the Board, the ability of the firm to conduct its business.

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RULE 3 – ONGOING MEMBERSHIP REQUIREMENTS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 – Requirements

The **eligibility**, qualifications and standards set forth in Rule 2A **in respect of an applicant** shall **continue to be continuing membership requirements met upon an applicant's admission as a Member and at all times while a Member.** In addition, each Member shall comply with the ongoing requirements set forth below.

Section 2 - Reports by Netting Members

Each Netting Member shall submit to the Corporation the reports, financial or other information set forth below and such other reports, financial and other information as the Corporation from time to time may reasonably require. Unless specifically set forth below, the time periods prescribed by the Corporation are set forth in the form of notices posted at the Corporation's Website and/or distributed by the Corporation from time to time. It shall be the Member's responsibility to retrieve all notices daily from the Website.

(a) a copy of the Member's annual audited Financial Statements for ~~such~~ **each** fiscal year, certified by the Member's independent certified public accountants and prepared in accordance with generally accepted accounting principles;

(b) if the Member is a broker or dealer registered under Section 15 of the Exchange Act, or a Government Securities Broker or **Government Securities** Dealer registered under Section 15C of the Exchange Act, (i) a copy of the Member's **Financial and Operational Combined Uniform Single Report ("FOCUS Report")** or **Report on Finances and Operations of Government Securities Brokers and Dealers ("FOGS Report")**, as the case may be, submitted to its Designated Examining Authority, (ii) a report of the Member's independent auditors on internal controls, and ~~(ii)~~ **(iii)** any supplemental reports required to be filed with the SEC pursuant to ~~SEC~~ **Exchange Act** Rule 17a-11 or 17 C.F.R. Section 405.3;

(c) if the Member is a ~~domestic~~ **U.S.** bank or ~~a~~ trust company, a copy of the ~~applicant's~~ **Member's Consolidated Report of Condition and Income ("Call Report")** submitted to its Appropriate Regulatory Agency and, to the extent not contained within such Call

Reports (or to the extent that Call Reports are not required to be filed), information containing each of the Member's capital levels and ratios, as such levels and ratios are required to be provided to the Member's Appropriate Regulatory Agency (or, if such ~~applicant~~ **Member**'s Appropriate Regulatory Agency does not require such information, as would be required to be provided, if such Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);

(d) if the Member is a Futures Commission Merchant and not a broker or dealer registered with the SEC, (i) a copy of its CFTC Form 1-FR as filed with the CFTC (or copies of the equivalent form filed with the CFTC pursuant to CFTC Regulation 1.10(b)(3), (ii) a copy of the computation required by CFTC Regulation 1.18, and (iii) a copy of any supplemental reports filed with the CFTC pursuant to Regulation 1.12 or any successor regulations;

(e) if the ~~applicant~~ **Member** is a broker, dealer or bank established or organized ~~in under the United Kingdom laws of a non-U.S. jurisdiction~~ and subject to regulation by ~~the United Kingdom's Financial Services Authority (or successor authority)~~ its home country regulator in such jurisdiction, a copy of ~~its Financial Services Authority~~ any reports submitted to such home country regulator;

(f) if the Member is a Foreign Netting Member other than one that is a broker, dealer or bank ~~organized or established in the United Kingdom and regulated by the Financial Services Authority~~ subject to regulation by its home country regulator in such jurisdiction, ~~key~~ financial information as requested by the Corporation;

(g) if the Member ~~is~~ does not ~~fall~~ within clauses (b) through (f) above, a copy of the Member's unaudited financial information as specified by the Corporation for ~~such~~ each quarter; and

(h) for any Member which has satisfied the financial requirements imposed by the Corporation pursuant to these Rules by means of a guaranty of its obligations by its parent company (including, in the case of a Member that is a U.S. branch or agency, its parent bank), Financial Statements and/or the reports or information of its parent company meeting the requirements specified in subparagraphs (a) through ~~(f)~~ (g) of this Section 2, as applicable.

With respect to a Member that has received from its regulators an extension of time by which one of the above-listed reports or submissions to the regulator is otherwise due, a copy of the extension letter or other regulatory communication granting such extension. Moreover, any Member that has provided to the SEC any notice required pursuant to paragraph (e) of ~~the SEC's~~ Exchange Act Rule 15c3-1 shall notify the Corporation of the provision of such notice, and shall furnish the Corporation with a copy of such notice, by the Close of Business on the day that it so provides such notice to the SEC.

With respect to subsections (a) and (f) above, the Corporation may accept, in its sole discretion, consolidated Financial Statements or financial information prepared at a parent level.

In addition to the above, Netting Members must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when a Member's capital levels or other financial requirements

fall below prescribed levels. In addition, Members must submit to the Corporation, concurrently with their submission to the applicable regulator or similar authority, copies of such filings as determined by the Corporation from time to time, which Members are required to file pursuant to the Sarbanes-Oxley Act of 2002, and any amendments thereunder.

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

Moreover, Foreign Netting Members **and Bank Netting Members that are U.S. branches or agencies of non-U.S. banks or trust companies** must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when ~~a member~~ **an entity** does not comply with the financial reporting and responsibility standards set by ~~its~~ **their** home country regulator. Foreign Netting Members **and Bank Netting Members that are U.S. branches or agencies of non-U.S. banks or trust companies** must also notify the Corporation in writing within 2 ~~business days~~ **Business Days** of becoming subject to a disciplinary action by their home country regulator.

* * *

Section 7 - General Continuance Standards

A Member shall promptly inform the Corporation, both orally and in writing, if it no longer is in compliance with any of the relevant qualifications and standards for admission to membership set forth in Rule 2 and in this Rule, including whether it is subject to any of the criteria set forth in subsection (d) of Section ~~3~~ **2** of Rule 2A. Notification must take place within two Business Days from the date on which the Member first learns of its non-compliance. The Corporation shall assess a fine against any Member who fails to so notify the Corporation. In addition, a Member shall notify the Corporation within two Business Days of learning that an investigation or proceeding to which it is or is becoming the subject of would cause the Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in Rules 2, 2A and 3. Notwithstanding the previous sentence, the Member shall not be required to notify the Corporation if doing so would cause the Member to violate an applicable law, rule or regulation. If, with respect to any type of Member: (a) it fails to maintain the relevant standards and qualifications for admission to membership, including but not limited to minimum capital standards and operational testing and related reporting requirements imposed by the Corporation from time to time; (b) it violates any Rule of the Corporation or other agreement with the Corporation; (c) it fails to satisfy in a timely manner any obligation to the Corporation; (d) there

is a Reportable Event relating to such Member; or (e) the Corporation otherwise deems it necessary or advisable, in order to protect the Corporation, its other Members, or its creditors or investors, to safeguard securities and funds in the custody or control of the Corporation or for which the Corporation is responsible, or to promote the prompt and accurate processing, clearance or settlement of securities transactions, the Corporation will undertake appropriate action to determine the status of the Member and its continued eligibility. In addition, the Corporation may review the financial responsibility and operational capability of the Member to the extent provided in these Rules and otherwise require from the Member additional reporting of its financial or operational condition at such intervals and in such detail as the Corporation shall determine, including, but not limited to, such information as the Corporation may request regarding the businesses and operations of the Member and its risk management practices with respect to services of the Corporation utilized by the Member for another Person or Persons, and shall make a determination as to whether such Member should be placed on the Watch List ~~and/or be subject to enhanced surveillance~~¹ by the Corporation consistent with the provisions of Section 12 of this Rule.

