



August 9, 2024

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

Re: SEC “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; SR-FICC-2024-009]

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ and SIFMA’s Asset Management Group (“SIFMA AMG”)² appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC”) in response to the above referenced rule proposal (“Proposed Rule”) from the Fixed Income Clearing Corporation (“FICC”).³ SIFMA and SIFMA AMG have been active in commenting on the various proposals to enhance the overall resiliency of the U.S. Treasury securities market (“Treasury market”) and believes that it is vitally important, given the role that the Treasury market plays in financing U.S. spending and in the global financial system, that the implementation of the SEC’s Treasury clearing mandate and other changes in the clearing infrastructure be done in a way that ensures and builds on the

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

³ Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement, 89 FR 54601 (July 1, 2024), available [here](#).

Treasury market's depth and liquidity. While, as we noted in SIFMA's comment on the SEC's original proposal on Treasury clearing,⁴ we agree that benefits exist to central clearing and we support ways that will build and improve on the current clearing environment, changes should be done carefully so as not to negatively impact resiliency and liquidity or significantly increase the costs associated with clearing.

Pursuant to the final SEC clearing rule⁵, the Proposed Rule would amend FICC's rules to: (i) incorporate a new trade submission rule; and (ii) create a self-monitoring and attestation regime for compliance with the trade submission requirements for FICC members. While we are happy to provide herein our preliminary comments on the Proposed Rule, given the short comment period and the importance of these changes to the implementation of the Clearing Rule and the capacity, resiliency and liquidity of the Treasury market, we will continue to review the Proposed Rules and may provide additional comments.

Terms used but not defined herein shall have the meaning given to such terms in the Proposed Rule or the Clearing Rule, as applicable.

Executive Summary

The SEC Clearing Rule represents the most significant structural change to the U.S. Treasury market in many years and implementation of the rules associated with this change should be done in a careful and analytic manner to avoid unnecessary costs and burdens that could impact overall activity by, contrary to the intent of the SEC and FICC, making clearing unattractive. We note several areas of concern with the Proposed Rule.

- **The trade submission requirement is anti-competitive:** The Proposed Rule's requirement that FICC members clear all their in-scope transactions only with FICC is anti-competitive and conflicts with the requirements of the Exchange Act.
- **The self-monitoring/attestation/auditing regime should be revamped to eliminate duplicative and costly elements:** Before the SEC approves changes to FICC's rules, FICC should remove duplicative and costly elements of the self-monitoring regime, most notably the triennial audit/report requirement.
- **Inappropriate extraterritorial expansion:** We are concerned that the changes to the treatment of bank FICC members may broaden the scope of transactions required to be cleared beyond what was contemplated in the SEC's Clearing Rule and could have a negative impact on the global market in Treasury securities.

⁴ Securities Industry and Financial Markets Association/Institute of International Bankers, Comment Letter on Standard 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 (December 22, 2022, available [here](#).)

⁵ 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. 99149 (December 13, 2023), 89 Fed.Reg. 2,714 (January 16, 2024) ("SEC Clearing Rule).

- **Inter-affiliate and triparty transactions:** We believe that the current inter-affiliate exemption and the treatment of triparty transactions in the Treasury Clearing Rule requires additional review to achieve their goals without negatively impacting the Treasury market.

I. The Proposed Rule is anti-competitive and conflicts with the requirements of the Exchange Act

A. Proposed trade submission requirement requires Netting Members to submit all in-scope transactions to FICC

Proposed Rule 5 (Trade Submission Requirement) states: “Netting Members shall submit to the Corporation for Novation all Eligible Secondary Market Transactions... to which such Netting Member is a counterparty.”⁶ (“Corporation” means FICC (Rule 1—Definitions)). Netting Members can only fulfill the trade submission requirements by submitting to FICC, and the Proposed Rule would not permit Netting Members to clear in-scope transactions with other clearing houses which may begin offering clearing of Eligible Secondary Market Transactions ahead of, or shortly after, go live dates of the SEC Clearing Rule. This is inconsistent with the intent of the final SEC Clearing Rule, fails to recognize that other entities have publicly stated that they expect to become clearing houses for the Treasury market, and is inconsistent with the requirements of the Exchange Act.

