



1100 15th Street NW, Washington, DC 20005
+1 202 919 4940
info@aima.org

[aima.org](https://www.aima.org)

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

Submitted via the SEC's Online Form

July 22, 2024

Dear Ms. Countryman:

Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GDS Rules Relating to the Adoption of a Trade Submission Requirement (File No. SR-FICC-2024-009)

The Alternative Investment Management Association (AIMA)¹ appreciates the opportunity to submit this response to the proposed rule change submitted by the Fixed Income Clearing Corporation ("FICC") to the U.S. Securities and Exchange Commission ("SEC" or "Commission") that is intended to promulgate SEC-adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities (each a "Treasury CCA"), including FICC.² FICC has proposed to: (i) require each netting member to submit all eligible secondary market transactions ("ESMTs"), as defined in the Treasury Clearing Rule, to which the netting member is a counterparty to FICC for clearance and settlement and define the scope of such trade submission requirement ("TSR"); (ii) add new provisions to update and facilitate FICC's monitoring of and

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$3 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US\$1 trillion of private credit assets. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

² SEC, "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", 89 Fed. Reg. 2714 (Jan. 16, 2024) (the "Treasury Clearing Rule").

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compliance with the TSR; and (iii) update its requirements for direct membership (altogether, the “Proposed Rule”).³

The U.S. Treasury market is the deepest and most liquid government securities market in the world. It plays a central role in both the U.S. and global economies, finances the federal government, provides a safe and liquid asset and facilitates the implementation of monetary policy. Since FICC is currently the only Treasury CCA, it is therefore essential that the rules it adopts to amend its clearing framework support – and do not limit or discourage – activity in the cash Treasury and/or repo markets.

One of the themes of the Treasury Clearing Rule is to facilitate access to clearance and settlement; however, the Proposed Rule would appear to do the opposite, a negative outcome that further exacerbates the barriers to access presented by the other three outstanding rules FICC has proposed implementing the Treasury Clearing Rule. As we outlined in our response⁴ to these other three proposals, FICC must do more to meet its statutory and regulatory obligations.

The Proposed Rule suffers from two fatal flaws. First, FICC seems to seek to maintain its monopoly as the only Treasury CCA. This is particularly troubling in light of recent announcements from two other firms that they intend to compete with FICC for the clearance and settlement of ESMTs. Second, the Proposed Rule would unnecessarily increase the barriers to entry and the costs associated with direct membership at FICC, which disincentivizes direct membership for those firms that may wish to pursue that path.

1. The Commission should reject FICC’s attempt to maintain its monopoly as the only Treasury CCA and direct it to make other changes to its rulebook to promote competition and fairness.

The Proposed Rule would require each FICC netting member to submit to FICC *all* ESMTs to which the netting member is a counterparty. This would seem to prevent FICC netting members from becoming members of another Treasury CCA and submitting ESMTs for clearance and settlement to any other Treasury CCA except for FICC. This is the latest example of FICC engaging in arguably anticompetitive practices in violation of the Securities Exchange Act of 1934 and the regulations adopted thereunder.⁵

In response, the Commission should direct FICC to amend the Proposed Rule to make explicitly clear that its netting members will not be required to submit all ESMTs to FICC. Netting members of FICC should not be prohibited from submitting ESMTs for clearance and settlement at one or more new Treasury CCAs that may enter that market.

³ FICC, “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”, 89 Fed. Reg. 54602 (July 1, 2024) (the “Proposed Rule”).

⁴ Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (April 23, 2024), available at: <https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-462051-1209434.pdf>.

⁵ See e.g., *id.* at 5.

A revised rule should also acknowledge the likelihood that other Treasury CCAs may enter the market to compete for the clearance and settlement of ESMTs. The Commission's direction to address anti-competitive practices at FICC should not stop with the Proposed Rule. It should further direct FICC to address other anti-competitive practices in its rulebook, particularly those that may seem to ignore the existence of another Treasury CCA and/or prevent its netting members from joining or utilizing another Treasury CCA, as well as those rules that limit indirect participants' access to clearing.⁶ The Commission should also consider how all of FICC's changes, including, for example, how changes to the ongoing membership requirements that include significant monetary penalties, will operate when other clearing agencies clear and settle ESMTs.