* * *

Section 8 - Specific Continuance Standards

In addition to the requirements set forth in Section 6 above of this Rule, the following requirements shall apply to Members that fall ~~from~~ out of compliance with an applicable membership standard:

(a) If a Bank Netting Member falls below the applicable minimum financial ~~requirement requirements~~ as specified in Rule 2A or this Rule 3, ~~or if one or more of its capital levels or ratios no longer meets the applicable minimum level for such as required by its Appropriate Regulatory Agency (or, if the applicant's Appropriate Regulatory Agency does not specify any such minimum level, such minimum level as would be required if the Member were a member bank of the Federal Reserve System, and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System)~~; it shall, for a period beginning on the day on which it fell below such level and continuing until the later of the 90th calendar day after the date on which (i) it returned to compliance with such standard, or (ii) the Corporation received notice of the applicable violation, have a Required Fund Deposit equal to the greater of either: (x) the sum of the normal calculation of its Required Fund Deposit plus \$1,000,000, or (y) 125 percent of the normal calculation of its Required Fund Deposit;

(b) If a Dealer Netting Member falls below either the minimum Net Worth level applicable to Dealer Netting Members pursuant to this Rule or the applicable minimum regulatory capital level, as applicable, as specified in this Rule, it shall, for a period beginning on the date on which it fell below such level and continuing until the later of the 90th calendar day after the date on which (i) it returned to compliance with such standard, or (ii) the Corporation received notice

¹ **This change to Section 7 will not be subject to the 12-month implementation delay; rather, the change will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when this change is implemented, and this footnote will automatically be removed from this Rule.**

of the applicable violation, have a Required Fund Deposit equal to the greater of either: (x) the sum of its Required Fund Deposit plus \$1,000,000, or (y) 125 percent of its Required Fund Deposit;

(c) If a Futures Commission Merchant Netting Member falls below either the minimum Net Worth level applicable to Futures Commission Merchant Netting Members pursuant to this Rule or the applicable minimum regulatory capital level specified in this Rule, it shall, for a period beginning on the date on which it fell below such level and continuing until the later of the 90th calendar day after the date on which (i) it returned to compliance with such standard, or (ii) the Corporation received notice of the applicable violation, have a Required Fund Deposit equal to the greater of either: (x) the sum of its Required Fund Deposit plus \$1,000,000, or (y) 125 percent of its Required Fund Deposit;

(d) If an Inter-Dealer Broker Netting Member falls below either the applicable minimum Net Worth level or the applicable minimum regulatory capital level, specified ~~by~~ in this Rule, it shall have, for a period beginning on the date on which it fell from compliance with either standard and continuing until the later of the 90th calendar day after the date on which (i) it returned to compliance with such standard, or (ii) the Corporation received notice of the applicable violation, a Required Fund Deposit equal to the greater of either: (x) the sum of the normal calculation of its Required Fund Deposit plus \$1,000,000, or (y) 125 percent of the normal calculation of its Required Fund Deposit;

(e) An Inter-Dealer Broker Netting Member shall: (A) limit its business to acting exclusively as a Broker; (B) conduct all of its business in Repo Transactions with Netting Members; and (C) conduct at least 90 percent of its business in transactions that are not Repo Transactions, measured based on its overall dollar volume of submitted sides over the prior month, with Netting Members. If an Inter-Dealer Broker Netting Member fails to comply with this scope-of-business standard, then, for a period beginning on the date on which it fell ~~from~~ out of compliance with this standard and continuing until the date on which it returned to compliance with such standard, such Member shall be considered by the Corporation for purposes of these Rules to be a Dealer Netting Member. Notwithstanding anything to the contrary above, if such Inter-Dealer Broker Netting Member continues to act exclusively as a Broker, it shall continue to be subject to the provisions of Section 7 of Rule 4 as if it were an Inter-Dealer Broker Netting Member, until and unless the Corporation determines, in its sole discretion, that such Member should be treated for purposes of that Section as if it were a Dealer Netting Member and so informs such Member. Moreover, notwithstanding anything to the contrary above, if such Inter-Dealer Broker Netting Member does not return to compliance with its applicable scope-of-business standard within 90 calendar days from the date on which it fell below such standard, such Member shall permanently become a Dealer Netting Member for purposes of these Rules, until and unless it applies to the Corporation to return to its Inter-Dealer Broker Netting Member status and such application is approved by the Board; and

(f) If a Government Securities Issuer Netting Member, Insurance Company Netting Member, Registered Clearing Agency Netting Member, or Registered Investment Company Netting Member falls out of compliance with any minimum admission or continuance standard that may be set for it by the Corporation pursuant to these Rules, it shall, for a period beginning on the date on which it fell below such standard and continuing until the later of the 90th calendar

day after the date on which (i) it returned to compliance with such standard, or (ii) the Corporation received notice of the applicable violation, have a Required Fund Deposit equal to the greater of either: (x) the sum of the normal calculation of its Required Fund Deposit plus \$1,000,000, or (y) 125 percent of the normal calculation of its Required Fund Deposit.

~~For purposes of applying a premium to the Required Fund Deposit of a Member that falls below its minimum financial requirements as set forth in this section, the Corporation shall begin to assess such a premium on the date on which the Corporation becomes aware of the applicable violation.~~

~~(g) If the Member is a Foreign Netting Member, and it has fallen falls out of compliance with the minimum financial requirements that the Corporation has determined, are applicable to it pursuant to these Rules, are applicable to it, the consequences under this Section of such noncompliance shall be determined by reference to the subsection of this Section that is applicable to the Netting System membership category that the Corporation has determined would be applicable to the Foreign Person if it were organized or established under the laws of the United States or of a State or other political subdivision thereof the Corporation in its sole discretion.~~

For purposes of applying a premium to the Required Fund Deposit of a Member that falls below its minimum financial requirements as set forth in this Section, the Corporation shall begin to assess such a premium on the date on which the Corporation becomes aware of the applicable violation.

If the Corporation takes any action pursuant to this Section, it shall promptly report such action, and the reasons thereof, to the Board, at its next regularly scheduled meeting, or sooner if deemed appropriate by the Corporation.

* * *

Section 12 – Ongoing Monitoring^[1]

(a) All Netting Members, Sponsoring Members and Funds-Only Settling Bank Members will be monitored and reviewed by the Corporation on an ongoing and periodic basis, which may include monitoring of news and market developments and review of financial reports and other public information.

(b) (i) A Member that is (A) a Bank Netting Member that files the ~~Consolidated Report of Condition and Income~~ (“Call Report”), (B) a Dealer Netting Member or Inter-Dealer Broker Netting Member that files the ~~Financial and Operational Combined Uniform Single Report~~ (“FOCUS Report”) or the equivalent with its regulator, or (C) a Foreign Netting Member that is a bank or trust company and that has audited financial data

^[1] The changes to Section 12 will not be subject to the 12-month implementation delay; rather, these changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this footnote will automatically be removed from this Rule.

that is publicly available will be assigned a credit rating by the Corporation in accordance with the Credit Risk Rating Matrix. Such Member's credit rating will be reassessed each time the Member provides the Corporation with requested information pursuant to Section 7 of Rule 3, or as may be otherwise required under the Rules (including this ~~Rule 3~~, Section 12 **of Rule 3**).

