

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96136; File No. SR–FICC–2022–006]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change To Increase the Minimum Required Fund Deposit for Government Securities Division Netting Members and Sponsoring Members, and Make Other Changes

October 24, 2022.

#### I. Introduction

On September 9, 2021, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–FICC–2022–006 (the “Proposed Rule Change”) 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> to increase the minimum Required Fund Deposit for members of FICC’s Government Securities Division (“GSD”)<sup>3</sup> members, as well as make certain clarifying and technical changes.

The Proposed Rule Change was published for comment in the **Federal Register** on September 22, 2022,<sup>4</sup> and the Commission has received no comments on the changes proposed therein. This order approves the Proposed Rule Change.

#### II. Description of the Proposed Rule Change

Currently, FICC requires from each Netting Member a minimum required margin amount, referred to as the Required Fund Deposit, of \$100,000 that must be made and maintained in cash, and does not require any specific minimum amount for Sponsoring Members.<sup>5</sup> FICC proposes to increase

each member’s minimum Required Fund Deposit amount to \$1,000,000.

#### A. Background

A key tool that FICC uses to manage its respective credit exposures to its members is the daily collection of margin from each member, which is referred to as each member’s Required Fund Deposit. The aggregated amount of all members’ margin constitutes the Clearing Fund, which FICC would access should a defaulted member’s own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member’s portfolio.

FICC conducts daily backtesting to evaluate whether each member’s Required Fund Deposit is sufficient to cover FICC’s credit exposures to that member based on a simulated liquidation of the member’s portfolio on that day.<sup>6</sup> Backtesting is an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.<sup>7</sup> A backtesting deficiency occurs when FICC determines that the projected liquidation losses to FICC arising in the event of a member’s default would be greater than the member’s Required Fund Deposit.<sup>8</sup> Therefore, backtesting deficiencies highlight exposure that could subject FICC to potential losses under normal market conditions in the event that a member defaults.<sup>9</sup>

FICC regularly reviews backtesting results to assess the effectiveness of its margin requirements.<sup>10</sup> As part of its review, FICC investigates the causes of any backtesting deficiencies, paying particular attention to repeat backtesting deficiencies that would result in the member’s backtesting coverage to fall below the 99% confidence target to determine if there is an identifiable cause of repeat backtesting deficiencies.<sup>11</sup> FICC also evaluates

whether multiple members may experience backtesting deficiencies for the same underlying reason.<sup>12</sup>

Based on its regular reviews, FICC has found that members with Required Fund Deposits below \$100,000 disproportionately experience repeat backtesting deficiencies because, should the member’s settlement activity abruptly increase, the additional exposure to FICC would not be mitigated until the collection of the Required Fund Deposit either intraday or on the next business day.<sup>13</sup> FICC states it has also found that its current minimum margin requirement of \$100,000 is disproportionately lower than the minimum margin requirements of other CCPs that clear similar securities products.<sup>14</sup>

#### B. Proposal

In the Proposed Rule Change, FICC proposes to increase its minimum Required Fund Deposit for its members to \$1,000,000.

Specifically, to implement this change for Netting Members, FICC would revise Section 2(a) of Rule 4 to state that each Netting Member shall be required to make a Required Fund Deposit to the Clearing Fund equal to the greater of (i) the Minimum Charge or (ii) the Total Amount. FICC would also revise section 3 of GSD Rule 4 to replace the minimum cash amount from \$100,000 to \$1 million, to match the proposed

period, then the member’s margin would not be sufficient 99% of the time. FICC believes that its targeted 99% confidence level is consistent with its regulatory requirements under Rule 17Ad–22(e)(4)(i) and (e)(6)(iii). *Id.*; see also 17 CFR 240.17Ad–22 (e)(4)(i), and (e)(6)(iii).

<sup>12</sup> See Notice of Filing, *supra* note 4, at 57961.

<sup>13</sup> *Id.* at 57961–62.