2. Several of the proposed provisions to monitor and enforce the TSR and other membership qualification updates are unnecessary, raise barriers to entry and disincentivize direct membership.

The Proposed Rule includes new provisions designed to monitor and enforce netting members' compliance with the TSR and updates to membership requirements, several of which deserve specific attention and response. These include:

- Netting members would be required on a triennial basis, and at their expense, to undertake an independent audit/review of their compliance with the TSR, the result of which would be provided to FICC;
- FICC may request and review a netting member's books and records in connection with its monitoring of the TSR;
- Netting members must submit to FICC any reports or other information FICC may reasonably request;
- Netting members would be required to provide FICC with an annual attestation regarding ongoing compliance with the TSR;
- FICC may request that applicants to become FICC netting members have their business plan evaluated by an independent third-party consultant, at the applicant's expense; and
- Applicants to become FICC netting members would need to be in operation for at least a year (instead of six months as is currently required) before becoming an active netting member.

All of these new provisions, together or individually, either increase barriers to entry and/or disincentivize pursuing direct membership. These requirements would have a significant adverse and outsized effect on those AIMA members and others that may be contemplating direct membership at FICC to solve for FICC's resistance to provide a workable solution for the clearance of done-away trades.⁷ Therefore, these provisions should not be adopted.

⁶ For example, FICC rules do not currently prohibit direct members from conditioning access to clearing on the disclosure of an indirect participant's execution counterparty or imposing other limits on the number of counterparties with whom an indirect participant may trade.

⁷ See *supra*, note 4, at 4.

First, the requirement to have a triennial audit/review conducted of compliance with the TSR seems unnecessary. It would be costly (especially if an independent third party needed to be engaged), time-consuming and appear to yield little, if any, value to the netting member, FICC or the SEC. Moreover, the new provision would require disclosing a significant amount of sensitive trade-related data to third parties, making them a potential target for cybersecurity attackers intent on accessing this valuable information. The audit/review requirement also seems particularly redundant in view of FICC's comfort in relying on netting members to self-monitor their compliance with the TSR, including the requirement to provide an annual attestation (which is, in itself, excessive).

Second, FICC seems to find it necessary to maintain a significant amount of discretion to request a trove of data, books and records from netting members, as well as their affiliates, relating not only to their compliance with the TSR but also including any other information FICC "may reasonably request."⁸ If FICC is relying on the netting member to self-monitor compliance with the TSR and FICC maintains its other supervisory capabilities, it seems unnecessary for FICC to also reserve for itself the ability to request, without limitation, additional data, books and records, some of which may not be relevant to the TSR and/or FICC membership and that may be commercially sensitive. Furthermore, the fact that FICC could request and access records of a netting member's affiliate is intrusive. An AIMA hedge fund member that is considering becoming a direct member at FICC would probably not pursue membership if FICC could, seemingly whenever it wished, request information on the affiliated fund manager and its trading activity.

Third, under the Proposed Rule, applicants to become FICC netting members will be required to provide FICC with a business plan that meets FICC's satisfaction and allow FICC to require an assessment of the applicant's business plan by an independent third-party consultant at the applicant's expense. Accordingly, not only will the applicant incur the initial costs of drafting and applying to FICC, but it may also have to factor in the significant costs of engaging an independent third-party consultant to evaluate the applicant's business plan should FICC seem such a step necessary. The possibility that FICC may require the applicant to conduct a third-party review – at the applicant's expense – may deter many firms from considering applying to become netting members, presenting an unnecessary barrier to access.

Finally, the Proposed Rule would make it more difficult for firms to become netting members of FICC by requiring them to have been in operation for at least a year before submitting their application. This requirement would raise barriers to entry and disincentivize becoming a direct member of FICC, particularly for AIMA members who may be trying to become members before the clearing mandates go into effect. Moreover, firms that may have been relying on the currently effective requirement to have six months of operating history may now face an additional six-month wait before becoming direct members. This delay could upend a firm's plans to be actively clearing on FICC before the

⁸ Proposed Rule, *supra* note 3, at 54606.



mandates go into effect in December 2025 and June 2026 and adds unnecessary complexity to a process that is already costly, onerous and time consuming.

For further information on the points raised in this letter, please contact Daniel Austin, Head of U.S. Markets Policy and Regulation, by email at daustin@aima.org.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned below the "Yours sincerely," text.

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA

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