(ii) Because the factors used as part of the Credit Risk Rating Matrix may not identify all risks that a Member specified in paragraph (b)(i) of this Section 12 may present to the Corporation, the Corporation may, in its discretion, override such Member's credit rating derived from the Credit Risk Rating Matrix to downgrade the Member. This downgrading may result in the Member being placed on the Watch List, ~~and/or it may subject the Member to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below. The Corporation may also take such additional actions with regard to the Member as are permitted by the Rules.

(c) Sponsoring Members, Funds-Only Settling Bank Members and Netting Members other than those specified in paragraph (b)(i) of this Section 12 will not be assigned a credit rating by the Credit Risk Rating Matrix but may be placed on the Watch List ~~and/or may be subject to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below, as the Corporation deems necessary to protect the Corporation and its Members.

(d) The factors to be considered by the Corporation under paragraphs (b)(ii) and (c) of this Section 12 include, but are not limited to, (i) news reports and/or regulatory observations that raise reasonable concerns relating to the ~~member~~ **Member**, (ii) reasonable concerns around the ~~member~~ **Member**'s liquidity arrangements, (iii) material changes to the ~~member~~ **Member**'s organizational structure, (iv) reasonable concerns of the Corporation about the ~~member~~ **Member**'s financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the ~~member~~ **Member** to demonstrate satisfactory financial condition or operational capability or ~~if the Corporation has~~ a reasonable concern **of the Corporation** regarding the ~~member~~ **Member**'s ability to maintain applicable membership standards, and (vi) failure of the ~~member~~ **Member** to provide information required by the Corporation to assess risk exposure posed by the ~~member~~ **Member**'s activity (including information requested by the Corporation pursuant to Section 7 of this Rule 3).

(e) The Corporation may require a Netting Member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with the provisions of Rule 4 (which additional deposit shall constitute a portion of the Netting Member's Required Fund Deposit), or such higher amount as the Board may deem necessary for the protection of the Corporation or other Members, which higher amount may include, but is not limited to, additional payments or deposits in any form to offset potential risk to the Corporation and its Members arising from activity submitted by such Member. The Corporation may also retain any Excess Clearing Fund Deposits of a Netting Member that has been placed on the Watch List as provided in Section 10 of Rule 4. Moreover, as regards a Netting Member that has been placed on the Watch List by the Corporation, the Corporation may suspend, during all or a portion of the time period that such Member is on the Watch List, its right under these Rules to collect a Credit Forward Mark Adjustment Payment. Moreover, if a Netting Member on the Watch List has a Collateral Allocation Entitlement as the result of its GCF Repo

Transaction activity, the Corporation may, in its sole discretion, maintain possession of the securities and/or cash that comprise such Collateral Allocation Entitlement.

(f) A ~~member~~ **Member** being ~~subject to enhanced surveillance or being~~ placed on the Watch List shall result in a more thorough monitoring of the ~~member~~ **Member**'s financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests from the Corporation. In addition, the Corporation may require a ~~member~~ **Member** placed on the Watch List ~~and/or subject to enhanced surveillance~~ to make more frequent financial disclosures, including, without limitation, interim and/or pro forma reports. Members that are subject to ~~enhanced surveillance~~ **placement on the Watch List** are also reported to the Corporation's management committees and regularly reviewed by a cross-functional team comprised of senior management of the Corporation. The Corporation may also take such additional actions with regard to any ~~member~~ **Member** (including a ~~member~~ **Member** placed on the Watch List ~~and/or subject to enhanced surveillance~~) as are permitted by the Rules.

* * *

RULE 3A—SPONSORING MEMBERS AND SPONSORED MEMBERS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 – General

The Corporation may permit the establishment of a sponsored membership relationship between a Netting Member that is approved as a Sponsoring Member and one or more Persons that are accepted by the Corporation as Sponsored Members of that particular Sponsoring Member.

The rights, liabilities and obligations of Sponsoring Members and Sponsored Members shall be governed by this Rule 3A. References to a "Member" in other Rules shall not apply to Sponsoring Members and to Sponsored Members, in their respective capacities as such, unless specifically noted as such in this Rule 3A or in such other Rules.

A Sponsoring Member shall continue to have all of the rights, liabilities and obligations set forth in these Rules and in any agreement between it and the Corporation pertaining to its status as a Netting Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as a Sponsoring Member except as contemplated under Sections 10, 11 and 12 of **this** Rule 3A and under the Sponsoring Member Guaranty.

Section 2 – Qualifications of Sponsoring Members, the Application Process and Continuance Standards

(a) A Netting Member shall be eligible to apply to become a Category 1 Sponsoring Member if it: (i) ~~it~~ is a Bank Netting Member, (ii) ~~it~~ has a level of equity capital ~~as of the end of the month prior to the effective date of its membership~~ of at least \$5 billion-, (iii) ~~it~~ is ~~“well-capitalized” as defined by the Federal Deposit Insurance Corporation’s applicable regulations~~ **Well Capitalized**, and (iv) ~~if it~~ has a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, such bank holding company is also ~~“well-capitalized” as defined by the applicable regulations of the Board of Governors of the Federal Reserve System~~ **Well Capitalized**. A Netting Member that is a Tier One Netting Member, other than an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall be eligible to apply to become a Category 2 Sponsoring Member. The Corporation may require that a Person be a Netting Member for a time period deemed necessary by the Corporation before that Person may be considered to become a Sponsoring Member.

* * *

**RULE 3B – CENTRALLY CLEARED INSTITUTIONAL
TRIPARTY SERVICE**

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 – General

The rights, liabilities and obligations of CCIT Members shall be governed by this Rule 3B. References to a “Member” in other Rules shall not apply to CCIT Members, unless specifically noted as such in this Rule 3B or in such other Rules.

In order for a Netting Member to participate in the CCIT Service as a trading counterparty to CCIT Members in CCIT Transactions, the Netting Member must be a participant in the GCF Repo Service. In addition to the Rules governing Netting Members, Netting Members who submit CCIT Transactions shall be subject to the provisions of this Rule 3B and to such other Rules applicable to CCIT Transactions.

Section 2 – Eligibility, Qualifications and Standards for Membership: CCIT Member

(a) The Corporation may approve an application to become a CCIT Member upon a determination that **the applicant meets the following requirements**:

(i) Financial Responsibility – The applicant has sufficient financial ability to meet all of its obligations to the Corporation in a timely manner.

(ii) ~~(A) — Except as otherwise provided in subsection (B), (C) or (D) below, the **Minimum Financial Requirements** –~~ The applicant has minimum Net Assets of \$100 million. The Corporation, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through the Corporation and the overall financial condition of the applicant, may impose greater standards.

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

~~(C) — For applicants whose financial statements are prepared in accordance with the generally accepted accounting principles of a European Union country other than the United Kingdom, the minimum financial requirements shall be five times the applicable requirements set forth in subsection (A) above.~~

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

(iii) Operational Capability – The applicant or its Joint Account Submitter, as applicable, must be able to satisfactorily communicate with the Corporation, fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy, and conform to any operational condition and requirement that the Corporation reasonably deems necessary for its protection or that of its Members (including CCIT Members).

* * *

Section 5 – On-going Membership Requirements

(a) The eligibility, qualifications and standards set forth above in this Rule **in respect of an applicant** shall **continue to be continuing membership requirements met upon an applicant's admission as a CCIT Member and at all times while a CCIT Member.** In addition, each CCIT Member shall comply with the ongoing requirements set forth below in this Section.

