MFA

April 17, 2024

**Via Electronic Mail:** rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

**Re: SR-FICC-2024-005 and SR-FICC-2024-007**

Dear Ms. Countryman:

MFA[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "**SEC**" or the "**Commission**") on the above-captioned proposed rule changes (the "**Proposed Rules**")[2] filed by the Fixed Income Clearing Corporation ("**FICC**"). The Proposed Rules are intended to address new SEC rules concerning the separation of house and customer margin, margin subject to the broker-dealer customer protection rule, and access to FICC's Treasury clearing services by indirect participants, which the Commission adopted as part of its rulemaking to expand clearing of U.S. Treasury securities transactions (the "**Treasury Clearing Rules**").[3]

We support FICC's desire to offer a flexible range of clearing structures and enhance protection of customer margin. However, we are concerned that the Proposed Rules include insufficient measures to ensure that customers will actually receive safe and effective access to clearing at FICC. Many of the Proposed Rules would merely make cosmetic or educational changes to FICC's Rulebook, without also

[1] Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over $3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

[2] Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice To Modify the GSD Rules (I) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (II) To Address the Conditions of Note H to Rule 15c3-3a ("**SR-FICC-2024-007**"); Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions In U.S. Treasury Securities, 89 Fed. Reg. 21,362 (Mar. 27, 2024) ("**SR-FICC-2024-005**").

[3] SEC Release No. 34-99149 (Dec. 13, 2023), 89 Fed. Reg. 2,714 (Jan. 16, 2024).

including any substantive rules to facilitate access to the different clearing structures and protections that FICC offers. In promulgating the Treasury Clearing Rules, the Commission stressed the "critical and unique role" that U.S. Treasury securities play in the United States and global markets and emphasized that "confidence in the U.S. Treasury market, and in its ability to function efficiently, even in times of stress, is critical to the stability of the global financial system."[4] Promoting confidence in the Treasury markets is especially important now when there are demand weaknesses, which could jeopardize the U.S. government's ability to issue and refinance its debt efficiently.[5] Therefore, FICC must make additional changes in order for the Treasury Clearing Rules to be successful in promoting deep, liquid, and stable U.S. Treasury security markets, and for FICC to meet its obligations under the Securities Exchange Act of 1934 ("**Exchange Act**") and Commission rules.

The Proposed Rules also are incomplete in certain other respects that raise problems under the Treasury Clearing Rules, including: no analysis confirming the enforceability of FICC's proposed new customer protections in the insolvency, resolution, or liquidation of a direct participant; no formal roadmap to facilitate cross-margining of Treasury securities transactions with related futures positions; and no revisions to existing FICC rules that would impede a participant's ability to clear Treasury securities transactions at another clearing agency. FICC should address these gaps in order to ensure the safer, more efficient and more resilient Treasury markets envisioned by the Commission. The absence of such analyses will impair investor confidence and the potential ability of certain investors to continue transacting and using Treasury securities at current volumes, leading to decreases in market liquidity and greater market volatility.

## EXECUTIVE SUMMARY

We are concerned that the Proposed Rules do not adequately support the Commission's Treasury Clearing Rules and its objective to strengthen the U.S. Treasury security markets. Absent a robust clearing framework at FICC to support these markets, implementation of the Treasury Clearing Rules will make it more difficult for investors to buy and sell Treasury securities and decrease participation in these markets, thereby leading to greater volatility and market instability. Accordingly, MFA makes the following recommendations, which we explain more fully below.

The SEC should require that:

- FICC adopt additional rules to streamline and clarify its indirect access models and ensure that each model is actually made available in practice by direct participants, as discussed in Section I;

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4 *Id.* at 2,715-2,716.

5 *See, e.g.,* Wall Street Journal, *America's Bonds Are Getting Harder to Sell* (Apr. 14, 2024), *available at* https://www.wsj.com/finance/americas-bonds-are-getting-harder-to-sell-c3fde4de.

- FICC conduct and publish a legal enforceability analysis covering the insolvency, resolution, or liquidation of FICC or a direct participant prior to adopting the Proposed Rules, as discussed in Section II;
- As set out in Section III, FICC not adopt the Proposed Rules until additional information is provided to market participants regarding the expansion of cross-margining opportunities; and
- Finally, FICC amend its rules to remove impediments to firms accessing other clearing agencies that may provide clearing services for U.S. Treasury securities, as provided in Section IV.