The final SEC Clearing Rule required that a clearing agency amend its rules to require that a “direct participant of [a] clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty...”⁷ This requirement does not suggest an exclusive clearing arrangement with any clearing house. Instead, the SEC Clearing Rule directs direct participants to submit for clearance all their in-scope transactions.

Two other clearing agencies have indicated that they plan to launch Treasury cash and Treasury repo clearing services.⁸ The Proposed Rule will effectively bar Netting Members from submitting their Eligible Secondary Market Transactions to those entities for clearing. As a result, FICC’s proposed trade submission requirement is contrary to the required standards for clearing house rules in the Exchange Act. Section 17A of the Exchange Act requires that “[t]he rules of the clearing agency do not impose any burden on competition not necessary or

⁶ See Proposed Rule.

⁷ 17 CFR Part 240.17ad-22(e)(18)(iv)(A).

⁸ Katherine Doherty, *ICE Moves to Clear U.S. Treasuries as Market Regulation Expands*, (June 24, 2024, 12:01 AM EDT updated at 9:40 AM EDT), <https://www.bloomberg.com/news/articles/2024-06-24/ice-moves-to-clear-us-treasuries-as-market-regulation-expands?embedded-checkout=true>; Reuters, *CME Group Bids to Enter US Treasuries Clearing Business*, (Mar. 12, 2024, 9:47 PM EDT), <https://www.reuters.com/markets/us/cme-group-bids-enter-us-treasuries-clearing-business-financial-times-reports-2024-03-12/>.

appropriate in furtherance of the purposes of this chapter.”⁹ We believe proposed Rule 5 would not meet this standard and would inhibit competition among clearing houses by forbidding members from clearing at multiple entities. Indeed, FICC has failed to provide any compelling reason for including this restriction nor is this provision “necessary or appropriate in furtherance of the purposes of [the Exchange Act],” emphasized above.

To avoid this anti-competitive outcome, FICC would in any case need to amend the trade submission requirement at a later date to permit its Netting Members to fulfill their clearing requirements at other clearing houses. This would take time, which would harm FICC’s Netting Members hoping to quickly take advantage of alternative clearing arrangements. We therefore believe that required changes to FICC’s rulebook should be undertaken now rather than later, recognizing the developing landscape in Treasury clearing and permitting FICC members to plan accordingly.

B. Suggested Changes

To address these concerns, the SEC should not approve the Proposed Rules until they are changed to comply with the Exchange Act requirements that the rules do not impose a burden on competition. A revised trade submission requirement should acknowledge that Netting Members may be submitting in-scope transactions to other clearing houses by explicitly permitting Netting Members to fulfill their clearing obligations through other clearing relationships. We believe that FICC can ensure that its Netting Members are compliant with the requirement that Netting Members clear all in-scope transactions through a revised self-monitoring and attestation process. The final FICC rules should be agnostic as to where Netting Members fulfill their obligations to submit all in scope transactions. In making necessary changes, FICC must take a holistic approach to remedy the anti-competitive nature of the Proposed Rules, as well as possibly other sections of its existing rulebook. For example, penalties for failure to clear would need to be revisited, because as written, penalties for failure to clear would be incurred even if the trade was intended to be cleared at another clearing agency, resulting in possible multiplication of fines across every clearing agency a netting member accesses for treasury clearing.

II. The self-monitoring/attestation requirements are overly burdensome and unnecessary

A. FICC’s requirement to identify and monitor its members’ compliance with clearing requirements

As noted in the prior section, the final SEC Clearing Rule required that a clearing agency amend its rules to require that a “direct participant of [a] clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty...”¹⁰ To ensure compliance with that mandate, the SEC Clearing Rule required

⁹ 15 USC 78q-1(b)(3)(I).