* * *

RULE 5 - COMPARISON SYSTEM

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 90 days from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 - General

Trade comparison, which consists of the reporting, validating, and, in some cases, matching by the Corporation of the long and short sides of a securities trade, including a Repo Transaction, to ensure that the details of such trade are in agreement between the parties, is the first step in the clearance and settlement process for securities transactions. A Member of the Comparison System must submit to the Corporation for comparison trade data on all of its trades that are of the type processed by the Corporation (including trades executed and settled on the same day), calling for delivery of Eligible Securities, between it or an Executing Firm on whose behalf it is acting, and another Member or an Executing Firm on whose behalf it or another Member is acting. If the Corporation determines that a Comparison-Only Member has, without good cause, violated its obligations pursuant to this section, such Comparison-Only Member may be reported to the appropriate regulatory body, ~~put placed~~ on the Watch List and/or ~~be subject to enhanced surveillance pursuant to Rule 3, or subject to~~ an additional fee. In addition, the Corporation may discipline a Comparison-Only Member for a violation of this section in accordance with Rule 48.

* * *

RULE 11 - NETTING SYSTEM

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 90 days from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Section 3 - Obligation to Submit Trades

* * *

If the Corporation determines that a Netting Member has, without good cause, violated its obligations pursuant to this Section, such Netting Member may be reported to the appropriate regulatory body, ~~put placed~~ on the Watch List and/or ~~be subject to enhanced surveillance pursuant to Rule 3, or~~ subject to an additional fee. In addition, the Corporation may discipline a Netting Member for a violation of this section in accordance with Rule 48.

* * *

RULE 13 - FUNDS-ONLY SETTLEMENT

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Section 4 – Funds-Only Settling Bank Members

* * *

(c) On an ongoing basis:

(i) Funds-Only Settling Bank Members approved as such pursuant to subsection (b)(i) above shall be required to maintain their status as a DTC Settling Bank or re-apply under subsections (b)(ii), (b)(iii) or (b)(iv).

(ii) Funds-Only Settling Banks approved as such pursuant to subsection (b)(ii) above must maintain their status as a Netting Member or re-apply under subsections (b)(i), (b)(iii) or (b)(iv).

(iii) Funds-Only Settling Banks approved as such pursuant to subsection (b)(iii) above must maintain their status as a Mortgage-Backed Securities Division Cash Settling Bank or re-apply under subsections (b)(i), (b)(ii) or (b)(iv).

(iv) Funds-Only Settling Banks approved as such pursuant to subsection (b)(iv) above must maintain the financial responsibility and operational capability standards as the Corporation may require pursuant to subsection (b)(iv) above. If required by the Corporation, such Funds-Only Settling Banks shall submit the financial and other information (if applicable) specified by the Corporation in notices issued by the Corporation from time to time. Such information must be submitted within the timeframes specified in guidelines issued by the Corporation from time to time.

(v) All Funds-Only Settling Banks that, in accordance with such entity's regulatory and/or statutory requirements, calculate a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio equal to or greater than the Tier 1 RBC Ratio that would be required for such Funds-Only Settling Bank to be Well Capitalized.

* * *

RULE 18 - SPECIAL PROVISIONS FOR REPO TRANSACTIONS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 90 days from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Section 2 - Obligation to Submit Repo Transactions

* * *

If the Corporation determines that a Netting Member has, without good cause, violated its obligations pursuant to this section, such Netting Member may be reported to the appropriate regulatory body, **put placed** on the Watch List and/or ~~be subject to enhanced surveillance pursuant to Rule 3, or~~ subject to an additional fee. In addition, the Corporation may discipline a Netting Member for a violation of this section in accordance with Rule 48.

* * *

INTERPRETIVE GUIDANCE WITH RESPECT TO WATCH LIST CONSEQUENCES

[Changes to this Interpretive Guidance, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 90 days from date of approval], these changes will be implemented and this legend will automatically be removed from this Interpretive Guidance.]

Being placed on the Watch List may result in Clearing Fund-related consequences as well as other consequences under the Rules:

A. Clearing Fund-Related Consequences

1. Additional Clearing Fund Deposits

Pursuant to Section 12(e) of Rule 3, the Corporation may require a Netting Member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with the provisions of Rule 4 or such higher amount as the Board may deem necessary for the protection of the Corporation or other Members.

The determination of whether a Netting Member that is on the Watch List should be subject to an additional Clearing Fund deposit is based on factors determined to be relevant by the Corporation from time to time, including:

- a. the overall financial condition and financial stability or volatility of the Netting Member, which may include a review of the Netting Member's credit rating/~~enhanced surveillance~~ history and outlook;
- b. the liquidity arrangement, if any, of the Netting Member;
- c. the Clearing Fund requirement history, transaction volume trends, simulated closeout results, stress test results, backtest results and outstanding positions of the Netting Member;
- d. adverse news reports and/or regulatory concerns relating to the Netting Member; and
- e. any additional concerns relating to the financial or operational condition of the Netting Member.

* * *

FIXED INCOME CLEARING CORPORATION
MORTGAGE-BACKED SECURITIES DIVISION
CLEARING RULES

RULE 1 – DEFINITIONS

* * *

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Cash Settling Bank Member

The term “Cash Settling Bank Member” means a bank, trust company or other entity specified in these Rules that has qualified pursuant to the provisions of these Rules and which is a party to an effective “Appointment of Cash Settling Bank and Cash Settling Bank Agreement” whereby the Cash Settling Bank undertakes to perform cash settlement services for the Member which also is a party thereto. The term “Cash Settling Bank Member” shall be used interchangeably with the term “Cash Settling Bank”.

CET1 Capital

The term “CET1 Capital” means an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

* * *

Event Period

The term “Event Period” shall have the meaning given that term in Section 7 of Rule 4.

Excess Adjusted Net Capital

The term “Excess Adjusted Net Capital” means, as of a particular date, the amount equal to the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 C.F.R. Section 1.17(a)(1) or (a)(2), or any successor rule or regulation thereto.

* * *

Excess Clearing Fund Deposit

The term “Excess Clearing Fund Deposit” shall have the meaning given that term in Section 10 of Rule 4

Excess Liquid Capital

The term “Excess Liquid Capital” means, as of a particular date, the amount equal to the difference between the Liquid Capital of a Government Securities Broker or Government Securities Dealer and the minimum Liquid Capital that such Government Securities Broker or Government Securities Dealer must have to comply with the requirements of 17 C.F.R. Section 402.2(a), (b) and (c), or any successor rule or regulation thereto.

* * *

Fully Compared

The term “Fully Compared” means that trade input submitted by a Broker matches trade input submitted by each Dealer on whose behalf the Broker is acting in accordance with the Net Position Match Mode.

Futures Commission Merchant

The term “Futures Commission Merchant” shall have the meaning set forth in the definitions section of the Commodity Exchange Act, except that no entity shall be deemed to be a Futures Commission Merchant for purposes of these Rules unless it is registered as such with the CFTC.

Ginnie Mae

The term “Ginnie Mae” means the Government National Mortgage Association.

Government Securities Broker

The term “Government Securities Broker” shall have the meaning given that term in Section 3(a)(43) of the Exchange Act, unless otherwise provided in these Rules.

Government Securities Dealer

The term “Government Securities Dealer” shall have the meaning given that term in Section 3(a)(44) of the Exchange Act, unless otherwise provided in these Rules.

* * *

Lender

The term “Lender” shall have the meaning given that term in Section 11 of Rule 4.