<sup>14</sup> See Notice of Filing, *supra* note 4, at 57962 (citing the following requirements: the Options Clearing Corporation’s (“OCC”) minimum initial contribution of \$500,000, see OCC Rule 1002(d), available at [https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ\\_rules.pdf](https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf); the Chicago Mercantile Exchange’s (“CME”) minimum requirement of \$500,000 or \$2.5 million depending on the product types being cleared, see CME Rule 816, available at <https://www.cmegroup.com/content/dam/cmegroup/rulebook/CME/1/8/8.pdf>; the National Securities Clearing Corporation’s (“NSCC”) minimum required fund deposit of \$250,000, see NSCC Rule 4, available at [https://dtcc.com/-/media/Files/Downloads/legal/rules/nscc\\_rules.pdf](https://dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf); LCH Limited’s minimum default fund contribution of GBP 500,000 (approximately \$566,000 based on current foreign currency exchange rate) and of GBP 2,000,000 (approximately \$2.3 million based on the current foreign currency exchange rate) for RepoClear, see LCH Limited Default Rules definition of “Minimum Contribution” and “Minimum RepoClear Contribution” available at [https://www.lch.com/system/files/media\\_root/210609\\_Default%20Rules\\_Clean\\_0.pdf](https://www.lch.com/system/files/media_root/210609_Default%20Rules_Clean_0.pdf); and Ice Clear U.S.’s minimum contribution to Guaranty Fund of \$2 million, see ICE Clear U.S. Rule 301, available at [https://www.ice.com/publicdocs/rulebooks/clear/ICE\\_Clear\\_US\\_Rules.pdf](https://www.ice.com/publicdocs/rulebooks/clear/ICE_Clear_US_Rules.pdf)).

<sup>6</sup> The Model Risk Management Framework (“Model Risk Management Framework”) sets forth the model risk management practices of FICC and states that Value at Risk (“VaR”) and Clearing Fund requirement coverage backtesting is performed on a daily basis or more frequently. See Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–FICC–2017–014), 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (SR–FICC–2018–010), 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–FICC–2020–004), 92380 (July 13, 2021), 86 FR 38140 (July 19, 2021) (SR–FICC–2021–006), and 94271 (Feb. 17, 2022), 87 FR 10411 (Feb. 24, 2022) (SR–FICC–2022–001).

<sup>7</sup> See 17 CFR 240.17Ad–22(a)(1).

<sup>8</sup> See Notice of Filing, *supra* note 4, at 57691.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> FICC states that a member’s backtesting coverage would fall below the 99% confidence target if the member has more than two backtesting deficiency days in a rolling twelve-month period. *Id.* In other words, if a member has three or more backtesting deficiency days during a twelve-month

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> FICC operates two divisions, GSD and the Mortgage Backed Securities Division (“MBS”). GSD provides trade comparison, netting, risk management, settlement, and central counterparty (“CCP”) services for the U.S. government securities market, including repos. MBS provides the same services for the U.S. mortgage-backed securities market. GSD and MBS maintain separate sets of rules, margin models, and clearing funds. The proposed rule change relates solely to GSD, except as discussed in section II.B at note 19 *infra*.

<sup>4</sup> Securities Exchange Act Release No. 95806 (Sept. 16, 2022), 87 FR 57960 (Sept. 22, 2022) (File No. SR–FICC–2022–006) (“Notice of Filing”).

<sup>5</sup> Rule 4, section 3 (for Netting Members) and Rule 3A, section 10(c) (for Sponsoring Members). Capitalized terms not defined herein are defined in the GSD Rules & Procedures (“Rules”), available at [https://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_gov\\_rules.pdf](https://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf). For purposes of this order, “member” will be used to describe Netting Members and Sponsoring Members, collectively.

increased minimum Required Fund Deposit amount. To implement this change for Sponsoring Members, FICC would revise section 10(c) of Rule 3A (Sponsoring Members and Sponsored Members) to state that the Sponsoring Member Omnibus Account Required Fund Deposit shall be equal to the greater of: (i) \$1 million or (ii), which is what is currently in the Rules, the sum of the following: (1) the sum of the VaR Charges<sup>15</sup> for all of the Sponsored Members whose activity is represented in the Sponsoring Member Omnibus Account as derived pursuant to, and (2) all amounts representing other components of the Sponsoring Member's Required Fund Deposit computed at the level of the Sponsoring Member Omnibus Account, other than the VaR Charge. In addition, Section 10(d) of Rule 3A would be revised to replace the minimum cash amount from \$100,000 to \$1 million to match the proposed increased minimum Required Fund Deposit amount for the Sponsoring Members.<sup>16</sup>

For Repo Brokers, FICC would not propose to change the current minimum Required Fund Deposit of \$5 million.<sup>17</sup> However, for clarity, FICC would propose to move the minimum Required Fund Deposit to a different section of the Rules, to improve organization.<sup>18</sup>

