

the status of meetings, contact Denise McGovern at 301-415-0681 or via email at Denise.McGovern@nrc.gov.

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Dated: October 12, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016-25106 Filed 10-13-16; 11:15 am]

BILLING CODE 7590-01-P

OFFICE OF SPECIAL COUNSEL

Senior Executive Service Performance Board

AGENCY: Office of Special Counsel

ACTION: Notice.

SUMMARY: The Office of Special Counsel (OSC) publishes the names of the persons selected to serve on its SES Performance Review Board (PRB). This notice supersedes all previous notices of the PRB membership.

DATES: October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hendricks, Acting General Counsel, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036, (202) 254-3600

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more

PRBs. The PRB shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the final rating authority relative to the performance of the senior executive.

The following individuals have been selected to serve on the OSC's PRB: Bruce Fong, Associate Special Counsel; Bruce Gipe, Chief Operating Officer; Louis Lopez, Associate Special Counsel; Anne Wagner, Associate Special Counsel.

Dated: October 11, 2016

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2016-24976 Filed 10-14-16; 8:45 am]

BILLING CODE 7405-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79077; File No. SR-FICC-2016-003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Describe the Blackout Period Exposure Charge That May Be Imposed on GCF Repo Participants

October 11, 2016.

On July 12, 2016, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2016-003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.³ The Commission received no comments on the proposed rule change. On August 30, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁴ For the reasons discussed below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-78347 (July 15, 2016), 81 FR 47466 (July 21, 2016) (SR-FICC-2016-003) ("Notice").

⁴ Securities Exchange Act Release No. 78720 (August 30, 2016), 81 FR 61271 (September 6, 2016).

I. Description of the Proposed Rule Change

FICC proposes to amend the Government Securities Division ("GSD") Rulebook (the "GSD Rules")⁵ to include a margin charge increase (the "Blackout Period Exposure Charge" as further described below) that is imposed on Netting Members that participate in the GCF Repo[®] service ("GCF Repo Participants"). Specifically, the proposed rule change would amend GSD Rule 1 (Definitions) to include certain defined terms and would amend Section 1b of GSD Rule 4 (Clearing Fund and Loss Allocations) to include the Blackout Period Exposure Charge and the manner in which FICC determines and imposes such charge, as described in detail below.⁶

A. GCF Repo Service and the Required Fund Deposit

FICC states that the GCF Repo service enables GCF Repo Participants to trade general collateral repurchase agreements based on rate, term, and underlying product throughout the day, without requiring intraday, trade-for-trade settlement on a delivery-versus-payment basis. On each trading day, GCF Repo Participants must cover their repurchase obligations by allocating collateral to FICC's account at the GCF Repo Participant's GCF Clearing Agent Bank.⁷ FICC accepts mortgage-backed securities ("MBS") securities for such collateral allocations.⁸ Additionally, FICC collects Required Fund Deposits from all Netting Members (including GCF Repo Participants) to help protect FICC against losses that could be realized in the event of a Netting Member's default.

The Required Fund Deposit serves as each Netting Member's margin. FICC states that the objective of the Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of the Netting Member's portfolio in the event that FICC ceases to act for a Netting Member (hereinafter referred to as a "default"). FICC determines Required Fund Deposit amounts using a risk-based margin methodology.

FICC determines the adequacy of each Netting Member's Required Fund Deposit through daily backtesting. FICC compares each Netting Member's

⁵ 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 GSD Rules.

⁶ The description of the proposed rule change herein is based on the statements prepared by FICC in the Notice. Notice, *supra* note 3, 81 FR 47466-47469.

⁷ GSD Rule 20 Section 3.

⁸ *Id.*

Required Fund Deposit to the simulated liquidation gains and losses based on the positions in the Netting Member's portfolio, including the allocated collateral of GCF Repo Participants, and the historical security returns. FICC investigates the cause(s) of any deficiencies. As a part of this process, FICC pays particular attention to Netting Members with backtesting deficiencies that bring the results for that Netting Member below a 99 percent confidence level (*i.e.*, greater than two deficiency days in a rolling twelve-month period)⁹ to determine if there is an identifiable cause of repeat deficiencies. FICC also evaluates whether multiple Netting Members may experience deficiencies for the same underlying reason.