Liquid Capital

The term “Liquid Capital” means, as of a particular date, the amount equal to the liquid capital of a Government Securities Broker or Government Securities Dealer as defined in 17 C.F.R. Section 402.2(d), or any successor rule or regulation thereto.

* * *

Registered Clearing Agency

The term “Registered Clearing Agency” means a Clearing Agency that is registered as such with the SEC.

Registered Clearing Agency Member

The term “Registered Clearing Agency Member” shall have the meaning given that term in Section 1 of Rule 2A.

* * *

Termination Date

The term “Termination Date” shall have the meaning given that term in Section 14 of Rule 3.

Tier 1 RBC Ratio

The term “Tier 1 RBC Ratio” means the ratio of an entity’s tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity’s regulatory and/or statutory requirements.

* * *

Watch List^π^[1]

The term “Watch List” means, at any time and from time to time, the list of Members whose credit ratings derived from the Credit Risk Rating Matrix are ~~5~~, 6 or 7, as well as Members that, based on the Corporation’s consideration of relevant factors, including those set forth in Section 11(d) of Rule 3, are deemed by the Corporation to pose a heightened risk to the Corporation and its Members.

Well Capitalized

The term “Well Capitalized” shall have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation.

^π Being placed on the Watch List may result in Clearing Fund-related consequences as well as other consequences under ~~the~~ these Rules. Please refer to the Interpretive Guidance with Respect to Watch List Consequences in this rulebook.

[¹ The changes to the defined term “Watch List” will not be subject to the 12-month implementation delay; rather, these changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this footnote will automatically be removed from this Rule.]

* * *

RULE 2 - MEMBERS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

(a) The Corporation may make its services, or certain of its services, available to Persons which (i) apply for membership to the Corporation for the use of its services, (ii) meet the **eligibility**, qualifications **and standards** specified in these Rules, (iii) are approved by the **Corporation or the** Board, as applicable, and (iv) if required, have contributed to the Clearing Fund as provided in Rule 4.

* * *

RULE 2A – INITIAL MEMBERSHIP REQUIREMENTS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 - Eligibility for Membership: Clearing Members

Eligibility for **each category of** Clearing **Membership-Member** shall be as follows:

(a) **Bank Clearing Member** – A Person shall be eligible to apply to become a Bank Clearing Member if it is a bank or trust company chartered as such under the laws of the United States, or a State thereof, or is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and participates in the Corporation through its U.S. branch or agency. A bank or trust company that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be a Bank Clearing Member.

(b) **Dealer Clearing Member** – A Person shall be eligible to apply to become a Dealer Clearing Member if it is a Registered Securities Dealer and is not a bank or trust company. A Registered Securities Dealer that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be a Dealer Clearing Member.

(c) **Inter-Dealer Broker Clearing Member** – A Person shall be eligible to apply to become an Inter-Dealer Broker Clearing Member if it is an Inter-Dealer Broker. An Inter-Dealer Broker that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be an Inter-Dealer Broker Clearing Member.

(d) **Unregistered Investment Pool Clearing Member** – A Person shall be eligible to **apply to** become an Unregistered Investment Pool Clearing Member if it is an Unregistered Investment Pool. An Unregistered Investment Pool that has been admitted into membership in the Clearing System pursuant to these rules, and whose membership **in the Clearing System** has not been terminated, shall be an Unregistered Investment Pool Clearing Member.

(e) **Government Securities Issuer Clearing Member** – A Person shall be eligible to apply to become a Government Securities Issuer Clearing Member if it is a Government Securities Issuer or a Government Sponsored Enterprise. A Government Securities Issuer or a Government Sponsored Enterprise that is admitted to membership in the Clearing System pursuant to these Rules and whose membership in the Clearing System has not been terminated, shall be a Government Securities Issuer Clearing Member.

(f) **Insurance Company Clearing Member** – A Person shall be eligible to **apply to** become an Insurance Company Clearing Member if it is ~~a~~ **an** Insurance Company in good standing with its primary regulator. An Insurance Company that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be an Insurance Company Clearing Member.

(g) **Registered Clearing Agency Member** – A Person shall be eligible to **apply to** become a Registered Clearing Agency Member if it is a Registered Clearing Agency in good standing with its primary regulator. A Registered Clearing Agency that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be a Registered Clearing Agency Member.

(h) **Insured Credit Union Clearing Member** – A Person shall be eligible to apply to become an Insured Credit Union Clearing Member if it is an Insured Credit Union in good standing with its primary regulator. An Insured Credit Union that is admitted to membership in the Clearing System pursuant to these Rules and whose membership in the Clearing System has not been terminated, shall be an Insured Credit Union Clearing Member.

(i) **Registered Investment Company Clearing Member** – A Person shall be eligible to apply to become a Registered Investment Company Clearing Member if it is a Registered Investment Company. A Registered Investment Company that is admitted to membership in the Clearing System pursuant to these Rules, and whose membership in the Clearing System has not been terminated, shall be a Registered Investment Company Clearing Member.

(j) **Other** – The Corporation shall make its services available to Persons in such other categories as the Corporation may from time to time determine, subject to approval of such categories and their minimum membership standards by the SEC.

Applicants in categories (a) through (h) above that are admitted into membership in the Clearing System shall be Tier One Members. Applicants in category (i) above that are admitted into membership in the Clearing System shall be Tier Two Members. With respect to applicants in ~~categories~~ category (j), the Corporation shall make a determination as to whether such applicant shall be a Tier One Member or Tier Two Member.

If any Person in categories (a) through (j) above is a Foreign Person, then it shall be eligible to become a Clearing Member if the Corporation, in its sole discretion, has determined that such Person maintains a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable in the Foreign Person's business and can assist the Corporation's representatives as necessary, and ensures that the Foreign Person will be able to meet its data submission, settlement, and other obligations to the Corporation as a Member in a timely manner. The Foreign Person applying to become a Foreign-Clearing Member must represent and certify to the Corporation that it is in compliance with the financial reporting and responsibility standards of its home country and, if it is a regulated entity, that it is regulated in its home country by a financial regulatory authority in the areas of maintenance of relevant books and records, regular inspections and examinations, and minimum capital standards, and make such other representations, certifications or assurances as the Corporation deems necessary to address jurisdictional and tax concerns. Without limiting the generality of the foregoing, the Corporation shall require each applicant that shall be an FFI Member to certify and periodically recertify to the Corporation that it is FATCA Compliant under such procedures as are set forth under FATCA, unless such requirements have been explicitly waived in writing by the Corporation, provided, however, that no such waiver will be issued if it shall cause the Corporation to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. In addition, as part of its membership application, each applicant that shall be an FFI Member must agree that it shall indemnify the Corporation for any loss, liability or expense sustained by the Corporation as a result of its failing to be FATCA Compliant. The Corporation shall determine, in its sole discretion, which category of membership set forth above the Foreign Person shall be for purposes of these Rules. Except as with respect to FATCA, a Bank Clearing Member that participates in the Corporation through its U.S. branch or agency shall not be deemed a Foreign Member for purposes of these Rules and the Corporation's ~~Rules and~~ procedures, unless otherwise stated by the Corporation.

