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July 22, 2024

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

Via E-Mail: rule-comments@sec.gov

Re: 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; Release No. 34-100417; File No. SR-FICC-2024-009

Dear Ms. Countryman:

MarketAxess Holdings Inc. ("MarketAxess") appreciates the opportunity to provide the Securities and Exchange Commission ("SEC" or "Commission") with our comments regarding the Fixed Income Clearing Corporation's ("FICC") proposal to implement the Treasury Clearing Rules.[1] MarketAxess operates a leading institutional electronic trading platform for corporate bonds and other fixed income securities. Through its registered broker-dealer, MarketAxess Corporation ("MAC"), and its global affiliates**,** more than 2,000 firms traded over $7.5 trillion of U.S. Treasury securities, U.S. investment-grade bonds, U.S. high yield bonds, emerging market debt, Eurobonds, and other fixed income securities on the MarketAxess platform in 2023.

MarketAxess' Open Trading™ marketplace is regarded as the premier all-to-all trading solution in the global fixed income markets, creating a unique liquidity pool for a broad range of fixed income market participants. All-to-all trading has the potential to increase the liquidity of the fixed income markets by encouraging a broad cross-section of market participants to act as liquidity providers, thus significantly expanding trading opportunities for market participants. This mechanism may be especially useful during stressed market environments by increasing the pool of liquidity providers when the intermediation capacity of traditional liquidity providers may

[1] See Securities Exchange Act Release No. 34–100417, 89 FR 54602 (July 1, 2024) (the "Proposed Rule"); Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (the ''Adopting Release'', and the rules adopted therein as the ''Treasury Clearing Rules'').

be constrained.[2] Thus, as discussed below, we believe that it is important for the Commission to encourage the central clearing of transactions in U.S. Treasury securities in a manner that does not disincentivize the participation of buy-side firms on multi-party platforms and arrest the development of all-to-all trading in this market.

I. Scope of the IDB Clearing Requirement

A. Background

On December 13, 2023, the Commission adopted amendments to the standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities, including FICC.[3] Among other things, the Treasury Clearing Rules require FICC to adopt rules which require a Netting Member to submit to FICC for clearance and settlement all purchase or sale transactions in U.S. Treasury securities between the Netting Member and any counterparty if the Netting Member brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions (hereafter, the "IDB clearing requirement").[4] The Proposed Rule generally mirrors the language set forth in the Treasury Clearing Rules.

As the Commission knows, a number of commenters have raised concerns that the IDB clearing requirement could reverse the progress that electronic trading platforms have made in facilitating the development of all-to-all trading in the U.S. Treasury market.[5] In response to these comments, the Commission stated that the mandatory clearing of IDB trades could make all-to-all trading more attractive because it substitutes FICC's credit risk for the credit risk of trading counterparties. It also stated that the benefits provided by IDB platforms are significant enough that market participants would be willing to incur the costs associated with FICC membership in

[2] See All-to-All Trading in the U.S. Treasury Market, Federal Reserve Bank of New York Staff Reports, No. 1036 (October 2022).

[3] See the Adopting Release.

[4] In the Adopting Release, the Commission referred to Netting Members that fall within the scope of this requirement as "IDBs," to the trading platforms they provide as "IDB platforms" and to the trades effected on these platforms as "IDB trades." For ease of reference, we use the same terminology in this letter. However, as noted below, we believe that this terminology fails to distinguish between the platform trading activity of dealers and proprietary trading firms (which appears to be more likely to present contagion risk) and the platform trading activity of buy-side market participants (which appears to be less likely to present such risk).

[5] See Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (Dec. 21, 2022); Letter from Sarah A. Bessin, Deputy General Counsel, and Nhan Nguyen, Assistant General Counsel, Investment Company Institute (Dec. 23, 2022).

order to continue using IDBs. Based on feedback from market participants to date, there appears to be significant opposition to the Commissions' conclusion in this regard.

The Commission also explained that even if the concerns raised by these commenters were correct, it was more important to decrease the contagion risk that arises from the hybrid clearing model that is utilized by IDB platforms. While the Commission acknowledged that singling out IDBs could be a disincentive to all-to-all trading, it also noted that the Treasury Clearing Rules require the clearing of U.S. Treasury security transactions between broker-dealers and Netting Members.

B. Discussion

We believe that Commission's response to these concerns warrants further analysis. While the central clearing of IDB trades may serve to reduce the credit risk associated with these transactions, others have noted that U.S. Treasury security transactions typically settle on the day after trade date and thus do not generate meaningful counterparty risk.[6] It also appears that the Commission's rationale for shortening the standard settlement cycle for most broker-dealer transactions from T+2 to T+1 is consistent with this observation.