¹⁰ 17 CFR Part 240.17ad-22 (e)(18)(iv)(A).

the clearing agency to “[i]dentify and monitor its direct participants’ submission of transactions for clearing as required ...”¹¹

To implement these requirements, the Proposed Rules require FICC members to: (1) submit any reports or other information that FICC may reasonably request;¹² (2) notify FICC within two business days of any non-compliance with the trade submission requirement; (3) submit an annual attestation as to compliance with the trade submission requirements from the Chief Compliance Officer (“CCO”)(or equivalent officer); and (4) conduct an independent review of its ongoing compliance with the trade submission requirement on a triennial basis and provide a report of that review to both FICC and the member’s most senior representative body (review may be by an independent internal group or an external third party approved by FICC).

B. FICC could fulfill its monitoring requirements through a less onerous self-monitoring regime

The self-monitoring regime in the Proposed Rule imposes multiple overlapping requirements on FICC members and we believe that a comprehensive and effective self-monitoring regime can be achieved---and FICC can fulfill its regulatory enforcement requirements---with a more streamlined approach that is less costly and more efficient.

C. Triennial Independent Consultant Review: costly and unnecessary

SIFMA and SIFMA AMG members are particularly concerned with the Proposed Rules’ requirement that FICC members commission an independent review every three years to confirm that the firm is complying with the trade submission requirements. This is in addition to the annual requirement that the CCO confirm compliance, and further in addition to the two-business day notice required in case a firm is no longer in compliance with the trade submission requirement.

This requirement is costly, time-consuming, and, in light of the other self-monitoring/self-reporting requirements and attestations, unnecessary and non-additive to information that FICC needs to fulfil its requirement. The independent triennial review must even be performed concurrently with the annual CCO compliance confirmation, further evidencing its redundancy and adding unnecessary costs and use of resources. FICC has not made clear why such a review is needed and how it adds to the effectiveness of its compliance monitoring. Indeed, the other tools that FICC has proposed (request comprehensive information, self-reporting, attestations) are sufficient to fully inform FICC of the activities of its members.

Implementing the independent triennial review would also provide serious functional difficulties that support its removal. First, the Proposed Rule requires the review be conducted by either an independent third party, approved by FICC, or by an independent internal auditor. The cost alone for smaller netting members would make such a requirement unfeasible. Second,

¹¹ 17 CFR Part 240.17ad-22 (e)(18)(iv)(B).

¹² The scope of this authority is concerning. The Rule Proposal would give FICC broad authority to request and examine confidential and proprietary information from Netting Members and Sponsored Members.

SIFMA and SIFMA AMG members are also concerned that these reviews may result in unwanted disclosure of significant amounts of proprietary trade information to third parties. While the Proposed Rule would permit an internal independent review, this, like an external review would be time-consuming and expensive with limited informational value. In both cases, the financial and operational resources needed to conduct such a review will increase the costs of trading in U.S. Treasury securities and diminish participation for some market participants and, contrary to the intent of the Clearing Rule, reduce participation in Treasury clearing.

The independent triennial review is inconsistent with the Exchange Act's mandate because it imposes unnecessary costs on market participants. In its proposed rule FICC has failed to assess that burden, and FICC must remove the independent triennial review because its costs clearly outweigh its benefits.

D. Annual attestation requirement

The Proposed Rules would require an annual certification as to compliance with the trade submission requirements from the CCO of the Netting Member. While we agree that an annual attestation would be an effective way for FICC to ensure member compliance with its rules, we question whether the CCO is the appropriate party to make the attestation. FICC should allow firms flexibility in identifying who should be the appropriate party to make the attestation. A more effective and informed attestation could come from the senior head of the trading operation or the person who oversees the clearing operations. Moreover, especially for globally operating institutions with multiple business lines, it may be appropriate for the attestation to come from an individual in the U.S. region, rather than a senior executive of the firm.

In addition, the wording of the attestation requirement must be revised. An attestation which requires an attestor's confirmation that it complied with the Proposed Rule "at all times" would be impossible to meet. Instead, the attestor should be required to attest to a compliance program reasonably designed and implemented, and in case of material breaches during the observation period, should describe the ways in which the policies and procedures have been improved to learn from the breach. Further, the current proposal fails to account for times where Netting Members failed to submit trades but notified FICC in accordance with the rules.