## DISCUSSION

### I. FICC Should Adopt Additional Rules to Facilitate Access by Indirect Participants

Commission rules require FICC to permit fair open and access by direct and indirect participants and ensure it has appropriate means to facilitate access to clearance and settlement services in respect of U.S. Treasury securities, including those of indirect participants.[6] Section 17A of the Exchange Act also subjects FICC to requirements relating to addressing unnecessary costs, maintaining fair competition, removing impediments to a national market system and promoting the public interest and protection of investors.

The Proposed Rules do not go far enough to satisfy these requirements because they do not include protections to ensure that the various indirect clearing and segregation models FICC would offer are available in practice.

As proposed, FICC would offer two indirect clearing models: its existing Sponsored Member model[7] and an Agent Clearing Member model, which is merely a rechristened version of FICC's existing Prime Broker and Correspondent Clearing models.[8] But nothing would require a direct participant actually to offer either clearing model. Today we are not aware of any meaningful repo activity taking place through the

6 17 C.F.R. § 240.17ad-22(e)(18)(i), § 240.17ad-22(e)(18)(iv)(C).

7 Under this model, a direct member, referred to as a "**Sponsoring Member**," provides a guarantee to an indirect participant (a "**Sponsored Member**") in connection with the Sponsored Member's transactions, in which the Sponsored Member faces FICC as principal.

8 Under this model, direct members acting as "**Agent Clearing Members**" would submit transactions to FICC on behalf of their customers (referred to as an "**Executing Firm Customer**") in accordance with Rule 8 of FICC's Rulebook. These transactions would be recorded in accounts maintained by FICC (referred to as "**Agent Clearing Member Omnibus Accounts**"). Under the Agent Clearing Service, the Agent Clearing Member is liable to FICC in respect of all obligations arising under the transactions in the same manner as if the Agent Clearing Member had executed the transactions and FICC would have no liability or obligations to any Executing Firm Customer.

precursors to FICC's proposed Agent Clearing Model, and it is unclear why that would change under the Proposed Rules just because FICC is renaming the model.[9]

The Proposed Rules also would permit a direct participant to designate any of its indirect participant accounts as a segregated account, which would result in FICC applying additional protections to margin posted by an indirect participant (*i.e.*, a customer) into that account. As described in the MFA comment letter regarding the Commission's proposed rule to expand central clearing of U.S. Treasury securities,[10] it is essential for an indirect participant to be able to elect to segregate margin, particularly in light of the fiduciary obligations many indirect participants have with respect to their own clients.[11] Segregating the margin of the indirect participant mitigates the extent of loss mutualization and undue credit risk faced by the indirect participant. FICC appears to assume, but would not require, that direct participants offer their customers the option to post margin and elect segregation.[12] In fact, however, despite what a customer may desire with respect to margin and segregation, there could be incentives for direct participants to finance the margin for their customers' transactions (and thereby earn extra fees for doing so) instead of the customer financing or posting that margin, and for the direct participant to accept the customer's margin without offering the option of segregation (and thereby avoid the additional operational and other costs associated with segregation).

FICC also asserts that both of its indirect clearing models are workable for "done-away" transactions, *i.e.*, transactions executed by an indirect participant with a party other than the direct

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[9] In this regard, under the Proposed Rules, FICC may require that a direct member be a Netting Member for "a time period deemed necessary by [FICC]" before becoming an Agent Clearing Member such that, if this provision is invoked, the direct member in fact could offer only the Sponsored Member model to an indirect participant, not the Agent Clearing Member model.

[10] SEC Release No. 34-95763, 87 Fed. Reg. 64,610 (Oct. 25, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-10-25/pdf/2022-20288.pdf.

[11] *See* Letter from Jennifer W. Han of the Managed Funds Association to Vanessa A. Countryman of the SEC, *Proposed Rules Regarding Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Release No. 34- 95763; File No. S7-23-22; 87 Fed. Reg. 64,610* (Dec. 21, 2022), *available at* https://www.mfaalts.org/wp-content/uploads/2022/12/MFA-SEC-Treasury-Clearing-Mandate-Letter-As-submitted-12.21.22.pdf (the "**MFA Comment Letter**"). *See also* Letter from Jennifer W. Han of the Managed Funds Association to Vanessa A. Countryman of the SEC, *Proposed Rules Regarding Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities; File No. S7-23-22; RIN 3235-AN09* (Dec. 4, 2023), *available at* https://www.mfaalts.org/wp-content/uploads/2023/12/MFA-Supplemental-Comment-Letter-on-Treasury-Clearing-Proposal-As-submitted-12.4.23.pdf (the "**MFA Supplemental Letter**").