It also is not clear how the Commission determined that buy-side firms[7] would find that the benefits of trading on IDB platforms would outweigh the costs associated with mandatory clearing. Indeed, it appears that the Commission has been inconsistent on this issue. On the one hand, the Commission acknowledged that unleveraged market participants, such as bond mutual funds, generally have lower trading volume and typically do not have the existing infrastructure to readily connect to a clearinghouse, thus making their up-front costs significantly higher than for other market participants. We note that large asset managers often have thousands of underlying account owners that include unleveraged public and private pension plans, insurance companies and other retirement savings accounts. We believe that the costs of mandatory clearing for these accounts would be quite significant because they do not have the infrastructure necessary to manage the margin workflows associated with central clearing. Thus, it is not surprising that the Commission concluded that the cost of subjecting these firms to mandatory clearing are likely higher than other market participants and the benefits smaller.[8] On the other hand, the Commission

[6] See How Can Policymakers Improve the Functioning of the U.S. Treasury Market? (September 12, 2022) (the "PIMCO Viewpoint")

[7] We use the term "buy-side firms" generally to refer to registered investment companies, pension plans, insurance companies and other similarly situated investors. We do not contemplate that this reference would include high frequency trading firms and principal trading firms.

[8] See Adopting Release at 2822. ("Nevertheless, there are compelling reasons for the exclusions that the proposal makes for a specific sample of market participants. Buy-side participants in the U.S. Treasury

responded to buy-side firm concerns regarding the mandatory clearing of IDB trades by asserting that the benefits they receive from trading on platforms would outweigh the costs associated with mandatory clearing.[9]

In addition, it seems clear from the comments submitted on FICC's related proposals[10] that the impediments to the successful implementation of the mandatory clearing of IDB trades may be greater than the Commission anticipated when it adopted the Treasury Clearing Rules. One of the most significant issues that has been raised is the lack of a viable "done-away" clearing model in the U.S. Treasury markets. This issue is especially critical when it comes to IDB platforms because all trades done on these platforms are, by definition, done-away transactions since the Netting Members that operate these platforms do not offer clearing services to their platform participants. Further, as the Commission noted in the Adopting Release, while the current client clearing models in place at FICC allow for the submission of done-away transactions and allow non-FICC entities to access FICC through multiple direct participants, they do not require direct participants to submit done-away transactions on behalf of other market participants.[11]

securities markets that do not take on any leverage, or take less than one-half their assets in leverage, such as the majority of bond mutual funds, typically have lower daily turnover. As a result of their lower turnover and subsequent lower volume, they typically do not have the existing infrastructure to readily connect to the CCP, making their up-front costs significantly higher than for other participants. This implies that the costs of subjecting these participants to the requirement to clear eligible secondary market transactions are likely higher than those of participants included in the proposal and the benefits smaller.").

[9] See Adopting Release at 2805. ("The benefits to market participants from trading on an IDBs, that is the ability find counterparties and to trade anonymously are significant and will continue even if such transactions are [subject to the clearing mandate].")

[10] See Securities Exchange Act Release No. 99817 (March 21, 2024), 89 FR 21362 (March 27, 2024) (File No. SR-FICC-2024-005) (Proposed Rule Change to Modify the GSD Rules to Facilitate Access to Clearance and Settlement of All Eligible Secondary Market Transactions in U.S. Treasury Securities); Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21603 (March 28, 2024) (File No. SR-FICC-2024-007) (Proposed Rule Change 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.

[11] While FICC has highlighted 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

We acknowledge that buy-side trades on IDB platforms may raise potential contagion risk concerns if they clear on a hybrid basis. However, we do not believe that these trades are the primary source of this risk. As the Commission has noted, most trades on IDB platforms which clear on a hybrid basis arise from transactions effected by proprietary trading firms.[12] Further, we believe that potential for contagion risk must be viewed in light of the financial safeguards that IDBs have adopted to manage counterparty credit risk (e.g., participation standards, establishment of risk based credit limits and real-time monitoring of limit usage). While these mechanisms cannot provide a guarantee against counterparty default, they can reduce the likelihood of its occurrence. It is also important to note that many buy-side firms, such as registered investment companies, are subject to significant leverage constraints under Commission rules and under their own internal risk limits.

In light of the above, we respectfully submit that, with respect to the mandatory clearing of buy-side trades on IDB platforms, the SEC has overemphasized the potential contagion risk arising from these trades at the expense of the equally important goal of increasing the intermediation capacity and resiliency of the U.S. Treasury markets via the expansion of all-to-all trading. If such intermediation capacity is not increased, and the U.S. government continues the fiscal policies that have been rapidly increasing the stock of U.S. Treasury securities outstanding, episodes of market dysfunction are likely to continue with increasing frequency.[13]

While we recognize the benefits that a clearing requirement can provide, it is important that this requirement be implemented in a thoughtful manner. Clearing does not promote time-of-

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. See letter from Jennifer Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association to Vanessa Countryman, Secretary, Commission, dated April 17, 2024.