E. Two Day Notice

To ensure uniformity with the proposed annual attestation, the two-day notice should only be triggered in cases of material noncompliance. Proposed Rule 5 requires Netting Member to notify FICC, in writing, within two Business Days upon learning it is not in compliance with the trade submission requirement. FICC is correct to include a knowledge qualifier with this requirement, but the requirement remains too broad and would be challenging to meet within two business days. Reporting minor or remediated instances of non-conformance would be unnecessarily burdensome. Further, the two-Business Day requirement is too short and will present too stringent a timeline for compliance. FICC should consider lengthening the timeline to aid compliance and to encourage remediation of errors.

F. Cost and burden

The multiple and overlapping self-monitoring requirements would raise costs and increase internal burdens on firms. These costs may, in some cases, result in reduced activity, reduced clearing, and negatively impact the resilience of the market. Prior to approval by the SEC, FICC should comprehensively review the regime to ensure that overlapping and duplicative requirements are eliminated and only the most effective elements are retained. At a minimum, we believe FICC should eliminate, as noted above, the triennial audit/report requirement.

Moreover, FICC's penalty schedules should be revised to account for Netting Members' good faith efforts at remediating the root cause of non-compliance. The penalty schedule should therefore take account of the remediation effort the member is taking to rectify non-compliance. A more equitable approach would be for a member to (i) initially notify FICC of the non-compliance and then (ii) work to a plan to remediate before any penalty starts applying.

III. Extraterritorial expansion

The Proposed Rule makes a significant change to the definition and treatment of Bank Netting Members. Specifically, the proposal amends FICC's Government Securities Division Rulebook ("GSD Rulebook") to change the definition of Bank Netting Member by eliminating language that recognized a distinction between a U.S. branch or agency of a non-U.S. banking entity and the entire non-U.S. banking entity itself. The Proposed Rule would strike from the GSD Rulebook Rule 2A(3)(a) the phrase "and either participates in [FICC] through its U.S. branch or agency" and substitute "that meets the qualifications applicable to a Foreign Person in this Section 3." In addition, the Rule Proposal notes that "a bank and its branches must all apply under the same membership, as a Bank Netting Member."¹³ This change, while characterized as a clarification in the rule filing, would substantively change the relationship of Banking Netting Members with FICC and expand the SEC's Clearing Rules well beyond the U.S.

A. Proposed Rules could have a negative impact on the global Treasury market

SIFMA and SIFMA AMG members are concerned that what FICC suggests is a clarifying change will have significant impact on activity outside the United States and with customers far removed from the U.S. market. Many of these customers would not expect to be captured by a U.S. clearing rule, have no or limited activity in the U.S., and are not otherwise subject to U.S. regulation.

In particular, as noted above, the Rule Proposal provides that "a bank and its branches must all apply under the same membership, as a Bank Netting Member" and that "a branch and its parent bank are considered the same legal entity..."¹⁴ Should this Rule Proposal be approved global Bank Netting Members would have activity done outside the U.S. subject to the trade submission requirements.

¹³ Proposed Rule, 89 Fed. Reg 54605.

¹⁴ Id.

The Rule Proposal alters the long-standing structure by deleting the recognition that entities may participate through its branches or agencies or through the U.S. bank. Should the Rule Proposal be approved as proposed, banks that participate in FICC as Bank Netting Members would be subject to FICC rules---including the new trade submission requirements---throughout their organizations globally.

Eliminating the ability of banks to participate in FICC through their branches or agencies and subjecting to FICC's rules the entire non-U.S. bank, including locations throughout the world, would have a number of significant consequences which were not reviewed, discussed or included in the cost/benefit analysis in the SEC's proposal concerning the Clearing Rule and are not now given further justification by FICC. Most fundamentally, if approved, this change would subject an entire banking entity to the trade submission requirements and require the banking institution to submit all its in-scope Treasury activity outside the US with non-US counterparties to FICC. Such a requirement is not mandated by the SEC Clearing Rules and FICC offers no rationale as to why it might be necessary and how it would impact the market for U.S. Treasury securities.

