

be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 10, 2017 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: Allianz Funds Multi-Strategy Trust and Allianz Global Investors U.S. LLC, 1633 Broadway, New York, New York 10019; and George B. Raine, Ropes & Gray LLP, Prudential Tower, 800 Boylston St., Boston, MA 02148.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Zaruba, Senior Counsel, at (202) 551-6878, or Robert Shapiro, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order to permit (a) a Fund<sup>1</sup> (each a "Fund of Funds") to acquire shares of Underlying

<sup>1</sup> Applicants request that the order apply to each existing and future series of the Trust and to each existing and future registered open-end investment company or series thereof that is advised by the Applying Manager or its successor or by any other investment adviser controlling, controlled by or under common control with the Applying Manager or its successor and is part of the same "group of investment companies" as the Trust (each, a "Fund"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term "group of investment companies" means any two or more registered investment companies, including closed-end investment companies and business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

Funds<sup>2</sup> in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.<sup>3</sup> Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.<sup>4</sup> Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same "group of investment companies" as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from

<sup>2</sup> Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund ("ETF").

<sup>3</sup> Applicants do not request relief for Funds of Funds to invest in reliance on the order in business development companies and registered closed-end investment companies that are not listed and traded on a national securities exchange.

<sup>4</sup> A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Fund of Funds to purchase or redeem shares from the ETF. A Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds (including business development companies).

any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80253; File No. SR-FICC-2017-004]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe the Intraday Mark-to-Market Charge

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 7, 2017, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. 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 Mortgage-Backed

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

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

Securities Division (“MBSD”) Clearing Rules (“MBSD Rules”)<sup>3</sup> in order to provide transparency in the MBSD Rules with respect to the existing intraday Mark-to-Market charge by codifying FICC’s current practices with respect to the assessment and collection of the intraday Mark-to-Market charge.<sup>4</sup> This charge is imposed on certain Clearing Members that experience an adverse intraday Mark-to-Market change that meets certain criteria described below. The charge is designed to mitigate FICC’s exposure resulting from large intraday Mark-to-Market fluctuations to Clearing Members’ portfolios that are not otherwise covered by Clearing Members’ Required Fund Deposits.

In order to provide transparency with respect to the existing intraday Mark-to-Market charge by codifying FICC’s existing practices with respect to the charge, FICC is proposing to amend MBSD Rule 1 (Definitions) to add the defined term “Intraday Mark-to-Market Charge” and to amend Section 2(c) of MBSD Rule 4 (Clearing Fund and Loss Allocation) to include the Intraday Mark-to-Market Charge.

In addition, the proposed rule change would delete the term “End of Day Charge” from the MBSD Rules because it is no longer used, as further discussed below. To effectuate this change, the proposed rule change would delete the definition of End of Day Charge from Rule 1 (Definitions) and would amend Section 2 of MBSD Rule 4 (Clearing Fund and Loss Allocation) to delete the reference to the End of Day Charge.

## 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.

<sup>3</sup> The MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>.

Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the MBSD Rules.

<sup>4</sup> The intraday Mark-to-Market charge is currently described in Section 2(a) of Rule 4 of the MBSD Rules.

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

#### 1. Purpose

The proposed rule change would provide transparency in the MBSD Rules with respect to the assessment and collection of the existing Intraday Mark-to-Market Charge, which FICC currently may impose on a Clearing Member on an intraday basis under certain circumstances described below. Once imposed, payment of this charge is due within one hour after notice from FICC to an affected Clearing Member.<sup>5</sup> The proposed rule change would also eliminate references to the End of Day Charge from the MBSD Rules.

#### (i) Background—The Required Fund Deposit and Mark-to-Market

The Required Fund Deposit serves as each Clearing Member’s margin. The objective of the Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of the Clearing Member’s portfolio in the event that FICC ceases to act for a Clearing Member (hereinafter referred to as a “default”). FICC determines Required Fund Deposit amounts using a number of component charges calculated and assessed daily, the largest of which is the VaR Charge that is a risk-based margin methodology intended to capture market price risk. The methodology uses historical market moves to project or forecast the potential gains or losses on the liquidation of a defaulting Clearing Member’s portfolio, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions. The projected liquidation gains or losses are used to determine the Clearing Member’s VaR Charge, which is calculated to cover projected liquidation losses at a 99 percent confidence level. The aggregate of all Clearing Members’ Required Fund Deposits constitutes the Clearing Fund of MBSD, which FICC would be able to access in the event a defaulting Clearing Member’s own Required Fund Deposit is insufficient to satisfy losses to FICC caused by the liquidation of that Clearing Member’s portfolio.