B. MBS and the Blackout Period

FICC only accepts MBS that are issued and guaranteed by U.S. government-sponsored entities ("GSEs"). Because MBS are composed of pools of mortgages, whose principal balances decrease over time because of scheduled and unscheduled payments by mortgagors, MBS notional values decrease over time. Investors in MBS issued by the GSEs are informed of the amount of this reduction in value on a monthly basis when the GSEs release new "Pool Factors" for their MBS at the beginning of every month.¹⁰ The period between the last business day of the prior month ("Record Date") and the date on which the GSE releases its new Pool Factors ("Factor Date") is known as the "Blackout Period."¹¹ FICC states that during the Blackout Period, MBS values may be overstated because they do not capture reductions in the principal balances of the MBS as described above.

FICC states that GCF Repo Participants may experience backtesting deficiencies during the Blackout Period if they allocate substantial amounts of MBS collateral to cover their repurchase obligations. Such deficiencies occur because the value of MBS collateral allocated to cover GCF Repo Participants' repurchase obligations may be overstated on the collateral reports

⁹ FICC explains that each deficiency reduces backtesting coverage by 0.4 percent (1 exception/250 observation days). Accordingly, three deficiencies in a 12-month period would decrease backtesting coverage to 98.8 percent.

¹⁰ FICC explains that Pool Factors are stated as a percentage amount of the initial aggregate face value of the security that remains unpaid on the underlying mortgage pool. For example, if the face amount of a mortgage-backed security were \$100,000 and the stated pool factor were 0.4587, the remaining principal balance in the security to be paid to the investor would be \$45,870.

¹¹ The Factor Date is typically the fourth or fifth business day of each calendar month.

delivered to FICC by the GCF Clearing Agent Banks, which rely on the prior month's Pool Factors to value MBS collateral pledged by GCF Repo Participants. FICC states that the Blackout Period Exposure Charge is designed to mitigate the risk posed to FICC by such deficiencies by temporarily increasing such GCF Repo Participants' Required Fund Deposits.

C. Calculation of the Blackout Period Exposure Charge

FICC states that the objective of the Blackout Period Exposure Charge is to increase Required Fund Deposits by an amount sufficient to maintain backtesting coverage above the 99 percent confidence threshold for GCF Repo Participants that are likely to experience backtesting deficiencies on the basis described above. Because the size of the backtesting deficiencies caused by this issue varies among impacted GCF Repo Participants, FICC must assess a Blackout Period Exposure Charge that is specific to each impacted GCF Repo Participant.

FICC examines each impacted GCF Repo Participant's historical backtesting deficiencies to identify the two largest deficiencies that occurred during a rolling 12-month look-back period. FICC then identifies an amount equal to the midpoint between the two largest historical deficiencies for such GCF Repo Participant as the presumptive Blackout Period Exposure Charge amount, subject to adjustment as further described below.¹² FICC identified the midpoint between the two largest historical deficiencies as an amount that is (i) particular to the GCF Repo Participant and its use of MBS collateral, and (ii) which FICC believes provides a reasonable buffer above the historically observed minimum increase necessary to achieve 99 percent coverage.

FICC states that the resulting Blackout Period Exposure Charge is added to the VaR Charge for such GCF Repo Participant pursuant to FICC's risk-based margining methodology, but that the charge is only imposed during the Blackout Period (*i.e.*, until the GCF Repo Participant's GCF Clearing Agent Bank updates the Pool Factors it uses to

¹² FICC states that although an increase equal to the third largest historical deficiency would suffice to bring the GCF Repo Participant's historically-observed backtesting coverage above the 99 percent target if deficiencies due to Blackout Period exposures were the only deficiencies experienced, such an approach would fail to take into account potential changes in such GCF Repo Participant's MBS collateral pledges or other factors that could contribute to deficiencies during this period.

value MBS collateral).¹³ FICC further states that this charge is applicable only to those GCF Repo Participants that have two or more backtesting deficiencies that occurred during the Blackout Period and whose overall 12-month trailing backtesting coverage falls below the 99 percent coverage target.