[12] FICC states that the direct and indirect participants would "choose whether (i) the indirect participant will post margin under a customer protection framework that is similar to that which exists in other cleared contexts, (ii) the Netting Member will finance the margin for the indirect participant's transactions, or (iii) the indirect participant will deposit margin but without the protection (or higher margin requirements) associated with a segregation arrangement." 89 Fed. Reg. at 21,601 (footnote text omitted).

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participant through which the indirect participant clears the transactions. As described in the MFA Comment Letter, it is critical for an indirect participant to be able to consolidate its clearing activities in a small number of direct participants to enhance the benefits of central clearing and minimize the costs, which requires a robust done-away clearing market. Done-away clearing is also necessary in order for market participants to be able to continue to trade anonymously on inter-dealer broker platforms, given that the brokers who operate those platforms generally do not offer customer clearing and so platform participants who are not self-clearing will need to give up their trades for clearing to direct participants willing to clear those trades as done-away transactions.

But there is no evidence to suggest that direct participants would actually accept done-away transactions. We are not aware of any meaningful done-away activity taking place at FICC today, under either the Sponsored Member model or the Agent Clearing Member model. It strains credulity to suggest that this is merely because FICC participants, all of which are sophisticated institutions, merely lack an adequate understanding of how FICC's clearing models work. A more plausible explanation is that there are economic incentives for direct participants to bundle their execution and clearing services by favoring "done-with" transactions.

FICC further highlights certain similarities between its clearing models and clearing offered by futures commission merchants ("**FCMs**") under the rules of the Commodity Futures Trading Commission ("**CFTC**"). This comparison ignores the significant measures the CFTC took to ensure open access to clearing. Specifically, when confronted with similar market dynamics in connection with its implementation of Dodd-Frank's swaps clearing mandate, the CFTC adopted rules prohibiting FCMs from entering into arrangements that, among other things, disclose to the FCM the identity of a customer's original executing counterparty, limit the number of counterparties with whom a customer may enter into a trade, restrict the size of the position a customer may take with any individual counterparty (apart from an overall limit for all positions held by the customer at the FCM), or impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available.[13] The CFTC adopted these prohibitions because "(1) disclosure of a customer's original executing counterparty could have potentially anticompetitive effects, (2) limiting the number of counterparties would hurt the customer's access to the best price as well as general market liquidity, (3) restricting the size of trades with particular counterparties also would hurt the customer's access to the best price as well as general market liquidity, and (4) restrictions on the number of counterparties and on the size of trades with them would slow down acceptance for clearing thereby causing the very problem the restrictions were purportedly designed to address."[14] For the same reasons, we think FICC should adopt the same protections in connection with U.S. Treasury securities clearing, as necessary to ensure a robust done-away clearing market.

Another relevant point of comparison is the clearing of derivatives in the European Union ("**EU**"). Like FICC is proposing to do, the relevant EU legislation (EMIR) provides for multiple indirect

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[13] *See* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 Fed. Reg. 21,278 (Apr. 9, 2012).

[14] *Id.*

clearing/segregation models. But, unlike FICC, the EU affirmatively required clearing firms to offer clients a choice of which model to use. We think it would be appropriate for FICC to adopt a similar requirement to facilitate clearing access.

FICC also has not adequately explained the rationale for each clearing model that will be made available. For example, while the Sponsored Member and Agent Clearing Member models differ in circumstances where an indirect participant has *not* elected to segregate its margin (*e.g.*, gross versus net margin), it is not clear why any indirect participants would favor posting segregated margin under the Agent Clearing Member model relative to doing so under the Sponsored Member model. Also, it is not clear why FICC did not propose to extend the benefits of segregation (such as establishment of segregated accounts, limits on permitted liens and use of margin deposits, holding customer margin deposits in bank or Federal Reserve accounts, investment restrictions on customer margin, and return of excess customer margin) to all Sponsored Members who post or finance their own margin. We cannot envision a scenario in which a Sponsored Member would wish to post margin to its Sponsoring Member on a gross basis, but without obtaining these benefits of segregation. On the other hand, offering clearing models such as these that have no clear rationale will lead to greater operational complexity associated with multiple models, the possibility of customer confusion, and potential for inequitable treatment associated with having each model. If FICC is not able to provide a rationale for certain clearing models, then FICC should simplify its offerings to ensure that the models that are made available are appropriately tailored to relevant use cases for customers.