MBSD calculates the full suite of components that comprise the Required Fund Deposit and imposes the Required Fund Deposit once per day, at the start of the day, based on a Clearing Member’s prior end-of-day positions. Generally, the second largest component of the daily Required Fund Deposit is a start-of-day Mark-to-Market amount,

which is designed to mitigate the risk arising out of the value change between the contract/settlement value of a Clearing Member’s open positions and the market value at the end of the prior day.

#### (ii) Overview—The Intraday Mark-to-Market Charge

During each trading day, a Clearing Member’s exposure may change due to the settlement of existing transactions and new trade activities. In addition, the value of the Clearing Member’s portfolio may change due to market influences. Normally, the start-of-day Mark-to-Market component of the daily Required Fund Deposit covers FICC’s exposure to a Clearing Member due to market moves and/or trading and settlement activity because it brings the portfolio of outstanding positions up to the market value at the end of the prior day. However, because the start-of-day Mark-to-Market component of the Required Fund Deposit is calculated only once daily using the prior end-of-day positions and prices, it does not cover a Clearing Member’s exposure arising out of intraday changes to position and market value in the Clearing Member’s portfolio that result in an adverse change to the Clearing Member’s Mark-to-Market (“MTM Exposure”). FICC manages this intraday risk exposure by observing snapshots of Clearing Members’ portfolios and monitoring intraday changes to each Clearing Member’s Mark-to-Market versus the Mark-to-Market that was part of the Required Fund Deposit at the start of the day or, if applicable, any subsequently collected Mark-to-Market amount. FICC then collects an Intraday Mark-to-Market Charge from Clearing Members to cover significant risk exposures that warrant the collection of intraday margin, as further described below.

#### (iii) The Parameter Breaks

FICC’s current practice with respect to the assessment of the Intraday Mark-to-Market Charge entails tracking three criteria (each, a “Parameter Break”) for each Clearing Member. The Parameter Breaks help FICC determine whether a Clearing Member’s MTM Exposure poses a risk to FICC that is significant enough to warrant an Intraday Mark-to-Market Charge. The objective of the Parameter Breaks is to ensure that FICC is able to limit exposure to intraday Mark-to-Market fluctuations that (a) are of a large dollar amount (the “Dollar Threshold”), (b) exhaust a significant portion of a Clearing Member’s VaR Charge (the “Percentage Threshold”) and (c) are experienced by Clearing Members with backtesting deficiencies

<sup>5</sup> MBSD Rule 4, Section 2.

that bring backtesting results for that Clearing Member below the 99 percent confidence target (the "Coverage Target"), indicating that a Clearing Member's activity was not sufficiently covered by margin.

### 1. The Dollar Threshold

The purpose of the Dollar Threshold is to identify those Clearing Members whose MTM Exposures represent a large portion of the Clearing Fund. FICC believes that such Clearing Members pose an increased risk of loss to FICC because the coverage provided by the Clearing Fund, which is designed to cover the aggregate losses of all Clearing Members' portfolios, would be substantially impacted by large MTM Exposures. More specifically, if a Clearing Member were to default and the Clearing Member's Required Fund Deposit was not sufficient to satisfy losses to FICC caused by the liquidation of the Clearing Member's portfolio, FICC would be able to access the funds held by it in the Clearing Fund to satisfy such losses. However, because the Clearing Fund must be available to satisfy potential losses to FICC that may arise from any Clearing Member defaults, FICC would be exposed to a significant risk of loss if Clearing Members' MTM Exposures accounted for a substantial portion of the Clearing Fund. The Dollar Threshold is set to an amount that would ensure that the aggregate MTM Exposures of all of its Clearing Members at such threshold would not exceed 5 percent of the Clearing Fund. FICC believes that the availability of 95 percent of the Clearing Fund to satisfy all other liquidation losses arising out of a Clearing Member's default is sufficient to mitigate the risks posed to FICC by such losses. FICC assesses the sufficiency of the Dollar Threshold on an annual basis and may adjust the Dollar Threshold if it determines that such an adjustment is necessary to provide reasonable coverage. Currently, the Dollar Threshold is an adverse intraday Mark-to-Market change in a Clearing Member's portfolio that equals or exceeds \$1,000,000 when compared to the Clearing Member's start-of-day Mark-to-Market requirement including, if applicable, any subsequently collected Mark-to-Market amount.