Although FICC uses the midpoint between the two largest historical Blackout Period deficiencies for a GCF Repo Participant as the Blackout Period Exposure Charge in most cases, FICC retains discretion to adjust the charge based on other relevant circumstances, such as material differences in the two largest deficiencies, variability in a GCF Repo Participant's use of MBS for collateral allocation, and variability in the magnitude of Pool Factor changes for certain categories of MBS. Based on FICC's assessment of the impact of these circumstances on the likelihood of, and estimated size of, future Blackout Period deficiencies for a GCF Repo Participant, FICC may, in its discretion, adjust the Blackout Period Exposure Charge for such Participant to an amount that FICC determines to be more appropriate for maintaining such GCF Repo Participant's backtesting results above the 99 percent coverage threshold (including a reasonable buffer).

D. Communication With GCF Repo Participants and Imposition of the Charge

If FICC determines that a Blackout Period Exposure Charge should apply to a GCF Repo Participant who was not assessed a Blackout Period Exposure Charge during the immediately preceding month or that the Blackout Period Exposure Charge applied to a GCF Repo Participant during the previous month should be increased, FICC will notify the Participant on or around the 25th calendar day of the month. FICC states that the Participant may avoid or decrease the charge by notifying FICC in writing of its intent to remove or reduce its use of MBS in collateral allocations, followed by the actual removal or reduction of MBS collateral allocations, during the Blackout Period. If such Participant elects not to adjust its portfolio (or fails to do so despite such notification to FICC), then FICC will impose a Blackout Period Exposure Charge as determined above.

FICC imposes the Blackout Period Exposure Charge as of the morning Clearing Fund call on the Record Date through and including the intraday

¹³ The GCF Clearing Agent Banks typically have a one-day lag in updating their databases with the most recent Pool Factor information.

Clearing Fund call on the Factor Date, or until the Pool Factors have been updated to reflect the current month's Pool Factors in the GCF Clearing Agent Bank's collateral reports. Thereafter the charge is removed because updated MBS valuations are incorporated into FICC's risk-based margining methodology for the remainder of the month, alleviating the risk of potentially uncovered credit exposures resulting from overvalued MBS collateral during Blackout Period. FICC repeats this process monthly.

If changes in an impacted GCF Repo Participant's MBS collateral pledges over time materially reduce the Blackout Period Exposure Charge calculated pursuant to the procedures described above, FICC may, in its discretion, reduce the Blackout Period Exposure Charge and would so notify the Participant. If an impacted GCF Repo Participant's trailing 12-month backtesting coverage exceeds 99 percent (without taking into account historically-imposed Blackout Period Exposure Charges), the Blackout Period Exposure Charge would be removed.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹⁴ 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. The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁵ and Rules 17Ad-22(b)(1) and (2) thereunder, as discussed below.¹⁶

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are within the custody or control of the clearing agency.¹⁷ As a central counterparty ("CCP"), FICC is exposed to losses that could arise out of the default of one of its Netting Members, such as a GCF Repo Participant. As explained above, FICC attempts to cover such potential losses through the collection of daily Required Fund Deposits (*i.e.*, margin) from its Netting Members, including GCF Repo Participants. Consequently, failure to accurately calculate Required Fund Deposits could expose FICC to losses in excess of the margin collected and, thus,

jeopardize the securities and funds in FICC's custody or control.

As described above, FICC determined that the Required Fund Deposits collected from GCF Repo Participants during monthly Blackout Periods may not accurately reflect decreases in the value of MBS underlying the GCF Repo transactions and, therefore, the Required Fund Deposits collected may be inadequate to cover the losses that could arise if a GCF Repo Participant defaulted. The Blackout Period Exposure Charge is specifically designed to address that risk. The charge is sized based on certain backtesting deficiencies of GCF Repo Participants. Where FICC identifies deficiencies related to the use of MBS underlying GCF Repo transactions, the Blackout Period Exposure Charge may be applied and, in turn, FICC would collect more margin. Therefore, the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of FICC, consistent with Section 17(b)(3)(F) of the Act.

Rule 17Ad-22(b)(1) requires a clearing agency that performs CCP services 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 cannot anticipate or control.¹⁸ FICC's Blackout Period Exposure Charge is calculated and imposed to cover potential credit exposures to certain GCF Repo Participants during monthly Blackout Periods, under normal market conditions.¹⁹ As described above, FICC estimates the Blackout Period Exposure Charge based on a GCF Repo Participant's backtesting results. Specifically, FICC calculates the Blackout Period Exposure Charge as the midpoint between a GCF Participant's two largest deficiencies over the past twelve months, which, as designed, incorporates a buffer to help ensure that FICC maintain margin coverage at or

above the 99 percent confidence threshold during monthly Blackout Periods. Therefore, because the proposed rule change will help FICC limit its potential losses from the default of certain GCF Repo Participants during monthly Blackout Periods, under normal market conditions, the proposed rule change is consistent with Rule 17Ad-22(b)(1).

