

August 13, 2024

**Via Electronic Mail:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

**Re: Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement (File No. SR-FICC-2024-009)**

Dear Ms. Countryman:

MFA<sup>1</sup> appreciates this opportunity to submit comments to the U.S. Securities and Exchange Commission (“**Commission**” or “**SEC**”) regarding the above-referenced proposed rule changes (“**Proposal**”) by the Fixed Income Clearing Corporation’s (“**FICC**”).<sup>2</sup> We thank the Commission for considering our comments.

We have two principal concerns with the Proposal.<sup>3</sup> First, the Proposal is anti-competitive and should be withdrawn. The Proposal seeks to prohibit netting members and their customers

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<sup>1</sup> Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over \$3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

<sup>2</sup> 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 (June 25, 2024), 89 Fed. Reg. 54602 (July 1, 2024), available at: <https://www.govinfo.gov/content/pkg/FR-2024-07-01/pdf/2024-14378.pdf>.

<sup>3</sup> For other concerns MFA has with FICC’s implementation of the Commission’s Treasury clearing rules, see Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Apr. 17, 2024), available at: <https://www.mfaalts.org/wp-content/uploads/2024/04/MFA-Comment-Letter-re-FICC-Rule-Propoals-As-submitted-4.17.24-1.pdf> (arguing that the Commission should require that (1) FICC adopt additional rules to streamline and clarify

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from clearing and settling transactions with any other SEC registered clearing agency, creating a de facto monopoly for FICC as the only clearing agency for U.S. Treasuries. Second, FICC proposes costly new ongoing membership requirements, which would be costly, unnecessary and will further limit the availability of direct membership.

## I. The Proposal is Anti-Competitive

The Commission acknowledged in the Treasury Clearing Rule<sup>4</sup> that FICC is currently the only covered clearing agency (“**CCA**”) with respect to U.S. Treasury securities and that this creates “concentration risk for the clearing of U.S. Treasury securities transactions.”<sup>5</sup> For this reason, it is important for the Commission to work with other potential entities seeking to provide clearing services for U.S. Treasury securities to mitigate this concentration risk.

The Proposed Rule would undermine this effort by requiring each FICC netting member to submit exclusively *to FICC* all eligible secondary market transactions (“**ESMT**”) to which the netting member is a counterparty. This requirement would significantly impede the ability of new clearing agencies from registering with the SEC to compete with FICC for clearing ESMTs and would impose unnecessary barriers to competition in violation of the Securities Exchange Act of 1934 and the regulations thereunder.

Given the significant expansion in the scope of transactions involving U.S. Treasury securities that will need to be cleared, it is critical that FICC amend its rulebook to remove any impediments to potential new clearing agencies from entering the market. In addition, the Commission should monitor these developments closely to help promote a healthy and efficient market for U.S. Treasury securities.

For these reasons, we believe the Commission should direct FICC to amend the Proposal to make explicitly clear that its netting members will not be required to submit all ESMTs to FICC. To

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its indirect access models and ensure that each model is actually made available in practice by direct participants; (2) FICC conduct and publish a legal enforceability analysis covering the insolvency, resolution, or liquidation of FICC or a direct participant prior to adopting the Proposed Rules; (3) FICC not adopt the Proposed Rules until additional information is provided to market participants regarding the expansion of cross-margining opportunities; and (4) FICC amend its rules to remove impediments to firms accessing other clearing agencies that may provide clearing services for U.S. Treasury securities, as provided in Section IV).

<sup>4</sup> “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) (“**Treasury Clearing Rule**”).

<sup>5</sup> *Id.* at 2720.

promote competition, 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.

## **II. The Proposed New Ongoing Membership Requirements are Costly and Unnecessary and Raise Inappropriate Barriers to Direct Membership**

FICC is proposing several new ongoing membership requirements that are costly and unnecessary and raise inappropriate barriers to direct membership. The most notable example is the Proposal's requirement that members perform an independent review every three years to confirm they are complying with the trade submission requirement (**"Triennial Review Requirement"**), which we believe does not have any analog in other clearing agency rulebooks.

In practice, this requirement will likely require clearing firms to engage an independent consultant to conduct the review, which will require firms to produce significant amounts of sensitive trading data to third parties, raising intellectual property leakage concerns. In addition to this, the cost of providing this information will raise barriers to entry for direct membership in FICC, at a time when the Commission should be working to encourage membership in FICC. The Triennial Review Requirement disincentivizes direct membership in FICC and is unnecessary given the proposed annual trade submission attestation, the policy and procedure requirements, and the expanded FICC examination authority. For this reason, it should be eliminated.

Several other proposed ongoing membership requirements are costly, unnecessary, and have not been adequately justified by FICC. For example, the Proposal would provide FICC with discretion to demand that applicants to FICC membership hire an independent third-party consultant to review the applicant's business plan at its own expense. The Proposal would also require potential netting members to be in operation for at least a year (rather than six months as is currently required), which could limit the ability of funds to register and obtain direct membership through affiliated entities in advance of the Commission's mandate.

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We appreciate the opportunity to provide our comments to the Commission regarding the Proposed Rule, and we would be pleased to meet with the Commission and its staff to discuss our comments. If the staff has questions or comments, please do not hesitate to contact Matthew Daigler or the undersigned at (202) 730-2600 with any questions regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han  
Executive Vice President  
Chief Counsel and Head of Global Regulatory Affairs  
MFA

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