### 2. The Percentage Threshold

The purpose of the Percentage Threshold is to identify those Clearing Members whose MTM Exposures deplete a significant portion of such Clearing Members' daily VaR Charge. FICC believes that Clearing Members that experience such MTM Exposures pose an increased risk of loss to FICC

because the coverage provided by the VaR Charge, which is designed to cover estimated losses to a portfolio over a specified time period at least 99 percent of the time, would be depleted by a significant MTM Exposure that could cause the Clearing Member's Required Fund Deposit to be unable to absorb further intraday losses to the Clearing Member's portfolio. The Percentage Threshold is designed to provide FICC with a reasonable cushion to allow the VaR Charge collected at the start of day to function as expected. More specifically, the VaR Charge is designed to cover potential losses over a three-day time period for a Clearing Member at least 99 percent of the time, assuming normal market conditions. When a Clearing Member's MTM Exposure meets or exceeds a certain percentage as compared to its daily VaR Charge, the value of the Clearing Member's portfolio is trending towards a loss outside of the expected value as determined by such VaR Charge. The Percentage Threshold is calculated to equal a percentage of the daily VaR Charge that FICC has determined would leave it with a sufficient amount of a Clearing Member's remaining VaR Charge after accounting for potential losses arising from the Clearing Member's MTM Exposure. FICC assesses the sufficiency of the Percentage Threshold on an annual basis and may adjust the Percentage Threshold if it determines that such an adjustment is necessary to provide reasonable coverage.<sup>6</sup> Currently, the Percentage Threshold is an adverse intraday Mark-to-Market change in a Clearing Member's portfolio that equals or exceeds 30 percent of the VaR Charge collected as part of the Clearing Member's daily Required Fund Deposit.

### 3. The Coverage Target

The purpose of the Coverage Target is to identify those Clearing Members that have experienced backtesting deficiencies that bring the results for that Clearing Member below the 99 percent confidence target (*i.e.*, greater than two deficiency days in a rolling 12-month period) as reported in the most current month. FICC believes that such Clearing Members pose an increased risk of loss to FICC because such backtesting deficiencies demonstrate that FICC's risk-based margin model did not perform as expected for the Clearing Member. More specifically, FICC employs daily backtesting to determine the adequacy of each Clearing Member's

Required Fund Deposit. FICC compares the Required Fund Deposit for each Clearing Member with the simulated liquidation gains/losses using the actual positions in the Clearing Member's portfolio and the actual historical security returns. FICC investigates the cause(s) of any deficiencies. As a part of this process, FICC pays particular attention to deficiencies that cause a Clearing Member's backtesting coverage to fall below the Coverage Target. Such deficiencies are evidence that the model used to calculate the Clearing Member's Required Fund Deposit did not calculate an amount sufficient to cover the Clearing Member's risk to FICC, as would otherwise be expected of the Required Fund Deposit. The Coverage Target is designed to provide coverage to FICC for intraday Mark-to-Market fluctuations in the portfolio of a Clearing Member for whom the Required Fund Deposit model is not performing as expected. FICC believes that a MTM Exposure for Clearing Members that fall below the Coverage Target may expose FICC to heightened risk, requiring an Intraday Mark-to-Market Charge to cover that risk.

#### (iv) Assessment and Collection of the Intraday Mark-to-Market Charge

FICC's current practice is to review intraday snapshots of each Clearing Member's portfolios to determine whether the Clearing Member has experienced a MTM Exposure that warrants FICC assessing an Intraday Mark-to-Market Charge. More specifically, if a Clearing Member's MTM Exposure breaches all three Parameter Breaks, the Clearing Member will be subject to the Intraday Mark-to-Market Charge and FICC will collect the charge subject to waivers or changes to the amount of the calculated charge, as described below. However, where FICC determines that certain market conditions exist, including but not limited to (i) sudden swings in an equity index in either direction that exceed certain threshold amounts determined by FICC and (ii) moves in U.S. Treasury yields and mortgage-backed security spreads outside of historically observed market moves, FICC does not require that the Coverage Target be breached; rather, FICC imposes the Intraday Mark-to-Market Charge if only the Dollar Threshold and Percentage Threshold are breached,<sup>7</sup> subject to waivers and

<sup>6</sup> In 2014, FICC lowered the Percentage Threshold from 40 percent to 30 percent of the VaR Charge after conducting a study that determined that a Percentage Threshold of 40 percent did not provide a sufficient cushion against potential losses.