<sup>15</sup> For Sponsoring Member's the VaR Charge is determined pursuant to Section 1b(a)(i) of GSD Rule 4 (Clearing Fund and Loss Allocation). The VaR Charge is generally the largest component of the Required Fund Deposit. It is designed to provide an estimate of FICC's projected liquidation losses with respect to a defaulted member's portfolio at a 99 percent confidence level, and it is based on the potential price volatility of unsettled positions using a sensitivity-based Value-at-Risk model. As an alternative to this calculation, FICC also uses a haircut-based calculation as the member's VaR Charge if that charge exceeds the amount determined by the model-based calculation. Fixed Income Clearing Corporation Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, at 64, available at [https://www.dtcc.com/media/Files/Downloads/legal/policy-and-compliance/FICC\\_Disclosure\\_Framework.pdf](https://www.dtcc.com/media/Files/Downloads/legal/policy-and-compliance/FICC_Disclosure_Framework.pdf); see also Exchange Act Release No. 92303 (June 30, 2021), 86 FR 35855 (July 7, 2021).

<sup>16</sup> See Notice of Filing, *supra* note 4, at 57963.

<sup>17</sup> Rule 4, section 1b, *supra* note 5. Currently, if a Repo Broker has two Margin Portfolios, with Broker Account(s) in one Margin Portfolio and Dealer Account(s) in the other Margin Portfolio, the total minimum Required Fund Deposit applicable to the Repo Broker would be \$5.1 million, *i.e.*, \$5 million minimum Required Fund Deposit for the Margin Portfolio with Broker Account(s) and \$100,000 minimum Required Fund Deposit for the Margin Portfolio with Dealer Account(s).

<sup>18</sup> FICC would also make revisions to state that the Minimum Charge applicable to each Repo Broker shall be no less than \$5 million for each Margin Portfolio with Broker Account(s) and no less than \$1 million for each Margin Portfolio with Dealer Account(s), and to refer to additional payments, charges and premiums being applied by FICC after application of Minimum Charges, which term replaces the current term "minimum Clearing Fund amounts."

Finally, FICC proposes to add a sentence to Section 2 of MBS Rule 4, which addresses required clearing fund deposits, to make clear that, as is currently the case due to other portions of the rule, the Minimum Charge for each margin portfolio of a Clearing Member shall be no less than \$100,000.<sup>19</sup> FICC also proposes to replace (i) "Clearing Fund requirement" with "Minimum Charge for each margin portfolio" and (ii) "minimum Clearing Fund amounts" with "Minimum Charges" in MBS Rule 4, section 2, which FICC believes will enhance clarity. Furthermore, FICC is proposing a technical change to correct a reference to the non-Unregistered Investment Pool Clearing Member in MBS Rule 4, section 2.

### C. Impact Study Results

To support its proposal, FICC relies upon the results of recent analyses of backtesting and margin.<sup>20</sup> Specifically, FICC examines the backtesting coverage of each of its members during the period for a 12-month period ending June 30, 2022 ("Backtesting Impact Study") under the current \$100,000 minimum GSD Required Fund Deposit amount compared to hypothetical (or "pro forma") minimum GSD Required Fund Deposit amounts, including the proposed \$1,000,000 amount. The Backtesting Impact Study shows that the number of member backtesting deficiencies that would have been eliminated during the period had FICC's minimum GSD Required Fund Deposit been \$1,000,000 compared to \$100,000. FICC then uses the Backtesting Impact Study to analyze the improvement to each member's backtesting coverage ratio and, taking all members' backtesting coverage ratio results together, to FICC's Clearing Fund backtesting coverage.<sup>21</sup>

According to FICC, the Backtesting Impact Study indicates that using \$1

<sup>19</sup> Specifically, Rule 4, section 3 of the MBS Rules, which addresses the form of a member's required fund deposit, states that a member must make deposit the lesser of \$5,000,000 or 10 percent of its required fund deposit, with a minimum of \$100,000, in cash. The MBS Rules are available at [https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc\\_mbsd\\_rules.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf) ("MBS Rules").

<sup>20</sup> FICC provided a public summary of the information in this Section II.B in its Notice of Filing, upon which this discussion is based. See Notice of Filing, *supra* note 4, at 57962-3. FICC submitted the data underlying these analyses as a confidential Exhibit 3 to the Proposed Rule Change pursuant to 17 CFR 240.24b-2.