Section 2 - Membership Qualifications and Standards for Clearing Members

~~The Subject to the limitations set forth in this Rule 2A, the~~ Board may approve an application to become a Clearing Member by a Person that is eligible to apply to become a Clearing Member pursuant to this Rule upon a determination that such applicant meets the following requirements:

* * *

(e) Financial Responsibility - The applicant shall:

(i) have sufficient financial ability to make anticipated required deposits to the Clearing Fund as provided for in Rule 4 and anticipated Cash Settlement amounts

as provided for in Rule 11, and to meet all of its other obligations to the Corporation in a timely manner; and

(ii) satisfy the following minimum financial requirements:

(A) ~~for applicants whose Financial Statements are prepared in accordance with U.S. generally accepted accounting principles:~~
Bank Clearing Member

~~(1) If the applicant is a bank or a trust company chartered under the laws of the United States, or a State thereof, applying to become a Bank Clearing Member, it must (i) have a level of equity capital as of the end of the month prior to the effective date of its membership~~
CET1 Capital of at least ~~\$100~~500 million; ~~and its capital levels and ratios must meet the~~ and (ii) be Well Capitalized; and

~~(2) If the applicant is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and applying to become a Bank Clearing Member through its U.S. branch or agency, it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any domestic systemically important bank (D-SIB) or global systemically important bank (G-SIB) buffer, if applicable~~ minimum levels for such as) and capital ratios required by its Appropriate Regulatory Agency (or, if the applicant's Appropriate Regulatory Agency does not specify any such minimum levels, home country regulator, or, if greater, with such minimum levels as would be capital requirements or ratios required if by the Member were a member bank of the Federal Reserve System and the Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System); Basel Committee on Banking Supervision, and (iii) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.

(B) ~~(2) Dealer Clearing Member - If~~ if the applicant is registered with the SEC pursuant to Section 15 or ~~Section~~ 15C of the Exchange Act and is applying to become a Dealer Clearing Member, it must have, ~~as of the end of the calendar month prior to the effective date of its membership,~~ (1) Net Worth of at least \$25 million, and (2) Excess Net Capital or an equivalent to Excess Net Capital

(e.g., Excess Liquid Capital or Excess Adjusted Net Capital), depending on what the applicant is required to report on its regulatory filings, of at least \$10 million;

(C) (3)–Inter-Dealer Broker Clearing Member - If if the applicant is registered with the SEC pursuant to Section 15 or ~~Section~~ 15C of the Exchange Act and is applying to become an Inter-Dealer Broker Clearing Member, it must have, ~~as (1) Net Worth of the end of the calendar month prior to the effective date of its membership at least \$25 million, and (2) Excess Net Capital or an equivalent to Excess Net Capital (e.g., Excess Liquid Capital or Excess Adjusted Net Capital), depending on what the applicant is required to report on its regulatory filings,~~ of at least \$10 million;

(D) Unregistered Investment Pool Clearing Member

~~(4)(1)–if If~~ If the applicant is applying to become an Unregistered Investment Pool Clearing Member, it must have an investment advisor domiciled in the United States. ~~The and registered with the SEC. An applicant that is an~~ Unregistered Investment Pool ~~applicant~~ must have Net Assets of at least \$250 million ~~in Net Assets. An Unregistered Investment Pool that does not meet the \$250-million-such Net Asset-Assets requirement, but has Net Assets of at least \$100 million, shall be eligible for membership if the Unregistered Investment Pool’s investment advisor advises an existing Member and has assets under management of at least \$1.5 billion. An Unregistered Investment Pool must have an investment advisor registered with the SEC; and~~

(2) In addition to the above, applicants that are Unregistered Investment Pools must obtain at least a “medium” rating on a qualitative assessment performed by the Corporation in which the Corporation will assess certain factors of the applicant, such as management, capital, strategy, risk profile, internal controls, and any other factors deemed relevant by the Corporation. The Corporation shall perform the assessment of each factor at the level at which the responsibility for such factor exists at the applicant (e.g., at the Unregistered Investment Pool level, at the level of the Unregistered Investment Pool’s investment advisor or other service provider, or some combination thereof).

(E) Government Securities Issuer Clearing Member - If the applicant is applying to become a Government Securities Issuer Clearing Member, it must have equity capital of at least \$100 million.

- (F) Insured Credit Union Clearing Member - If the applicant is applying to become an Insured Credit Union Clearing Member, it must have equity capital of at least \$100 million and be “well capitalized” as defined by the NCUA under 12 C.F.R. Part 702.**
- (G) Registered Investment Company Clearing Member - If the applicant is applying to become a Registered Investment Company Clearing Member, it must have Net Assets of at least \$100 million.**
- (H) Foreign Member - If the applicant applying to become a Clearing Member is a Foreign Person, it must, at a minimum, satisfy its home country regulator’s minimum financial requirements, in addition to the following:**
- (1) In the case of a Foreign Person that is a broker or dealer (and not applying to become a Dealer Clearing Member or Inter-Dealer Broker Clearing Member), it must have total equity capital of at least \$25 million; and**
- (2) In the case of a Foreign Person that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (and not applying to become a Bank Clearing Member through a U.S. branch or agency), it must (i) have CET1 Capital of at least \$500 million, (ii) comply with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum requirements or ratios required by the Basel Committee on Banking Supervision and (iii) provide an attestation for itself and its parent bank holding company detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator.**
- The Corporation may, based on information provided by or concerning an applicant that is a Foreign Person, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles an existing category of Clearing Member and (ii) the applicant’s risk profile, which assigned minimum financial requirements will be promptly communicated to, and discussed with, the applicant.**
- (I) Other - If the applicant is not otherwise addressed in this Section 2(e)(ii), it must be in compliance with its regulator’s minimum**

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

The foregoing financial responsibility standards are only the minimum requirements. The Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of Transactions the applicant proposes to process through the Corporation, and the overall financial condition of the applicant, may, in its sole discretion, impose heightened or different financial responsibility standards on any applicant. If an applicant does not itself satisfy the required minimum financial responsibility standards, the Board may include for such purposes the financial resources of the parent company of the applicant (including in the case of an applicant that is a U.S. branch or agency, its parent bank), if the parent company has delivered to the Corporation a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to the Corporation.

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

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

~~(7) if the applicant is applying to become an Insured Credit Union Clearing Member, it must have a level of equity capital as of the end of the month prior to the effective date of its membership of at least \$100 million and achieve the "well capitalized" statutory net worth category classification as defined by the NCUA under 12 C.F.R. Part 702.~~

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

~~If the applicant in sections (1) through (8) above is a Foreign Person that is applying to become a Foreign Clearing Member, it must satisfy the minimum financial requirements: (i) defined by reference to regulatory capital as defined by the applicant's home country regulator, or (ii) in the case of unregulated entities, as defined by the Corporation in its discretion, that are applicable to the Clearing System membership category that the Corporation determines, in its sole discretion, would be applicable to the Foreign Person if it were organized or established under the laws of the United States or a State or other~~

~~political subdivision thereof, subject to subsections (B), (C) and (D) below if the entity's financial statements are not prepared in accordance with U.S. generally accepted accounting principles. For Unregistered Investment Pools, subsections (B), (C) and (D) shall apply to the following figures cited in subsection (A)(4) above: the \$250 million in Net Assets, the \$100 million in Net Assets.~~

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

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

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

(f) Business History - The applicant must have an established, profitable business history of a minimum of six months or personnel with sufficient operational background and experience to ensure, in the judgment of the Board, the ability of the firm to conduct its business.