<sup>7</sup> FICC has determined that, because a Clearing Member's backtesting coverage may not accurately reflect the risks posed by a Clearing Member under certain market conditions, Clearing Members with backtesting coverage that meets or exceeds the Coverage Target may nonetheless pose increased

changes to the amount of the calculated charge, as described below. Moreover, during such market conditions, the Dollar Threshold and Percentage Threshold may be reduced if FICC determines that such reduction is appropriate in order to accelerate collection of anticipated additional margin from Clearing Members whose portfolios may present relatively greater risks to FICC on an overnight basis. Any such reduction would not cause the Dollar Threshold to be less than \$250,000 and the Percentage Threshold to be less than 5 percent.

Irrespective of market conditions, FICC may impose the Intraday Mark-to-Market Charge on Clearing Members that (i) are approaching but have not yet breached the Percentage Threshold (but are at 20 percent or greater of the daily VaR Charge) and (ii) have a MTM Exposure that exceeds a certain dollar amount ("Surveillance Threshold") that is set by FICC per Clearing Member based on the Clearing Member's internal Credit Risk Rating Matrix ("CRRM") rating and/or the Clearing Member's Watch List status, if the Corporation determines that the size of such Clearing Member's Mark-to-Market change exposes the Corporation to increased risk. FICC links the Surveillance Thresholds to a Clearing Member's CRRM rating and Watch List status because a Clearing Member with a weaker internal rating is likely to pose a greater risk of default. Clearing Members with weaker internal credit ratings are assigned lower Surveillance Thresholds than Clearing Members with stronger internal credit ratings. The Surveillance Thresholds are intended as a tool to aid FICC in identifying Clearing Members whose MTM Exposures may necessitate the collection of an Intraday Mark-to-Market Charge. The current Surveillance Thresholds are: (a) \$50 million for Clearing Members with a CRRM rating of "1" or "2" and for non-rated Clearing Members that are not on the Watch List; (b) \$25 million for Clearing Members with a CRRM rating of "3"; (c) \$15 million for Clearing Members with a CRRM rating of "4"; (d) \$10 million for Clearing Members with a CRRM rating of "5" or "6" and for non-rated Clearing Members that are on the Watch List; and (e) \$5 million for Clearing Members with a CRRM rating of "7."

Although FICC generally collects the Intraday Mark-to-Market Charge under

risk to FICC. Therefore, FICC imposes the Intraday Mark-to-Market Charge on Clearing Members that breach the Dollar Threshold and Percentage Threshold, despite the fact that such Members may not have breached the Coverage Target during certain market conditions.

the conditions described above, FICC retains the discretion to waive or alter such Intraday Mark-to-Market Charge in circumstances where it determines that the MTM Exposure and/or the breaches of the Parameter Breaks do not accurately reflect FICC's risk exposure to the Clearing Member's intraday Mark-to-Market fluctuation (e.g., a Clearing Member's breach of the Coverage Target Parameter Break is based on a shortened backtesting look-back period and large Mark-to-Market fluctuations arising out of trade errors). Based on FICC's assessment of the impact of these circumstances and FICC's actual risk exposure to a Clearing Member, FICC may, in its discretion, waive or alter (decrease or increase) an Intraday Mark-to-Market Charge for a Clearing Member. Given the variability of the factors that result in breaches of the Parameter Breaks, FICC believes that it is important to maintain such discretion in order to limit the imposition of the Intraday Mark-to-Market Charge to those Clearing Members with MTM Exposures that pose a significant level of risk to FICC. Such Intraday Mark-to-Market Charge would not reduce a Clearing Member's Required Fund Deposit below the amount reported at the start of day. Any increase to the Intraday Mark-to-Market Charge would not cause the Intraday Mark-to-Market Charge to be greater than two times its calculated amount.

#### (v) Communication With Clearing Members and Imposition of the Intraday Mark-to-Market Charge

If FICC determines that FICC should collect an Intraday Mark-to-Market Charge from a Clearing Member, FICC notifies the Clearing Member during the trading day of its requirement to pay the Intraday Mark-to-Market Charge and the amount due. Affected Clearing Members are required to pay the amount due within one hour after FICC has provided the Clearing Member with notification that such payment is due (as long as notification is provided at least one hour prior to the close of the cash Fedwire operated by the Federal Reserve Bank of New York).