<sup>21</sup> The backtesting coverage represents the daily sufficiency of the aggregate of all members' margin over a rolling 12-month period. As described in Section II.A above, FICC would be able to access its clearing fund to cover any losses to it should a member with insufficient margin default. GSD Rule 4, Section 3, *supra* note 3.

million as GSD's minimum Required Fund Deposit amount would have reduced the number of members with backtesting coverage below 99%. Specifically, the Backtesting Impact Study shows 70 members below 99% backtesting coverage as of June 30, 2022 with a collective 396 backtesting deficiencies in GSD. Approximately 21% (*i.e.*, 85 out of 396) of the backtesting deficiencies occurred with respect to members that had a Required Fund Deposit of less than \$1 million on the relevant deficiency day(s). FICC states that if the proposed changes had been in place during the Backtesting Impact Study period, approximately 16% (*i.e.*, 65 out of 396) of the backtesting deficiencies incurred by the members would have been eliminated, and the total number of members that were below the 99% confidence target as of June 30, 2022 would have been reduced by 8. Overall, FICC states that a \$1 million minimum requirement would have increased GSD's 12-month backtesting coverage 0.22%, eliminated 65 backtesting deficiencies, and improved the rolling twelve-month backtesting coverage for 8 members to above 99% confidence target.

In addition, FICC conducted a clearing fund requirement impact study for the period of July 1, 2021 to June 30, 2022 ("CFR Impact Study") on a member-level basis, meaning that it examined the effect on each member's Required Fund Deposit had the proposal been in place. According to FICC, the CFR Impact Study indicates that under the proposal, approximately 47% (81 out of a total of 174) of the current members' Margin Portfolios would have been impacted, with an average and a weighted average (with weights based on number of impacted days) additional Required Fund Deposit of approximately \$686,000 and \$792,000, respectively, for each such Margin Portfolio per impacted day. When comparing the actual, total Clearing Fund deposit of the current members' Margin Portfolios (that is, including any additional resources held at FICC in addition to the Required Fund Deposit) with the proposed minimum Required Fund Deposit amount, however, only approximately 13% (23 out of a total 174) of such members' Margin Portfolios would have been impacted, requiring an average and a weighted average (with weights based on number of impacted days) additional cash deposit of approximately \$649,000 and \$715,000, respectively, for each such Margin Portfolio per impacted day. FICC states the result of the CFR Impact Study also shows one Repo Broker that would have

been impacted, requiring additional Clearing Fund deposit of approximately \$392,000 in either cash or Eligible Clearing Fund Securities per impacted day. Overall, FICC states that the proposed changes would have resulted in an average increase in the daily required margin amount, for all members' deposits in the aggregate, of \$31.4 million (or 0.17%) at GSD during the CFR Impact Study period.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>22</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to FICC.<sup>23</sup> In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) and (b)(3)(I)<sup>24</sup> of the Act and Rules 17Ad-22(e)(4) and (e)(6) thereunder.<sup>25</sup>

#### A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as FICC, be designed, in part, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>26</sup> The Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.

As discussed in Section II.A above, backtesting deficiencies highlight when a member's margin is insufficient to cover FICC's credit exposure to that member. If a defaulted member's margin is insufficient to satisfy losses caused by the closeout of that member's positions, FICC and its non-defaulting members may be subject to losses. As summarized in Section II.B above, and based on the Commission's review and analysis of the material submitted by FICC,<sup>27</sup> the proposed increase would have provided

FICC with additional resources, which would have resulted in a decrease in backtesting deficiencies and thus a reduction in credit exposure to its members under the proposal. Therefore, the Commission believes FICC would improve the probability that the increased minimum margin amount it collects is sufficient to cover FICC's credit exposure to those members, particularly in instances where the defaulted member's clearing activity abruptly increases following a period of low or no activity because FICC would have additional resources available to cover that additional exposure before collecting additional margin for that increased activity. This increase could reduce the possibility that FICC or its non-defaulting members face losses from the close-out process, in the event that FICC were to have to allocate losses amongst non-defaulting losses pursuant to its Rules.