FICC's rules also should explicitly allow an indirect participant to transfer its positions to another direct participant, including in the event of a Sponsoring Member or Agent Clearing Member default.[15] This type of provision, which tracks similar CFTC's rules,[16] is an important risk management tool that will provide additional certainty to indirect participants, particularly during periods of market stress. This provision also helps facilitate access by enabling an indirect participant to change or consolidate its clearing activity with a different direct participant if the transferor direct participant does not afford it the desired form of access on appropriate commercial terms. FICC may also clarify that the indirect participant must meet the new direct participant's requirements for indirect participants (*i.e.*, ensuring sufficient margin for the transferring positions) to provide comfort to direct participants as well.

Finally, we urge FICC to recalibrate its minimum segregated margin requirement for indirect participants.[17] As proposed, the rules would require an indirect participant to post at least $1 million in cash in any segregated margin account that it establishes with a direct participant. FICC based this minimum on its requirements for direct participants without sharing any analysis addressing why that is the correct baseline. Given the generally smaller portfolios and activity levels exhibited by indirect participants relative to direct participants and the additional credit support FICC receives for indirect participants via the guarantees provided by their direct participants, the baseline is incorrect and this minimum requirement is

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[15] Such a provision should also be considered in the legal enforceability analysis proposed in Section II, below.

[16] *See* 17 C.F.R. § 190.04(a)(1). *See also* National Futures Association Compliance Rule 2-27.

[17] 89 Fed. Reg. at 21,595.

arbitrary. It also would discourage smaller indirect participants from selecting a segregated clearing model, which is not consistent with the customer protection objectives of the Exchange Act or FICC's obligation to facilitate access. Instead of a blanket $1 million minimum, FICC's rules should take a risk-based approach to setting a minimum requirement for any particular indirect participant based on that participant's particular risk profile, including its planned and historical clearing activity.

To address these issues, we recommend that FICC make the following revisions to its Rulebook to:

- Unless it identifies a rationale for why an indirect participant would prefer the segregated Agent Clearing Member model relative to a segregated Sponsored Member model, eliminate the segregated Agent Clearing Member model;
- Unless it identifies a rationale for why a Sponsored Member who posts or finances its own margin would not wish to have that margin segregated, make the application of segregation protections automatic for any Sponsored Member who posts or finances its own margin;
- With respect to a direct participant that offers clearing services to an indirect participant:
    - Require the direct participant to allow the indirect participant to choose whether to access clearing through either the Sponsored Member or Agent Clearing Member model;
    - Require the direct participant to allow (but not require) the indirect participant to post or finance its own margin for the transactions it clears at FICC;
    - If the indirect participant chooses to post or finance its own margin:
        - Require the direct participant to accept done-away transactions executed by the indirect participant with third parties; and
        - Consistent with analogous CFTC rules, prohibit the direct participant from (a) requiring the disclosure of its indirect participant's executing counterparties, (b) limiting the number of counterparties with whom an indirect participant may enter into a trade, (c) restricting the size of the position an indirect participant may take with any individual counterparty (apart from an overall limit for all positions held by the indirect participant with the direct participant), or (d) impairing an indirect participant's access to execution of a trade on terms that have a reasonable relationship to the best terms available;[18]

[18] If FICC chooses to retain the segregated Agent Clearing Member model or the non-segregated Sponsored Member model, such that segregated and non-segregated versions of each model remain, then it also should require a direct participant to offer segregation of margin posted or financed by an indirect participant.

- Allow an indirect participant to transfer its positions to another direct participant, including in the event of a Sponsoring Member or Agent Clearing Member default; and

- Revise the proposed minimum segregated margin requirement for indirect participants to provide for individualized, risk-based minimum requirements.