[12] See Adopting Release at note 773 (Commission cites to SIFMA Paper stating that ("While in the interdealer cash market, U.S. Treasury securities are often cleared and settled through FICC, ‘‘dealer trades with principal trading firms (‘‘PTFs’’)—a very large share of this market—are generally cleared bilaterally because most PTFs are not members of the FICC.’’)) See Improving Capacity and Resiliency in US Treasury Markets: Part III - SIFMA - Improving Capacity and Resiliency in US Treasury Markets: Part III - SIFMA (November 15, 2021). See also Adopting Release at 2798 ("PTFs had by far the highest volumes among identified non-FINRA member participants in the U.S. Treasury market, and the largest PTFs had trading volumes that were roughly comparable to the volumes of the largest dealers. A Federal Reserve staff analysis found that PTFs were particularly active in the interdealer segment of the U.S. Treasury market in 2019, accounting for 61 percent of the volume on [electronic] interdealer broker platforms").

[13] See Group of Thirty Working Group on Treasury Market Liquidity. (2021). U.S. Treasury Markets: Steps Toward Increased Resilience. Group of Thirty. https://group30.org/publications/detail/4950. In general, this report recommended that Treasury repos should be centrally cleared while the benefits and costs of central clearing of dealer-to-client cash trades should be subject to further study.

trade liquidity or mitigate adverse market events such as those that occurred in September 2019 or March 2020.[14] In addition, we are concerned that the mandatory clearing of buy-side trades on IDB platforms may actually decrease the resiliency of the U.S. Treasury markets by causing buy-side firms to cease engaging in all-to-all trading on these platforms. The Proposed Rule favors direct dealing with bank-owned dealers rather than the use of open electronic marketplaces that offer all-to-all trading because direct trades between buy-side firms and Netting Members not operating an IDB platform are not required to be cleared.[15] This seems contrary to the goal of improving market resiliency through increased utilization of all-to-all trading.[16] Accordingly, we believe that the Commission should strike a more appropriate balance between the competing concerns noted above by, for example, exempting all or some buy-side firms that trade on IDB platforms from the Treasury Clearing Rules.

II. Definition of Trading Facility

As noted above, the Proposed Rule would require a Netting Member to clear all purchase and sale transactions involving U.S. Treasury securities between the Netting Member and any counterparty at FICC if the Netting Member brings together multiple buyers and sellers using a "trading facility" (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions. The Commission did not define the term "trading facility" under the Treasury Clearing Rules and FICC has not defined this term under the Proposed Rule.

In the Adopting Release, the Commission made it clear that the term "trading facility" does not include platforms that provide for manual execution and/or disclosed trading.[17] Further, the Commission's description of the term "trading facility" in the release proposing the Treasury

[14] See PIMCO Viewpoint.

[15] At the same time, the current proposal to increase capital requirements for bank trading activities may impair market liquidity by reducing banks' incentive to engage in market-making activities. See 88 Fed. Reg. 64028, at 64170 (September 18, 2023). We also note that the Treasury Clearing Rules generally require the clearing of transactions in U.S. Treasury securities between **any broker-dealer** and a Netting Member. However, the Proposed Rule would only require the clearing of such transactions between **broker-dealers that are FICC members** and Netting Members. Thus, if the Proposed Rule is adopted as proposed, it would appear to further disadvantage the competitive position of IDB platforms relative to the over-the-counter market.

[16] See letter from William C. Thum, Managing Director and Assistant General Counsel, SIFMA Asset Management Group to Vanessa A. Countryman, Secretary, Commission dated December 23, 2022.

[17] In footnote 753 of the Adopting Release, the SEC stated that platforms that provide voice-based or other non-anonymous methods of bringing together buyers and sellers of U.S. Treasury securities would not fall within the scope of the Treasury Clearing Rules but that electronic platforms that provide anonymous methods of bringing together buyers and sellers would fall within the scope of these Rules.

Clearing Rules indicates that it is designed to refer to many-to-many trading platforms that permit the display of orders to all users on an anonymous basis where these orders are matched on an automated basis. [18]

We believe that the term "trading facility" should not be deemed to include systems that clearly fall outside such descriptions, such as RFQ trading systems under which transactions are effected on a one-to-many basis and/or are executed manually. In this regard, if the Commission intended the term "trading facility" to include RFQ trading systems, it could have defined this term in a more expansive manner, rather than using a narrow term that has historically referred to order books.[19] Because it did not choose to do so, we believe that RFQ systems should not be deemed to be "trading facilities" under the Proposed Rule. Accordingly, we would appreciate confirmation from the Commission that it does not object to this interpretation.

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MarketAxess appreciates the opportunity to comment on the Proposed Rule. We would be happy to discuss our comments with the Commission or its staff. If you have any comments or questions concerning this letter, please feel free to contact us.

Sincerely,

DocuSigned by:
Ross Pazzol
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Ross Pazzol

Assistant General Counsel, MarketAxess

[18] See Securities Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022).

[19] We believe that if the Commission had intended for the term "trading facility" to include RFQ trading systems, it would have made a clearer statement to this effect. For example, under its proposal to amend SEC Rule 3b-16. the Commission expressly stated that RFQ trading systems would be "communication protocol systems" under its proposed revisions to this Rule. See Securities Exchange Act Release No. 34-94062 (January 26, 2022). The Commission's silence on this matter in the Adopting Release, combined with the manner in which it described the term "trading facility", leads us to believe that it did not intend for RFQ trading systems to be included in the term "trading facilities" under the Treasury Clearing Rules.