Moreover, FICC would continue to require that members pay an amount equal to the minimum Required Fund Deposit amount in cash. The proposal therefore would enable FICC to have available additional collateral that is easier for FICC to access quickly to complete end of day settlement upon a member's default, further reducing the risk of losses to FICC or non-defaulting members. Accordingly, the Commission believes the Proposed Rule Change would promote the safeguarding of securities and funds which are in the custody or control of FICC or for which FICC is responsible, consistent with Section 17A(b)(3)(F) of the Act.

Finally, as discussed in Section II.B above, FICC proposes clarifying and technical changes to the GSD and MBS Rules. Such changes provide clarifications to members regarding the definitions and applications of Rules. The Commission believes that such changes would ensure that the Rules are accurate and clear to members, thus promoting prompt and accurate clearance and settlement, which is consistent with Section 17A(b)(3)(F) of the Act.<sup>28</sup>

#### B. Consistency With Section 17A(b)(3)(I) of the Act

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Act.<sup>29</sup> This provision does not require the Commission to find that a proposed rule change represents the least anti-competitive means of achieving the

goal.<sup>30</sup> Rather, it requires the Commission to balance the competitive considerations against other relevant policy goals of the Act.

The Commission acknowledges that the impact of increased margin requirements may present higher costs to some members with lower operating margins, lower cash reserves or higher costs of capital compared to other members, which may weaken those members' competitive positions relative to others. Although some of FICC's members could experience a burden on competition because of these higher costs, the Commission concludes any burden to these members is necessary and appropriate in furtherance of the policy goals under the Act<sup>31</sup> for the following reasons.

As discussed in Section II.A above, FICC seeks to maintain sufficient resources (*i.e.*, margin) to cover its credit exposures to its members fully with a high degree of confidence. Conversely, FICC uses backtesting to determine when a member's margin would have been insufficient to cover FICC's credit exposure to that member. As previously discussed, the Backtesting Impact Study shows the proposed \$1,000,000 minimum Required Fund Deposit would have decreased the number of backtesting deficiencies, thereby increasing the number of members for which FICC maintained sufficient coverage at a confidence level of at least 99%. Therefore, the Proposed Rule Change would enable FICC to better manage its credit exposure to its members by ensuring it holds sufficient collateral to cover that exposure, thereby reducing the likelihood that FICC or non-defaulting members would incur losses resulting from a member default.

Additionally, as described in Section II.B, FICC conducted a Clearing Fund impact study. Specifically, when comparing the actual, total Clearing Fund deposit of the current members' Margin Portfolios with the proposed minimum Required Fund Deposit amount, approximately 13% (23 out of a total 174) of such members' Margin Portfolios would have been impacted, requiring an average and a weighted average (with weights based on number of impacted days) additional cash deposit of approximately \$649,000 and \$715,000, respectively, for each such

<sup>30</sup> See Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

<sup>31</sup> 15 U.S.C. 78q-1(b)(3)(I). Specifically, as discussed in greater detail in Section III.C and III.D below, the Proposed Rule Change is necessary and appropriate to further the policy goals under Rule 17Ad-22(e)(4)(i) and (e)(6)(iii), 17 CFR 240.17Ad-22(e)(4)(i) and (e)(6)(iii).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>23</sup> The Commission's findings are based on its review of the Proposed Rule Change, including its analysis of the Backtesting and CFR Impact Studies, which are summarized in Section II.B above. See *supra* note 20 and accompanying text.

<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(4) and (e)(6).

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>27</sup> See *supra* note 20.

<sup>28</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(I).

Margin Portfolio per impacted day. The result of the CFR Impact Study also shows one Repo Broker that would have been impacted, requiring an additional margin deposit of approximately \$392,000 in either cash or Eligible Clearing Fund Securities per impacted day. Overall, the proposed changes would have resulted in an average increase in daily Required Fund Deposit of \$31.4 million (or 0.17%) at GSD during the CFR Impact Study period.

Finally, according to FICC, when comparing the average additional cash deposit amounts that members would be required to make if the minimum Clearing Fund cash deposit at GSD had been increased to \$1,000,000 with their respective average Net Capital during the CFR Impact Study period, the largest average additional cash deposit amount represented approximately 0.49% of the affected member's average Net Capital.<sup>32</sup> In addition, when comparing the average additional Clearing Fund deposit that members would be required to make, either in cash or Eligible Clearing Fund Securities, if the minimum Required Fund Deposit amount at GSD had been increased as proposed with their respective average Net Capital during the CFR Impact Study period, the largest average additional Clearing Fund deposit amount represented approximately 1.46% of the affected member's average Net Capital.<sup>33</sup> In light of this analysis, and our review of the confidential data underlying the CFR Impact Study, the Commission believes that the majority of impacted members likely would not experience a weakened competitive position compared to others as a result of the Proposed Rule Change.