To be clear, we are not proposing to require that direct participants either offer to finance their customers' margin or to accept done-away transactions from customers who do not post their own margin. However, to the extent the customer assumes its own margin funding costs, we see no reasonable justification for why the direct participant should not accept done-away transactions from that customer.

We also are not proposing to require that indirect participants fund their own margin or forswear execution of done-with transactions. We understand that some market participants, for regulatory or commercial reasons, may prefer not to post margin to FICC or prefer to seek clearing services from the same firm providing execution services to them. Under our proposal, those options would remain available.

In addition to these rule changes, we also recommend that FICC publish aggregate statistics reflecting the volumes and proportion of transactions that are (i) cleared through each of its available clearing models and (ii) executed on either a done-with versus done-away basis. Publishing this information would be consistent with the Commission's statement that FICC "should consider the volumes and proportion of the market that are being centrally cleared through different access models" in connection with its consideration of whether its "access models are meeting the needs of the market."[19] In order for FICC participants (both direct and indirect) to provide feedback regarding whether FICC is meeting this obligation, they also need access to this information. Publishing this information would also reduce information asymmetry between direct and indirect participants when they are negotiating commercial arrangements and more generally mitigate anti-competitiveness concerns.

## II. FICC Should Not Adopt the Proposed Rules Until It Has Conducted and Published a Robust Legal Enforceability Analysis

The Proposed Rules would implement substantial changes to the structure and operations of the FICC clearing models available to indirect participants, in particular with respect to margin and segregation. However, to date, there has not been sufficient time for market participants to evaluate and analyze whether those changes actually would be enforceable in the key circumstance where they matter, which is in the insolvency, resolution, or liquidation of FICC or a direct participant.

In this regard, Section 17A of the Exchange Act and implementing regulations require FICC, among other things, to: (i) provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities[20] and (ii) provide sufficient information to enable participants to identify and evaluate

[19] 89 Fed. Reg. at 2,757.

[20] 17 C.F.R. § 240.17ad-22(e)(1).

risks incurred by participating in FICC.[21] The minimal level of analysis FICC has conducted in respect of the commercial law and insolvency implications of the Proposed Rules—in substance, that the ability of an indirect participant to recover funds or securities posted to its direct member will depend on the relevant insolvency regime[22]—does not satisfy these obligations.

Also, without a more robust analysis, market participants do not have a meaningful opportunity to comment on the Proposed Rules because they cannot assess whether further changes would be necessary in order for FICC's rules to achieve the customer protection objectives envisaged by the Treasury Clearing Rules. Nor do we see how the Commission itself can assess whether the Proposed Rules satisfy FICC's obligations under the Treasury Clearing Rules absent that analysis.

Inadequate attention to these issues could have significant adverse consequences, particularly in the event of market stresses leading to defaults of direct participants, indirect participants or FICC. In the context of cleared swaps, the industry generally has considered these issues for years, both during and after the rulemaking process implementing the segregation model for cleared swaps under Part 22 of the CFTC's regulations,[23] referred to as "legally segregated, operationally commingled" or "LSOC." The same time and attention will need to be devoted to analyzing these commercial law and insolvency issues with respect to U.S. Treasury securities transactions cleared by FICC and other clearing agencies.

Accordingly, FICC must provide to direct and indirect participants the relevant legal analysis supporting the enforceability of the Proposed Rules—including in applicable insolvency scenarios—at a minimum in respect of direct participants that are insured depository institutions or broker-dealers. That approach would be consistent with practices adopted by other clearing agencies and derivatives clearing organizations registered with the CFTC. Alternatively, the Commission must extend the comment period on the Proposed Rules to permit commenters to conduct their own analysis of these critical issues.

## III. FICC Should Not Adopt the Proposed Rules Until There Is a Clear Roadmap to Expand Cross-Margining

In general, the Proposed Rules do not address considerations in respect of cross-margining programs and other measures that would reduce clearing costs. As discussed in the MFA Comment Letter and MFA Supplemental Letter, we recommend that the Commission consider measures to facilitate broader cross-margining with respect to repo transactions cleared at FICC and interest rate derivatives cleared on a clearing house registered with the CFTC. Cross-margining currently is available under CFTC and SEC orders only with respect to direct participants of FICC, not to indirect participants.

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21 17 C.F.R. § 240.17ad-22(e)(23)(ii).

