

FIA PTG

PRINCIPAL TRADERS GROUP

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July 23, 2024

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

Re: Notice of Filing of a Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement (SR-FICC-2024-009)

Dear Ms. Countryman:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to submit this letter to the Securities and Exchange Commission (the “Commission”) in response to the Fixed Income Clearing Corporation’s (“FICC”) proposed trade submission requirement (the “Proposal”).² The Proposal is anti-competitive, overly burdensome, and should be withdrawn.

I. The Proposal is Anti-Competitive.

We are disappointed that following prior letters urging FICC to remove *existing* anti-competitive rules that prevent direct members from clearing with other clearinghouses,³ FICC did not do so. We previously explained, for example, how FICC Rules 2(7) and 5(1) impede clearinghouse competition by requiring direct FICC members to submit trade data to FICC regarding all transactions that are the type FICC processes, irrespective of whether the direct member clears those trades with FICC or another SEC-registered clearing agency. Now, FICC proposes to require all direct FICC members to “submit to FICC for clearance and settlement” all eligible secondary market transactions to which the direct member is a party.⁴

¹ FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

² 89 Fed. Reg. 54602 (July 1, 2024).

³ Letter from Joanna Mallers to Vanessa Countryman dated Apr. 17, 2024 available at <https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-459531-1191158.pdf>.

⁴ Proposal at 54603-4; Proposed FICC Rule 5.

As we previously explained, while FICC is currently the only Commission-registered clearing agency for Treasury securities, the SEC Clearing Rule expressly acknowledges “the potential for multiple clearing agencies serving the U.S. Treasury market.”⁵ And in recent weeks, we have seen other clearing agencies express interest in entering the market.⁶ It is inexplicable that FICC would seek to thwart clearing agency competition by requiring its members to clear all eligible secondary transactions through FICC, rather than implement a clearing agency-neutral requirement to submit eligible transactions to an SEC-registered clearing agency generally.

The Proposal is blatantly inconsistent with the Exchange Act. Section 17A(b)(3)(I) of the Act prohibits clearing agency rules from “impos[ing] any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].”

There is no basis in the record for the Commission to find the Proposal meets the standards of the Exchange Act. FICC appears not to have considered the Proposal’s effects on clearing agency competition at all, let alone the consequences of requiring all of its members to clear all eligible secondary transactions exclusively through it. In the SEC Clearing Rule, the Commission did not contemplate a single clearinghouse for eligible secondary transactions and there is no reasonable basis for asserting an FICC monopoly on clearance and settlement of eligible secondary market transactions is a necessary or appropriate means to comply with FICC’s obligations under that rule.

As FICC reconsiders this Proposal, we again urge FICC to conduct a holistic review of its existing rules to remove inappropriate impediments to clearinghouse competition, including modifying existing FICC Rules 2(7) and 5(1). Direct FICC members should be able to clear transactions through any registered clearing agency they choose, and FICC rules must be clearinghouse agnostic where appropriate. We look forward to continuing to constructively engage with FICC on these important issues.

II. Other Issues.

In addition to the above, the Proposal includes requirements that are overly burdensome, risk disclosing confidential trade information, and unreasonably raise the barriers to direct membership. Section 17A(b)(3)(F) requires clearing agency rules to protect the public interest and prohibits rules that unfairly discriminate in the admission of participants or among participants in the use of the clearing agency or from regulating “matters not related to the purposes of [Section 17A] or the administration of the clearing agency.” The proposal runs afoul of each of these rulemaking requirements under the Exchange Act.

FICC proposes an unprecedented triennial independent trade submission review and report requirement. As proposed, FICC would require direct members to conduct independent reviews of

⁵ 89 Fed. Reg. 2714 (Jan. 16, 2024) (“SEC Clearing Rule”) at 2722.

⁶ See, e.g., ICE Aims to Clear US Treasuries as Market Regulation Expands (June 24, 2024) available at <https://www.bloomberg.com/news/articles/2024-06-24/ice-moves-to-clear-us-treasuries-as-market-regulation-expands?embedded-checkout=true>; CME Group Bids to Enter US Treasuries Clearing Business (Mar. 12, 2024) available at <https://finance.yahoo.com/news/cme-group-bids-enter-us-220918719.html>.

their ongoing compliance with the trade submission requirement every three years and deliver reports of the reviews to FICC. While FICC nominally proposes to permit direct members to engage a review body that is either internal or external to the member, given the requirement that an internal review group must report directly to the direct member's board of directors, members will likely need to rely on external consultants to comply.

The triennial independent review requirement is not in the public interest. FICC failed to consider the considerable costs that would result from this requirement. Engaging an external auditor to review all of a direct members' trading activity for the three-year period would be an enormous undertaking. Given that the triennial review cycle would likely be aligned for direct members following the effective date of a final rule, it may also result in auditor capacity issues. Some of these costs will be passed on to indirect members in the form of increased costs for clearing services and it would expose significant amounts of confidential trading data to third parties.

FICC would impose these significant costs for no tangible benefit. The only vague justification FICC offers is its general belief that "a more comprehensive review...performed by an independent body on a less frequent basis would be an important mitigant to any contravention of the trade submission requirement." But such vague generalities do not justify the sizable obligations proposed. And FICC provides no explanation of why the other requirements to ensure compliance with the trade submission requirement are insufficient, including the annual trade submission attestation, policy and procedure requirements, and expanded FICC examination authority, among others. We are aware of no other clearing agency that requires a similar review in any other asset class.

This proposal is also a discriminatory barrier to direct clearing agency membership. To the extent certain FIA PTG members consider direct membership as a means of complying with the SEC Clearing Rule, this requirement would serve as another unnecessary and costly barrier to doing so.

Further, the Proposal suffers from additional issues. The Proposal would provide FICC with discretionary authority to require applicants for direct membership to obtain an assessment of the applicant's business plan by an independent third-party consultant at the expense of the applicant. Once again, FICC fails to consider the costs of such an undertaking and fails to offer any reasonable explanation or procedural safeguards on circumstances in which it would exercise such authority. FICC also proposes to permit FICC the authority to require detailed financial information regarding a direct member's affiliates (beyond the member's direct parent). FICC fails to offer any justification for this requirement or set forth procedural safeguards regarding when such information may be requested.

Finally, FICC must clarify that direct members will not be required to comply with its proposed trade submission requirement until the compliance date set forth in the SEC Clearing Rule, or as otherwise provided by the SEC pursuant to the Exchange Act, whichever is later.

III. Conclusion

The Proposal is anti-competitive, overly burdensome, and flawed. We therefore urge FICC to withdraw the Proposal and consider a more reasonable alternative. We look forward to continuing to engage with FICC and the Commission to expand access to clearing and to ensure that the marketplace is prepared to implement the clearing mandate.

If you have any questions, please do not hesitate to contact Joanna Mallers at jmallers@fia.org.

Respectfully,

FIA Principal Traders Group



Joanna Mallers
Secretary

cc: Gary Gensler, Chair
Hester M. Peirce, Commissioner
Caroline A. Crenshaw, Commissioner
Mark T. Uyeda, Commissioner
Jaime Lizárraga, Commissioner