Rule 17Ad-22(b)(2) requires a clearing agency that performs CCP services 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 and use risk-based models and parameters to set margin requirements.²⁰ As described above, FICC limits its exposure to Netting Members, including GCF Participants, by collecting margin (*i.e.*, Required Fund Deposit), which is sized using a risk-based margin methodology. The Blackout Period Exposure Charge is a component of a GCF Repo Participant's daily Required Fund Deposit and is sized based on the GCF Repo Participant's backtesting deficiencies, as described above. The charge is designed to address the potential increased exposure that FICC may face if the MBS collateral underlying a GCF Repo Participant's transactions decreases during a monthly Blackout Period, under normal market conditions. Therefore, because the proposed rule change will help FICC limit its exposure to GCF Repo Participants during monthly Blackout Periods, under normal market conditions, by collecting more margin, as needed, the proposed rule change is consistent with Rule 17Ad-22(b)(2) under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,²¹ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-FICC-2016-003) be, and hereby is, APPROVED.²³

¹⁴ 17 CFR 240.17Ad-22(b)(1).

¹⁵ As used in Rule 17Ad-22(b)(1), normal market conditions are conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time (*i.e.*, a 99 percent confidence threshold). 17 CFR 240.17Ad-22(a)(4).

¹⁶ 17 CFR 240.17Ad-22(b)(2).

¹⁷ 15 U.S.C. 78q-1.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(b)(1)-(2).

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-24982 Filed 10-14-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79081; File No. SR-NASDAQ-2016-135]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Continued Listing Requirements for Exchange-Traded Products

October 11, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2016, The Nasdaq Stock Market LLC (“Nasdaq” 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 continued listing requirements for exchange-traded products (“ETPs”) in the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 for improved clarity.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.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 Exchange proposes to amend the listing rules for ETPs in the Nasdaq Rule 5700 Series (Other Securities) to add additional continued listing standards as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 (e.g., punctuation, formatting, capitalization and renumbering) for improved clarity.

The proposed rule changes are being made in concert with discussions with the SEC. Citing their concern for potential manipulation of ETPs, staff (“Staff”) of the SEC’s Office of Trading and Markets (“T&M”) requested that the Exchange adopt certain additional continued listing standards for ETPs.

As a result, the proposed amended rules reflect the guidance provided by T&M Staff to clarify that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b-4³ to list an ETP (“Exchange Rule Filings”), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include: (a) The description of the fund; (b) the fund’s investment restrictions; and (c) the applicability of Nasdaq rules and surveillance procedures.

The proposed rule changes require that ETPs listed by the Exchange without an Exchange Rule Filing must maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) Stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at

least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to list a specific ETP, the proposed rule change requires that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including: (a) The description of the portfolio; (b) limitations on portfolio holdings or reference assets; and (c) the applicability of Nasdaq rules and surveillance procedures.

The Nasdaq listing rules will also be modified to require that issuers of securities listed under the Nasdaq Rule 5700 Series must notify the Exchange regarding instances of non-compliance. In addition, while listed ETPs are currently subject to the delisting process in the Rule 5800 Series, the rules will be clarified to make this explicit.⁴ The Rule 5800 Series will also be clarified to make explicit that in cases where Listing Qualifications staff has notified an ETP that it is deficient under one or more listing standards, the ETP may submit a plan to regain compliance as set forth under the Listing Rules. In this regard, consistent with deficiencies from most other rules that allow issuers to submit a plan to regain compliance,⁵ Nasdaq proposes to allow issuers of ETPs 45 calendar days to submit such a plan. Nasdaq staff will review the plan and may grant a limited period of time for the ETP to regain compliance as permitted under the Listing Rules. If Nasdaq staff does not accept the plan, Nasdaq staff would issue a Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

⁴ ETPs are also subject to Nasdaq Rule 4120, which governs trading halts.

⁵ Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.