#### (vi) Proposal To Delete the End of Day Charge

Currently, MBS Rule 4 states that the Required Fund Deposit is equal to the greater of: (i) The Minimum Charge, or (ii) the End of Day Charge,<sup>8</sup> plus the

<sup>8</sup> The "End of Day Charge" means with respect to each Clearing Member, the calculation equaling: (i) The VaR Charge; plus (ii) the Mark-to-Market Debit; minus (iii) the Mark-to-Market Credit; plus (iv) a cash obligation item debit; minus (v) a cash obligation item credit; plus or minus (vi) accrued

VaR Charge, the Deterministic Risk Component,<sup>9</sup> and the special charge, if applicable. The End of Day Charge is comprised of the VaR Charge plus components that are identical to the components in the Deterministic Risk Component and is therefore duplicative and unnecessary. Therefore, FICC is proposing to delete the term and the reference to the End of Day Charge in order to help ensure that the MBS Rules are accurate and clear.

## 2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the "Act"), requires, in part, that the MBS Rules promote the prompt and accurate clearance and settlement of securities transactions.<sup>10</sup> The proposed rule changes with respect to the Intraday Mark-to-Market Charge would provide transparency in the MBS Rules regarding the existing Intraday Mark-to-Market Charge by codifying FICC's current practices with respect to the assessment and collection of the charge. In addition, the proposed rule change associated with the deletion of the End of Day Charge would delete provisions that are not used to ensure that the MBS Rules remain accurate and clear. Collectively, the proposed changes would ensure that the MBS Rules remain transparent, accurate and clear, which would enable all stakeholders to readily understand their rights and obligations in connection with MBS's clearance and settlement of securities transactions. Therefore, FICC believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(b)(1) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions, so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they

principal and interest. See MBS Rule 1, *supra* note 3.

<sup>9</sup> The "Deterministic Risk Component" means with respect to the margin portfolio of a Clearing Member, the calculation equaling: (i) The Mark-to-Market Debit; minus (ii) the Mark-to-Market Credit; plus (iii) a cash obligation item debit; minus (iv) a cash obligation item credit; plus or minus (v) accrued principal and interest. See MBS Rule 1, *supra* note 3.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

cannot anticipate or control.<sup>11</sup> FICC's Intraday Mark-to-Market Charge is calculated and imposed to cover credit exposures estimated by FICC based on significant intraday Mark-to-Market changes to a Clearing Member's portfolio, as well as the Clearing Member's trailing 12-month backtesting results, with the goal of ensuring that FICC is not exposed to increased risk from large intraday Mark-to-Market changes to the Clearing Member's portfolio. Therefore, FICC believes that management of its credit exposures to Clearing Members through this charge is consistent with Rule 17Ad-22(b)(1) under the Act.

Rule 17Ad-22(b)(2) under the Act requires a clearing agency to maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.<sup>12</sup> When applicable, the Intraday Mark-to-Market Charge is a component of a Clearing Member's Required Fund Deposit, or margin, and is intended to maintain coverage of FICC's credit exposures to such Clearing Member at a confidence level of at least 99 percent. The Intraday Mark-to-Market Charge therefore limits FICC's exposures to Clearing Members under normal market conditions. Moreover, by incorporating the Intraday Mark-to-Market Charge into the MBS Rules more clearly, the proposed change demonstrates that FICC has rule provisions that are reasonably designed to use margin requirements to limit its credit exposures to its Clearing Members under normal market conditions. Therefore, FICC believes that the proposed rule change is also consistent with Rule 17Ad-22(b)(2) under the Act.

The proposed rule changes with respect to the Intraday Mark-to-Market Charge have also been designed to be consistent with Rules 17Ad-22(e)(4) and (e)(6) under the Act, which were recently adopted by the U.S. Securities and Exchange Commission ("Commission").<sup>13</sup> Rule 17Ad-22(e)(4) will require FICC to 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 exposures arising from its payment, clearing, and settlement processes.<sup>14</sup> The proposed rule change codifies MBS Rules' practices associated with the Intraday Mark-to-Market Charge, which address the identification, measurement, monitoring and management of credit exposures that may arise from intraday changes that occur to a Clearing Member's portfolio because of settlement of existing transactions and new trade activities. Moreover, by incorporating the Intraday Mark-to-Market Charge into the MBS Rules more clearly, the proposed change would enable FICC to have rule provisions that are reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to Clearing Members and those exposures arising from its payment, clearing, and settlement processes, which FICC believes is consistent with Rule 17Ad-22(e)(4).