Therefore, the Commission concludes that any competitive burden to members imposed by the Proposed Rule Change is necessary and appropriate in furtherance of the Act. Accordingly, the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(I) of the Act.<sup>34</sup>

#### C. Consistency With Rule 17Ad-22(e)(4)(i)

Rule 17Ad-22(e)(4)(i) 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.<sup>35</sup>

As described above in Section II.A, FICC and its non-defaulting members may be subject to losses should a defaulted member's own Required Fund Deposit be insufficient to satisfy losses caused by the liquidation of that member's portfolio. As summarized in Section II.B above and based on the Commission's review and analysis of the underlying data,<sup>36</sup> the Backtesting Impact Study shows a \$1,000,000 minimum Required Fund Deposit would have decreased the number of backtesting deficiencies, which would likely help FICC better manage its credit exposure to each of its members and credit exposures arising from its payment, clearing, and settlement processes.

Additionally, as discussed in Section II.B above, FICC would continue to require that members pay an amount equal to the minimum Required Fund Deposit amount in cash, which should enable FICC to better maintain sufficient prefunded margin to mitigate potential future exposures to its members. Therefore, requiring the proposed minimum \$1,000,000 deposit to be made in cash should reduce the probability that FICC or non-defaulting members would incur losses resulting from a member default. Accordingly, the Commission finds that FICC's proposed increase to its minimum Required Fund Deposit would be consistent with Rule 17Ad-22(e)(4)(i).<sup>37</sup>

#### D. Consistency With Rule 17Ad-22(e)(6)(iii)

Rule 17Ad-22(e)(6)(iii) under the Act requires that a covered clearing agency 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, at a minimum, calculates margin sufficient to cover its potential future exposure to members in the interval between the last margin collection and the close out of positions following a member default.<sup>38</sup>

As summarized in Section II.A above, FICC employs daily backtesting to determine the adequacy of each member's Required Fund Deposit paying particular attention to members that have backtesting deficiencies below the 99% confidence target. Such backtesting deficiencies highlight

exposure that could subject FICC to potential losses if a member defaults.

Based on the Backtesting Impact Study, which the Commission has reviewed and analyzed, approximately 21% of all backtesting deficiencies occur for those members that maintain a Required Fund Deposit of less than \$1,000,000, and approximately 16% of the deficiencies of those members would have been eliminated during the Impact Study Period if the Required Fund Deposit were \$1,000,000 or higher. By raising the minimum Required Fund Deposit amount to \$1,000,000, the Commission believes the proposal should enable FICC to decrease the number of backtesting deficiencies by members, thereby improving FICC's backtesting coverage, and thus decrease FICC's exposure to such members in the event of a member default.

Therefore, the Commission concludes FICC's Proposed Rule Change should better ensure FICC maintains sufficient margin to cover its potential future exposure to its members in the interval between the last margin collection and the close out of positions following a member default, thereby reducing the likelihood FICC or non-defaulting members would incur losses as a result. Accordingly, the Commission finds that FICC's proposed increase to its minimum Required Fund Deposit would be consistent with Rule 17Ad-22(e)(6)(iii).<sup>39</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>40</sup> and the rules and regulations promulgated thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>41</sup> that Proposed Rule Change SR-FICC-2022-006, as modified by Partial Amendment No. 1, be, and hereby is, *approved*.<sup>42</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2022-23482 Filed 10-27-22; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>39</sup> 17 CFR 240.17Ad-22(e)(6)(iii).

<sup>40</sup> 15 U.S.C. 78q-1.

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). See discussion *supra* Section III.B.

<sup>43</sup> 17 CFR 200.30-3(a)(12).

<sup>32</sup> Notice of Filing, *supra* note 4, at 57965.

<sup>33</sup> *Id.*

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(4)(i).

<sup>36</sup> See *supra* note 23.

<sup>37</sup> 17 CFR 240.17Ad-22(e)(4)(i).

<sup>38</sup> 17 CFR 240.17Ad-22(e)(6)(iii).