~~(g) — In addition to the above, applicants that are Unregistered Investment Pools must obtain at least a “medium” rating resulting from a qualitative assessment performed by the Corporation whereby the Corporation will assess certain factors, such as management, capital, strategy and risk profile, internal controls, and any other factors deemed relevant by the Corporation. The Corporation shall perform the assessment of each factor at the level (e.g., at the Unregistered Investment Pool level, at the level of the Unregistered Investment Pool's investment advisor or other service provider, or some combination thereof) at which the responsibility for such factor falls.~~

~~The foregoing financial responsibility standards are only minimum requirements, and the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of Transactions the applicant proposes to process through the Corporation, and the overall financial condition of the applicant, may impose greater standards. If an applicant does not itself satisfy the above minimum capital requirements, the Board may include for such purposes the capital of an Affiliate of the applicant, if the Affiliate has delivered to the Corporation a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to the Corporation.~~

* * *

RULE 3 - ONGOING MEMBERSHIP REQUIREMENTS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

Section 1 – Requirements

The **eligibility**, qualifications and standards set forth in Rule 2A **in respect of an applicant** shall **continue to be continuing membership requirements met upon an applicant's admission as a Member and at all times while a Member**. In addition, each Member shall comply with the ongoing requirements set forth below.

Section 2 - Reports by Clearing Members

Each Clearing Member shall submit to the Corporation the reports and other information set forth below and such other reports and information as the Corporation from time to time may reasonably require. Unless specifically set forth below, the time periods prescribed by the Corporation are set forth in the form of notices posted at the Corporation's website and/or distributed by the Corporation from time to time. It shall be the Member's responsibility to retrieve all notices daily from the website.

(a) a copy of the Member's annual audited Financial Statements for ~~such each~~ fiscal year, certified without qualification by the Member's independent certified public accountants and prepared in accordance with generally accepted accounting principles; ~~and~~

(b) if the Member is a broker or dealer registered under Section 15 ~~or of the Exchange Act or a Government Securities Broker or Government Securities Dealer registered under~~ Section 15C of the Exchange Act, (i) a copy of the Member's **Financial and Operational Combined Uniform Single Report ("FOCUS Report")** or **Report on Finances and Operations of Government Securities Brokers and Dealers ("FOGS Report")**, as the case may be, submitted to its Designated Examining Authority, and (ii) any supplemental reports required to be filed with the SEC pursuant to ~~SEC Exchange Act~~ Rule 17a-11 or 17 C.F.R. Section 405.3;

(c) if the Member is a ~~domestic U.S.~~ bank or ~~a~~ trust company, a copy of the Member's **CALL Consolidated Report of Condition and Income ("Call Report")** submitted to its Appropriate Regulatory Agency and, to the extent not contained within such ~~CALL~~ **Call** Reports (or to the extent that ~~CALL~~ **Call** Reports are not required to be filed), information containing each of the Member's capital levels and ratios, as such levels and ratios are required to be provided to the Member's Appropriate Regulatory Agency (or, if such ~~applicant~~ **Member**'s Appropriate Regulatory Agency does not require such information, as would be required to be provided, if such

Member's Appropriate Regulatory Agency were the Board of Governors of the Federal Reserve System);

(d) if the Member is a broker, dealer or bank established or organized ~~in under~~ the ~~United Kingdom laws of a non-U.S. jurisdiction~~ and subject to regulation by ~~the United Kingdom's Financial Services Authority (or successor authority)~~ its home country regulator in such jurisdiction, a copy of ~~its Financial Services Authority any~~ reports submitted to such home country regulator;

(e) if the Member is a Foreign ~~Clearing~~ Member other than one that is a broker, dealer or bank ~~organized or established in the United Kingdom and regulated by the Financial Services Authority~~ subject to regulation by its home country regulator in such jurisdiction, financial information as requested by the Corporation;

(f) if the Member is an Unregistered Investment Pool ~~as defined in these Rules~~, a copy of the monthly certified statements of assets and liabilities on standard form signed by the Chief Financial Officer or equivalent of such Unregistered Investment Pool;

(g) if the Member ~~is does~~ not fall within clauses (b) through (f) above, copies of the Member's unaudited financial information as specified by the Corporation for ~~such each~~ each quarter; and

(h) for any Member ~~which that~~ has satisfied the financial requirements imposed by the Corporation pursuant to these Rules by means of a guaranty of its obligations by ~~an Affiliate a parent company (including, in the case of a Member that is a U.S. branch or agency, its parent bank)~~, Financial Statements and/or the reports or information of its parent company meeting the requirements specified in subparagraphs (a) through (g) of this Section 2, as applicable.

Moreover, any Member that has provided to the SEC any notice required pursuant to paragraph (e) of ~~the SEC's Exchange Act~~ Rule 15c3-1 shall notify the Corporation of the provision of such notice, and shall furnish the Corporation with a copy of such notice, by the Close of Business on the day that it so provides such notice to the SEC.

With respect to subsections (a) and (g) above, the Corporation may accept, in its sole discretion, consolidated Financial Statements or financial information prepared at a parent level.

In addition to the above, Clearing Members must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when a Member's capital levels or other financial requirements fall below prescribed levels. In addition, Members must submit to the Corporation, concurrently with their submission to the applicable regulator or similar authority, copies of such filings as determined by the Corporation from time to time, which Members are required to file pursuant to the Sarbanes-Oxley Act of 2002, and any amendments thereunder.

In furtherance of the preceding paragraph, a Member that is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction (including a Bank Clearing Member that is a U.S. branch or agency) must (i) provide, no less than annually and upon

request by the Corporation, an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (ii) notify the Corporation: (a) within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

Moreover, Foreign-~~Clearing~~ Members ~~who-that~~ are regulated by their home country regulator and Bank Clearing Members that are U.S. branches or agencies of non-U.S. banks or trust companies must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when ~~a Member-an entity~~ does not comply with the financial reporting and responsibility standards set by ~~its-their~~ home country regulator. Foreign ~~Clearing~~ Members ~~who-that~~ are regulated by their home country regulator and Bank Clearing Members that are U.S. branches or agencies of non-U.S. banks or trust companies must also notify the Corporation in writing within 2 ~~business days-Business Days~~ of becoming subject to a disciplinary action by their home country regulator.

* * *

Section 6 - General Continuance Standards^[1]

A Member shall promptly inform the Corporation, both orally and in writing, if it no longer is in compliance with any of the relevant qualifications and standards for admission to membership set forth in Rule 2A and in this Rule, including whether it is subject to any of the criteria set forth in subsection (d) of Section 2 of Rule 2A. Notification must take place within two ~~business days~~ Business Days from the date on which the Member first learns of its non-compliance. The Corporation may assess a fine against any Member who fails to so notify the Corporation. In addition, a Member shall notify the Corporation within two ~~business days-Business Days~~ of learning of an investigation or proceeding to which it is or is becoming subject that would cause the Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in Rule 2A and this Rule. Notwithstanding the previous sentence, the Member shall not be required to notify the Corporation if doing so would cause the Member to violate an applicable law, rule or regulation. If, with respect to any type of Member: (a) it fails to maintain the relevant standards and qualifications for admission to membership, including but not limited to minimum capital standards and operational testing and related reporting requirements imposed by the Corporation from time to time; (b) it violates any Rule of the Corporation or other agreement with the Corporation; (c) it fails to satisfy in a timely manner any obligation to the Corporation; (d) there is a Reportable Event relating to such Member; or (e) the Corporation

^[1] The changes to Section 6 will not be subject to the 12-month implementation delay; rather, these changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this footnote will automatically be removed from this Rule.

otherwise deems it necessary or advisable, in order to protect the Corporation, its other Members, or its creditors or investors, to safeguard securities and funds in the custody or control of the Corporation, or to promote the prompt and accurate processing, clearance or settlement of securities Transactions, the Corporation will undertake appropriate action to determine the status of the Member and its continued eligibility. In addition, the Corporation may review the financial responsibility and operational capability of the Member to the extent provided in these Rules and otherwise require from the Member additional reporting of its financial or operational condition at such intervals and in such detail as the Corporation shall determine, including, but not limited to, such information as the Corporation may request regarding the businesses and operations of the Member and its risk management practices with respect to services of the Corporation utilized by the Member for another Person or Persons, and shall make a determination as to whether such Member should be placed on the Watch List ~~and/or be subject to enhanced surveillance~~ by the Corporation consistent with the provisions of Section 11 of this Rule. The Corporation may also, in its sole discretion, if it believes it necessary to protect itself and its Members, require a Member to deliver to the Corporation a guaranty of an Affiliate of the Member, satisfactory in form and substance to the Corporation, of the obligations of the Member to the Corporation.

