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Via Electronic Submission

Vanessa Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number SR-FICC-2024-009-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

Dear Ms. Countryman:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (“ICE”), appreciates the opportunity to comment on the notice of proposed rule change by the Fixed Income Clearing Corporation (“FICC”), titled “Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement” (the “Proposal”).¹ FICC states that its Proposal was designed primarily to comply with the Commission’s amendments to the covered clearing agency standards to require certain repurchase and cash transactions in U.S. Treasury securities to be centrally cleared (the “Treasury Clearing Rule”).²

The Proposal would prohibit FICC participants from clearing these Treasury transactions at any other covered clearing agency (“CCA”) aside from FICC.³ As a result, the Proposal would impose burdens on competition that are neither necessary nor appropriate and cannot be justified by the benefits of centrally clearing, in violation of Section 17A(b)(3)(I) of the Securities Exchange Act of 1934. The Proposal would also lead to an “enormous concentration risk” that is “highly problematic,” just as commenters on the Treasury Clearing Rule warned could happen if multiple Treasury CCAs were not available.⁴

¹ 89 Fed. Reg. 54602 (July 1, 2024).

² 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)

³ See FICC Proposal, 89 Fed. Reg. at 54603-4; Proposed FICC Rule 5.

⁴ See Letter from William C. Thum, Managing Director and Assistant General Counsel, Securities Industry and Financial Markets Association Asset Management Group, at 9 (Dec. 23, 2022); see, also Letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial

In light of the benefits of a competitive market for clearing services, ICE's comments on the Treasury Clearing Rule specifically requested that the Commission "acknowledge the potential for multiple Treasury clearing agencies" and "prohibit a clearing agency's rules from restricting or impeding in any way their members ability to clear U.S. Treasury securities, repurchase, and reverse repurchase agreements at another clearing agency."⁵ The Commission's response to this comment was clear: it stated that "the existence of additional U.S. Treasury securities CCAs would lower the concentration risk that currently exists due to having a single CCA for that market" and "a rule prohibiting a clearing agency from restricting or impeding in any way its member's ability to clear at another CCA is also unnecessary because to be registered under Section 17A of the Exchange Act, a clearing agency's rules must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of Section 17A."⁶ Because the Commission has already determined that a clearing agency rule restricting its member's ability to clear at another CCA would violate Section 17A, the Commission cannot approve the Proposal, as it would impose just such a restriction.

Our concerns about the Proposal are not merely theoretical. In recent months, we have announced our intent to launch a clearing service for U.S. Treasury securities through our existing, Commission-registered clearing agency, ICE Clear Credit.⁷ ICE Clear Credit is uniquely positioned to compete with FICC and help facilitate the policy objective of bringing increased transparency and standardized risk management to the Treasury securities market. In addition to its experience as a leading global clearing house for credit derivatives, ICE Clear Credit is designated as a systemically important financial market utility (SIFMU) by the Financial Stability Oversight Council,⁸ and deemed a qualified central counterparty under U.S. bank capital rules. Due to its comprehensive regulation as a registered clearing agency and designated SIFMU, ICE Clear Credit has obtained recognitions and exemptions from key non-U.S. jurisdictions, enabling it to support Treasury clearing on a global basis.

A broad range of market participants commenting on the Proposal have also raised concerns about the Proposal's anti-competitive clearing restriction.⁹ ICE joins them in

Markets Association, and Michelle Meertens, Deputy General Counsel, Institute of International Bankers, at 10 (Dec. 22, 2022).

⁵ Letter from Chris Edmonds, Chief Development Officer, Intercontinental Exchange, Inc., at 2-3 (Jan. 12, 2023).

⁶ Treasury Clearing Rule, 89 Fed. Reg. at 2722.

⁷ See Press Release, "ICE to Launch Treasury Clearing Service to Increase Transparency and Enhance Resilience in the U.S. Treasury Market" (Jun. 24, 2024), available at <https://ir.theice.com/press/news-details/2024/ICE-to-Launch-Treasury-Clearing-Service-to-Increase-Transparency-and-Enhance-Resilience-in-the-U.S.-Treasury-Market/default.aspx>.

⁸ As a designated SIFMU, ICE Clear Credit is subject to enhanced risk management standards and has access to Federal Reserve Bank accounts, services, and advances, which provides significant risk mitigation benefits to ICE Clear Credit, its participants, and the market.

⁹ See Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, at 1-2 (July 23, 2024); Letter From Katherine Darras, General Counsel, International Swaps and Derivatives Association, at 2-3 (July 22, 2024), Letter from Jiri Krol, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association, at 2-3 (July 22, 2024)

calling for FICC to revise the Proposal to remove this restriction and to eliminate any other FICC rules that would restrict or impede its members from clearing at another Treasury CCA.¹⁰

ICE appreciates the opportunity to comment on the Proposal and the engagement of the Commission and its staff in the rulemaking process. ICE shares the Commission's goals of expanding the use of clearing to support the sound operation of financial markets, including the U.S. Treasury market. In light of these goals, ICE respectfully request that the Commission take steps to address the concerns we have described above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "E. Lafont K. K.", is positioned below the text "Respectfully submitted,".

¹⁰ See, e.g., existing FICC Rules 2A(7)(e), 5(1), 11(3), and 18(2).