

July 22, 2024

Ms. Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: *Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement (File No. SR-FICC-2024-009)*

Dear Ms. Countryman:

The Investment Company Institute¹ is writing in response to the Securities and Exchange Commission's (SEC or "Commission") notice regarding the above-referenced proposed rule changes by Fixed Income Clearing Corporation (FICC) ("Proposal").² The Proposal, which we describe in more detail herein, has been issued to implement the SEC's recently adopted rules under the Securities Exchange Act of 1934 (the "Exchange Act") relating to the central clearing of transactions in securities issued by the US Department of the Treasury ("US Treasury securities").³

ICI's members, which include US-registered investment companies—mutual funds, ETFs, money market funds, and other funds that are regulated under the Investment Company Act of

¹ The [Investment Company Institute](#) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$35.2 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington, D.C., Brussels, and London and carries out its international work through [ICI Global](#).

² *Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement*, Exchange Act Release No. 34-100417 (Jun. 25, 2024), 89 Fed. Reg. 54602 (Jul. 1, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-07-01/pdf/2024-14378.pdf>.

³ *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*, Exchange Act Release No. 34-99149 (Dec. 13, 2023), 89 Fed. Reg. 2714 (Jan. 16, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-27860.pdf> (the "Treasury Clearing Rule Adopting Release;" and the rules adopted pursuant to that release are referred to in this letter as the "Treasury Clearing Rule").

1940, as amended (“1940 Act”) (“registered funds”)—and non-US regulated funds⁴ (together with registered funds, “regulated funds” or “funds”), along with their advisers, are among the most significant investors in the US Treasury markets, including the US Treasury repo market. The ability of funds to access these markets in an efficient and cost-effective manner is critical to their ability to achieve their investment objectives. Thus, ICI has a strong interest in ensuring that the implementation of the Treasury Clearing Rule by FICC will continue promote such access.

I. Executive Summary

As we discuss in further detail below, our comments to the Proposal are that:

- FICC should more clearly address the application of the Proposal to triparty repurchase agreement (“repo”) transactions (1) involving purchased securities that include both Treasury CUSIPs and securities with other CUSIPs (“mixed collateral repo trades”) or (2) that become mixed collateral repo trades resulting from permissible substitutions of collateral.
- FICC should add a stated process and timeline for implementing changes to its list of “Eligible Securities” that FICC accepts for clearing.

II. Trade Submission Requirement Proposal

A. Summary of the Proposal

The Proposal is designed to address the requirement set forth in Rule 17ad-22(e)(18)(iv)(A) under the Exchange Act that a covered clearing agency (CCA) require that any direct participant of such CCA submit for clearance and settlement all of the “eligible secondary market transactions” to which such direct participant is a counterparty, with certain exclusions.⁵ In relevant part, Rule 17ad-22(a) defines the term “eligible secondary market transaction” to include “a secondary market transaction in US Treasury securities of a type accepted for clearing by a registered covered clearing agency” that is “a repurchase or reverse repurchase agreement collateralized by US Treasury securities, in which one of the counterparties is a direct participant” (“Treasury repo trades”). A US Treasury security in turn is defined as “any security issued by the US Department of the Treasury.”

The Proposal consists of a new Rule 5 of FICC’s Government Securities Division (GSD) Rulebook (“FICC GSD Rules”) and certain related changes to other provisions of the FICC GSD Rules. The Proposal would require under Rule 5 that each FICC Netting Member submit to FICC

⁴ “Non-US regulated funds” refer to funds that are organized or formed outside the United States and are substantively regulated to make them eligible for sale to retail investors, such as funds domiciled in the European Union and qualified under the UCITS Directive (EU Directive 2009/65/EC, as amended), Canadian investment funds subject to National Instrument 81-102, and investment funds subject to the Hong Kong Code on Unit Trusts and Mutual Funds.