* * *

Section 11 – Ongoing Monitoring^[1]

(a) All Members will be monitored and reviewed by the Corporation on an ongoing and periodic basis, which may include monitoring of news and market developments and review of financial reports and other public information.

- (b) (i) A Member that is (A) a Bank Clearing Member that files the **Consolidated Report of Condition and Income** (“Call Report”), (B) a Dealer Clearing Member or Inter-Dealer Broker Clearing Member that files the **Financial and Operational Combined Uniform Single Report** (“FOCUS Report”) or the equivalent with its regulator, or (C) a Bank Clearing Member that is a Foreign Person and that has audited financial data that is publicly available will be assigned a credit rating by the Corporation in accordance with the Credit Risk Rating Matrix. Such Member’s credit rating will be reassessed each time the Member provides the Corporation with requested information pursuant to Section 6 of Rule 3, or as may be otherwise required under ~~the~~ **these** Rules (including **Section 11 of** this Rule 3, ~~Section 11~~).
- (ii) Because the factors used as part of the Credit Risk Rating Matrix may not identify all risks that a Member specified in paragraph (b)(i) of this Section 11 may present to the Corporation, the Corporation may, in its discretion, override such Member’s credit rating derived from the Credit Risk Rating Matrix to downgrade the Member. This downgrading may result in the

^[1] **The changes to Section 11 will not be subject to the 12-month implementation delay; rather, these changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this footnote will automatically be removed from this Rule.**

Member being placed on the Watch List, ~~and/or it may subject the Member to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below. The Corporation may also take such additional actions with regard to the Member as are permitted by ~~the~~ these Rules.

(c) Members other than those specified in paragraph (b)(i) of this Section 11 will not be assigned a credit rating by the Credit Risk Rating Matrix but may be placed on the Watch List ~~and/or they may be subject to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below, as the Corporation deems necessary to protect the Corporation and its Members.

(d) The factors to be considered by the Corporation under paragraphs (b)(ii) and (c) of this Section 11 include, but are not limited to, (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Member, (ii) reasonable concerns around the Member's liquidity arrangements, (iii) material changes to the Member's organizational structure, (iv) reasonable concerns of the Corporation about the Member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Member to demonstrate satisfactory financial condition or operational capability or if the Corporation has a reasonable concern regarding the Member's ability to maintain applicable membership standards and (vi) failure of the Member to provide information required by the Corporation to assess risk exposure posed by the Member's activity (including information requested by the Corporation pursuant to Section 6 of this Rule 3).

(e) The Corporation may require a Clearing Member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with the provisions of Rule 4 (which additional deposit shall constitute a portion of the Clearing Member's Required Fund Deposit), or such higher amount as the Board may deem necessary for the protection of the Corporation or other Members, which higher amount may include, but is not limited to, additional payments or deposits in any form to offset potential risk to the Corporation and its Members arising from activity submitted by such Member. The Corporation may also retain any Excess Clearing Fund Deposits of a Clearing Member that has been placed on the Watch List as provided in Section 10 of Rule 4.

(f) A Member ~~being subject to enhanced surveillance or~~ being placed on the Watch List shall result in a more thorough monitoring of the Member's financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests from the Corporation. In addition, the Corporation may require a Member placed on the Watch List ~~and/or subject to enhanced surveillance~~ to make more frequent financial disclosures, including, without limitation, interim and/or pro forma reports. Members that are subject to enhanced surveillance placement on the Watch List are also reported to the Corporation's management committees and regularly reviewed by a cross-functional team comprised of senior management of the Corporation. The Corporation may also take such additional actions with regard to any Member (including a Member placed on the Watch List ~~and/or subject to enhanced surveillance~~) as are permitted by ~~the~~ these Rules.

RULE 3A - CASH SETTLING BANK MEMBERS

[Changes to this Rule, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

(c) On an ongoing basis:

(i) Cash Settling Bank Members approved as such pursuant to subsection (b)(i) above shall be required to maintain their status as a DTC Settling Bank or re-apply under subsections (b)(ii), (b)(iii) or (b)(iv).

(ii) Cash Settling Bank Members approved as such pursuant to subsection (b)(ii) above must maintain their status as a Government Securities Division Funds-Only Settling Bank Member or re-apply under subsections (b)(i), (b)(iii) or (b)(iv).

(iii) Cash Settling Bank Members approved as such pursuant to subsection (b)(iii) above must maintain their status as a Member or re-apply under subsections (b)(i), (b)(ii) or (b)(iv).

(iv) Cash Settling Bank Members approved as such pursuant to subsection (b)(iv) above must maintain the financial responsibility and operational capability standards as the Corporation may require pursuant to subsection (b)(iv) above. If required by the Corporation, such Cash Settling Bank Members shall submit the financial and other information (if applicable) specified by the Corporation in notices issued by the Corporation from time to time. Such information must be submitted within the timeframes specified in guidelines issued by the Corporation from time to time.

(v) All Cash Settling Bank Members that, in accordance with such entity's regulatory and/or statutory requirements, calculate a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio equal to or greater than the Tier 1 RBC Ratio that would be required for such Cash Settling Bank to be Well Capitalized.

* * *

INTERPRETIVE GUIDANCE WITH RESPECT TO WATCH LIST CONSEQUENCES

[Changes to this Interpretive Guidance, as amended by File No. SR-FICC-2021-009, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. These changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this legend will automatically be removed from this Interpretive Guidance.]

Being placed on the Watch List may result in Clearing Fund-related consequences under the Rules:

A. Clearing Fund-Related Consequences

1. Additional Clearing Fund Deposits

Pursuant to Section 11(e) of Rule 3, the Corporation may require a Clearing Member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with the provisions of Rule 4 or such higher amount as the Board may deem necessary for the protection of the Corporation or other Members.

The determination of whether a Clearing Member that is on the Watch List should be subject to an additional Clearing Fund deposit is based on factors determined to be relevant by the Corporation from time to time, including:

- a. the overall financial condition and financial stability or volatility of the Clearing Member, which may include a review of the Clearing Member's credit rating/~~enhanced surveillance~~ history and outlook;
- b. the liquidity arrangement, if any, of the Clearing Member;
- c. the Clearing Fund requirement history, transaction volume trends, simulated close-out results, stress test results, backtest results and outstanding positions of the Clearing Member;
- d. adverse news reports and/or regulatory concerns relating to the Clearing Member; and
- e. any additional concerns relating to the financial or operational condition of the Clearing Member.

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