Rule 17Ad-22(e)(6) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.<sup>15</sup> The Intraday Mark-to-Market Charge is a risk-based margining system with parameters that are regularly reviewed by FICC. Therefore, FICC believes the proposed rule change is consistent with Rule 17Ad-22(e)(6).

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

FICC does not believe that the proposed rule change associated with the Intraday Mark-to-Market Charge would impact competition.<sup>16</sup> The proposed rule change would increase the transparency of the MBS Rules with respect to this existing charge by codifying FICC's current practices with respect to the assessment and imposition of the charge. As such, FICC believes that the proposed rule change will not impact Clearing Members or have any impact on competition.

FICC does not believe that the proposed rule change to delete the End of Day Charge would impact competition. Changes to the applicable provisions would not impact Clearing Members because the End of Day Charge is not used by MBS Rules in the calculation of a Clearing Member's Required Fund Deposit. As such, FICC believes that the

deletion of these provisions will not impact competition.

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

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2017-004 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FICC-2017-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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

<sup>11</sup> 17 CFR 240.17Ad-22(b)(1).

<sup>12</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(4) and (6). The Commission adopted amendments to Rule 17Ad-22, including the addition of new section 17Ad-22(e), on September 28, 2016. See Exchange Act Release No. 34-78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). FICC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) and must comply with new section (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

<sup>14</sup> 17 CFR 240.17Ad-22(e)(4).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(6).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(I).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2017-004 and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-05502 Filed 3-20-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80249; File No. SR-ISE-2017-23]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 10, 2017, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Schedule of Fees to: (i) Eliminate the

Priority Customer complex order rebate for orders in the NASDAQ 100 Index option ("NDX") and in the Mini Nasdaq 100 Index option ("MNX"); (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX options, and (iii) waive the Marketing Fees for NDX and MNX, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The purpose of the proposed rule change is to: (i) Eliminate the Priority Customer complex order rebate for orders in NDX and MNX; (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and (iii) waive marketing fees for NDX and MNX.<sup>3</sup> The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.<sup>4</sup>

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

Currently, the Exchange provides rebates to Priority Customer<sup>5</sup> complex orders that trade with non-Priority

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2017 (SR-ISE-2017-21). On March 10, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> The Exchange and its affiliates will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

<sup>5</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

Customer complex orders in the complex order book or trade with quotes and orders on the regular order book.<sup>6</sup> Rebates are tiered based on a member's ADV executed during a given month as follows: 0 to 14,999 contracts ("Tier 1"), 15,000 to 44,999 contracts ("Tier 2"), 45,000 to 59,999 contracts ("Tier 3"), 60,000 to 74,999 contracts ("Tier 4"), 75,000 to 99,999 contracts ("Tier 5"), 100,000 to 124,999 contracts ("Tier 6"), 125,000 to 224,999 contracts ("Tier 7"), and 225,000 or more contracts ("Tier 8"). In Non-Select Symbols,<sup>7</sup> including NDX and MNX, the rebate is \$0.40 per contract for Tier 1, \$0.60 per contract for Tier 2, \$0.70 per contract for Tier 3, \$0.75 per contract for Tier 4, \$0.75 per contract for Tier 5, \$0.80 per contract for Tier 6, \$0.81 per contract for Tier 7, and \$0.85 per contract for Tier 8. The Exchange now proposes to add note 4 to Section II of the Schedule of Fees to provide that no Priority Customer complex order rebates will be paid for orders in NDX or MNX.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The purpose of the second proposed change is to raise revenue for the Exchange by increasing the Non-Priority Customer License Surcharge for options on NDX and MNX. Currently, a number of Non-Select Symbols are index options that are traded on the Exchange pursuant to license agreements for which the Exchange charges license surcharges. The Exchange charges the following license surcharges for all orders other than Priority Customer orders: \$ 0.10 per contract for options on BKX, and \$ 0.22 per contract for options on NDX and MNX. The license surcharge fees, which are charged by the Exchange to defray the licensing costs, are charged in addition to transaction fees. The Exchange is now proposing to amend Section IV.B of the Schedule of Fees to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX from \$ 0.22 per contract to \$ 0.25 per contract.

Waive the Marketing Fee for NDX and MNX Options

Currently, the Exchange administers a Marketing Fee program that helps Market Makers establish Marketing Fee

<sup>6</sup> These rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

<sup>7</sup> "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program. "Non-Select Symbols" are options overlying all symbols, excluding Select Symbols. NDX and MNX are Non-Select Symbols.

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

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

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