⁵ Rule 17ad-22(e)(18)(iv)(A).

for “Novation” all “Eligible Secondary Market Transactions . . . to which such Netting Member is a counterparty” (the “Trade Submission Requirement”) and would add to Rule 5 a definition of the term “Eligible Secondary Market Transaction” that tracks the definition under Rule 17ad-22(a) and the related exclusions from the definition. The Proposal also would update and add new definitions of related terms in Rule 1 of the FICC GSD Rules.

B. Comments on the Proposal

FICC stated in proposing the rule that the clearing mandate and related definitions “codifies” the corresponding aspects of the Treasury Clearing Rule.⁶ We agree that each of the elements of the Proposal reflects the applicable requirements of Rule 17ad-22 noted above. In particular, the Eligible Secondary Market Transaction definition in Rule 5 would appropriately be limited to transactions in US Treasury Securities “where the transaction is of a type that is accepted by [FICC] for Novation.”

However, the Proposal does not adequately address mixed collateral repo trades.

The Commission stated in the Treasury Clearing Rule Adopting Release that a mixed collateral repo trade (1) would be included in the scope of the Rule 17ad-22 eligible secondary market transaction definition relating to Treasury repo trades if US Treasury securities were included as collateral at the outset of the transaction but (2) would not be included in the scope of the Rule 17ad-22 definition if US Treasury securities were substituted mid-transaction for other collateral types that were included as collateral at the outset of the transaction.⁷ Accordingly, if a particular mixed collateral repo trade includes US Treasury securities and is a transaction “of a type accepted for clearing” by a CCA, the mixed collateral repo trade would be subject to the clearing mandate; other mixed collateral repo trades would not be subject to the clearing mandate.

The Proposal does not acknowledge this guidance or address it in the proposed changes to the FICC GSD Rules. The Commission should encourage FICC to acknowledge this Commission guidance in the FICC GSD Rules and clarify that mixed collateral repo trades that include Treasury CUSIPs from the outset of the transaction would be subject to the clearing mandate to the extent FICC accepts repo on the relevant CUSIPs for clearing, and that mixed collateral repo trades resulting from permissible substitutions would not be within the scope of the clearing mandate.

Further, we are concerned that the relevant FICC GSD Rule provisions do not set forth a clear process or specify an objective timeline for FICC to add new securities to the list of Eligible Securities that FICC will accept for clearing. In this regard, Rule 30 of the FICC GSD Rules and the related definition of “Eligible Security” together provide that FICC “may from time to time add securities to [the list of Eligible Securities] or remove securities therefrom.” Having certainty with respect to what securities that are included in a mixed collateral repo trade

⁶ Proposal at 54604.

⁷ Treasury Clearing Rule Adopting Release at 2726.

Ms. Vanessa Countryman

July 22, 2024

Page 4

are Eligible Securities and subject to FICC's clearing mandate is vitally important to funds. Theoretically, FICC could add a new CUSIP to its list of Eligible Securities and thereby subject any mixed collateral repo trade including both such CUSIP and a Treasury CUSIP as collateral to the clearing mandate with no prior notice. Funds will need time to consider the implications of changes to FICC's Eligible Securities list in light of the clearing mandate for Treasury repo trades and the application thereof to mixed collateral repo trades. This certainty is particularly important for triparty repo where the relevant documentation typically includes a general collateral schedule with US Treasury securities and other securities that are not in-scope for the Treasury Clearing Rule. In this regard, it would be operationally challenging for funds to redocument their collateral schedules to distinguish between US Treasury securities and other securities that FICC currently accepts for clearing as "Eligible Securities" and thus bifurcate their transactions. The Commission should encourage FICC to add a stated process and timeline for implementing changes to its list of Eligible Securities.

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We hope that this information and recommendations are helpful to the Commission as it considers how to proceed on the Proposal. If you have any questions, please contact Paul Cellupica at paul.cellupica@ici.org, Kimberly Thomasson at kthomasson@ici.org, or Philip Hinkle, of Dechert LLP, at philip.hinkle@dechert.com.

Regards,

/s/ Paul Cellupica

Paul Cellupica
General Counsel

/s/ Kimberly Thomasson

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Assistant General Counsel

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
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Ms. Vanessa Countryman

July 22, 2024

Page 5

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