22 89 Fed. Reg. at 21,595, fn. 43.

23 17 C.F.R. Part 22.

The Commission has recognized the benefits of cross-margining programs in prior orders.[24] Expanding FICC cross-margining programs to indirect participants would lower the costs of clearing to indirect participants and enhance market efficiencies more generally by permitting participants to calculate risk-based margin requirements across correlated positions that are cleared at different clearinghouses. This is particularly important in light of the significant increase in transactions in U.S. Treasury securities that would be cleared by FICC as a result of the Treasury Clearing Rules and the number of indirect participants engaging in U.S. Treasury repo transactions that will subject to mandatory clearing under the Treasury Clearing Rules. The unavailability of customer cross-margining before market participants are mandated to clear Treasury securities could lead to significant deterioration in market liquidity.

Given the criticality of expanding cross-margining, market participants cannot fully assess the Proposed Rules until they understand how they could access clearing at FICC under a cross-margining program. For example, FICC and the Chicago Mercantile Exchange ("**CME**") have informally proposed a customer cross-margining program that would involve the customer holding its margin and positions in a futures account at a dually registered broker-dealer/FCM and contractually opting out of securities customer protections. That proposal would involve an entirely different clearing and segregation model from what is envisioned by the Proposed Rules. But market participants cannot assess the relative benefits and risks of the Proposed Rules' clearing and segregation models without comparing them to what they would face under a FICC cross-margining program.

For this reason, it is inappropriate to split out cross-margining from the rule proposals that the Commission has mandated FICC to conduct around indirect access models and separation of house and customer margin. It makes good sense that the Commission required FICC to finalize those rulemakings sufficiently far in advance of clearing mandates for market participants to have time to analyze different access models and take appropriate steps to gain access to FICC. But given the centrality of cross-margining to the ultimate menu of access arrangements, splitting out cross-margining to some undefined point in the future undermines the Commission's well thought-out plan. It therefore is essential that FICC, together with CME, the Commission, and the CFTC further expedite their plans around expanding cross-margining.

## IV. FICC Should Amend its Rules to Remove Impediments to Accessing Other Clearing Agencies

The Commission acknowledged in the Treasury Clearing Rules that FICC is the only covered clearing agency with respect to U.S. Treasury securities and that this creates "concentration risk for the

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[24] *See*, *e.g.*, SEC Release No. 34-98327, pp. 9-10 (Sept. 8, 2023) (noting that the Commission "has historically supported and approved cross-margining at clearing agencies and has recognized the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing functions, reducing clearing agency risk by centralizing asset management, and harmonizing liquidation procedures" and that cross-margining programs "enhance member liquidity and systemic liquidity both in times of normal trading and in times of market stress by reducing margin requirements for members, which could prove crucial in maintaining member liquidity during periods of market volatility, and enhancing market liquidity as a whole").

clearing of U.S. Treasury securities transactions."[25] For this reason, it is important for the Commission to work with other potential entities seeking to provide clearing services for U.S. Treasury securities to mitigate this concentration risk.

In this regard, FICC must confirm or provide clarifications that its Rulebook does not contain restrictions on market participants accessing clearing services—with respect to U.S. Treasury securities or otherwise—through a different covered clearing agency. For example, we are concerned that the language in Rule 11, Section 3 and Rule 18, Section 2 of the Rulebook prohibits market participants from clearing certain transactions on another covered clearing agency. The broad discretion provided to FICC in its Rulebook with respect to restricting access to clearing services also raises issues regarding anticompetitive behavior. Given the significant expansion in the scope of transactions involving U.S. Treasury securities that will need to be cleared on FICC (absent new entrants entering the market), it is critical that FICC amend its Rulebook to remove these impediments to market participants using a different clearing agency to clear transactions involving U.S. Treasury securities. In addition, the Commission should monitor these developments closely to help promote a healthy and efficient market for U.S. Treasury securities.

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We appreciate the opportunity to provide our comments to the Commission regarding the Proposed Rules, and we would be pleased to meet with the Commission and its staff to discuss our comments. If the staff has questions or comments, please do not hesitate to contact Matthew Daigler or the undersigned at (202) 730-2600 with any questions regarding this letter.

Very truly yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel and Head of Global Regulatory Affairs
MFA

cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets

[25] 89 Fed. Reg. at 2,720.