If the entire non-US banking entity globally were to be subject to FICC's rules, including the trade submission requirement, customers of the banking entity that engage in Treasury repos with the banking entity would be required to clear those Treasury repos. This would force those non-U.S. entities to become direct members of FICC or to access clearing as a sponsored entity. These customers might be firms that do not meet the qualifications to become FICC members and sponsoring member firms might not be able to provide a sponsored arrangement.

The negative impact on Netting Members is clear. Non-members may trade repo with non-U.S. counterparties harming Netting Members who are required to clear all transactions no matter the counterparty. Treasury securities, currently the globe's benchmark sovereign security, would become less attractive to many market participants and investors throughout the world who would then be incentivized to seek out alternative investments. This could not have been the intent of the SEC in adopting the clearing mandate. The Clearing Rule is meant to reduce risk and improve the overall resiliency and liquidity in the Treasury market---not create incentives to seek out alternative investments.

In addition, this change would disincentivize banks from participating, as they do today, in the U.S. Treasury either through their U.S. branches and agencies or the U.S. bank. This would reduce the number of market participants in the U.S. and may make it more difficult to achieve the SEC's goals of increasing clearing to reduce risk. Again, this cannot have been the intention of the SEC and there are no indications that the SEC ever considered this eventuality.

A. Suggested change

Before the SEC approves the Proposed Rules, FICC should amend its filing to make clear that the trade submission requirements do not apply to banking institutions globally. Further

study may be necessary to understand the global Treasury market and the impact such a requirement might have on the market.

IV. Treatment of inter-affiliate and tri-party transactions

SIFMA members are concerned with the usefulness of the inter-affiliate exception and with the treatment of tri-party transactions that contain Treasury securities. Of particular concern with the SEC's conditional inter-affiliate exemption is that it will not permit enough flexibility for a market participant to engage in necessary liquidity and collateral management transactions within a global institution without bringing into trade submission scope transactions involving entities far removed from the U.S. clearing ecosystem.

In addition, SIFMA believes that the treatment of Treasury triparty transactions, in both the SEC Clearing Rule and in the FICC rules, is impracticable and would expand the clearing mandate to classes of securities beyond Treasury securities. We believe that a recognition of the triparty process that allows for mixed triparty transactions to not be subject to the trade submission requirements with appropriate monitoring safeguards is appropriate and consistent with the intent of the SEC Clearing Rule.

On both these issues, we are happy to work with SEC staff to develop a framework that addresses the SEC's concerns and that will not have negative or unintended consequences on the Treasury market.

Conclusion

SIFMA and SIFMA AMG strongly support efforts to ensure enhanced resiliency, capacity and liquidity within the Treasury market. The SEC's clearing mandate can lessen risk and provide resiliency benefits if implemented in a way that incorporates rigorous analysis and receives broad market participant understanding and buy-in. While we believe that it is important for FICC to clearly define the in-scope transactions subject to a trade submission requirement and we believe that an appropriately calibrated self-monitoring and attestation program can help FICC meet its required enforcement role, the Proposed Rule needs to be amended to address our significant concerns----potential anti-competitive impact, onerous self-monitoring/auditing program and elimination of the change to the Bank Netting Member definition that would scope in to the clearing requirement transactions that have no relationship with the U.S.

We respectfully request that the SEC and FICC consider the comments offered above and we would be happy to discuss our thoughts on these proposals.

Please feel free to contact either of us with any questions (rtoomey@sifma.org or 212.313.1124 or bthum@sifma.org at 202 962-7381) or for more information, and we thank you for your consideration of this request.

Sincerely,



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cc: The Hon. Gary Gensler, SEC Chairman
The Hon. Hester M. Peirce, SEC Commissioner
The Hon. Caroline A. Crenshaw, SEC Commissioner
The Hon. Mark T. Uyeda, SEC Commissioner
The Hon. Jaime Lizárraga, SEC Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets