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

Submitted via the SEC's Online Form

April 23, 2024

Dear Ms. Countryman:

Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities (SR-FICC-2024-005); Notice of Filing of Proposed Rule Change to Amend the Clearing Agency Risk Management Framework (SR-FICC-2024-006); Notice of Filing of 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 15c-3-3a (SR-FICC-2024-007)

The Alternative Investment Management Association (AIMA)[1] appreciates the opportunity to submit this response to proposed rule changes submitted by the Fixed Income Clearing Corporation ("FICC") to the U.S. Securities and Exchange Commission ("SEC" or "Commission") that are intended to promulgate SEC-adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities (each a "Treasury CCA"),

[1] AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $3 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US$1 trillion of private credit assets. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

including FICC.[2] At a high level, the three FICC proposed rules address access to clearance and settlement;[3] the separate calculation, collection and holding of margin;[4] and FICC governance/risk management (altogether, the "FICC Proposals").[5] The FICC Proposals have been submitted separately, but their practical effects must be considered in the aggregate, which is why we have compiled our comments on the proposed rule changes into this single response.

The U.S. Treasury market is the deepest and most liquid government securities market in the world. It plays a central role in both the U.S. and global economies, finances the federal government, provides a safe and liquid asset and facilitates the implementation of monetary policy. Since FICC is currently the only Treasury CCA, it is therefore essential that the rules it adopts to amend its clearing framework support – and do not limit or discourage – activity in the cash Treasury and/or repo markets.

AIMA has a long history of supporting central clearing because, when calibrated appropriately, it has increased resiliency, liquidity and transparency in the financial market. In our initial response to the Treasury Clearing Proposal,[6] we emphasized the importance of resolving existing indirect access-related issues before implementing a clearing mandate, i.e., moving to a done-away model.[7] The Commission declined to adopt changes in the Treasury Clearing Rule required to address this threshold concern; instead, it directed FICC to propose rules to broadly facilitate and improve access to clearance and settlement.

Unfortunately, more is required in order for FICC to meet it statutory and regulatory obligations, including:

- making meaningful changes to facilitate access to clearance and settlement services for indirect participants;
- considering reasonable alternatives to achieve its policy goals vis-à-vis a minimum margin amount in segregated customer accounts;

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2 SEC, "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) (the "Treasury Clearing Rule").

3 FICC, "Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities", 89 Fed. Reg. 21363 (Mar. 27, 2024) (the "Access Proposal").

4 FICC, "Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of 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", 89 Fed. Reg. 21603 (Mar. 28, 2024) (the "Margin Proposal").

5 FICC, "Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework", 89 Fed. Reg. 21068 (Mar. 26, 2024) (the "Governance Proposal").

6 SEC, "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", 87 Fed. Reg. 64610 (Oct. 25, 2022) (the "Treasury Clearing Proposal").

7 Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (Dec. 22, 2022), *available at*: https://www.sec.gov/comments/s7-23-22/s72322-20153388-320795.pdf.

- publishing a robust legal enforceability analysis; and
- explicitly providing that any advisory or stakeholder council maintains sufficient representation from the customer community.

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We elaborate on these points in more detail in the attached Annex. For further information on the points raised in this letter, please contact Daniel Austin, Head of U.S. Markets Policy and Regulation, by email at daustin@aima.org.

Yours sincerely,

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA

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

ANNEX

1. The FICC Proposals do not reasonably facilitate access to clearance and settlement services for indirect participants.[8]

Pursuant to the Treasury Clearing Rule, FICC is required to "ensure that it has the appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants."[9] While the FICC Proposals introduce several changes and clarifications to FICC's clearing offerings, these changes are not sufficient to facilitate access to clearing for indirect participants.

FICC proposes to rename the correspondent clearing/prime broker services to the "Agency Clearing Service" ("ACS") and will continue to offer its Sponsored Member model. The FICC Proposals also permit a direct participant to designate any of its indirect participant accounts as a segregated account, which would result in FICC applying additional protections to margin posted by an indirect participant into that account. This, in sum, will result in four different indirect access models that direct members may choose to offer (segregated sponsored and ACS, and non-segregated sponsored and ACS).

"Done-Away" Clearing

Unfortunately, the FICC proposals do not change the status quo with respect to done-away clearing, and they would continue to permit FICC clearing members to condition access to clearing on the forced bundling of execution and clearing services. In a market subject to mandatory clearing, failing to address the done-away problem leaves a critical gap in access to clearing and settlement services and places significant competitive burdens on indirect participants.

Without a done-away model, indirect participants will face new and unnecessary costs in having to either bundle execution and clearing services or establish additional clearing relationships so that they can engage with multiple execution counterparties. Alternatively, these market participants may limit their cash Treasury and/or repo transactions, thereby negatively impacting market liquidity.

Done-away clearing is also necessary for AIMA members to continue trading anonymously on order books such as ATSs and inter-dealer broker platforms, given that the brokers operating those platforms do not offer customer clearing. By not making meaningful changes to facilitate a done-away model, FICC risks undermining its other proposed changes and its goal of facilitating access to clearance and settlement.

We note that, to the extent indirect participants agree to post their own margin under FICC's new models, there is no reasonable basis for a direct member to refuse to clear a trade between the indirect participant and its execution counterparty. We therefore strongly encourage FICC to

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8 We use the terms "indirect participant" and "customer" interchangeably in this letter.

9 Treasury Clearing Rule, *supra* note 2, at 2714.

reconsider its position in view of the current (and growing) customer demand for a done-away model and the benefits it will achieve.

Cross-Margining

The FICC Proposals do not address the availability of cross-margining for indirect participants. While we appreciate that FICC has stated its intent to expand existing cross-margining programs to indirect participants, we are aware of no formal progress on this issue or even a definitive roadmap or timeline for executing on this critical enhancement. Given the coordination that will be required to achieve this effort, including between the CME, SEC and Commodity Futures Trading Commission, among others, FICC must act quickly and prioritize expanding cross-margining for it to be successful in achieving this change *before* the mandate becomes effective.

Given that FICC did not provide substantive information regarding potential revisions to its cross-margining agreement to allow for customer cross-margining, market participants are unable to fully evaluate the effects of the FICC Proposals and will otherwise be significantly disadvantaged under the SEC's mandate. For example, cross-margining for indirect participants will be important for unlocking purported benefits associated with the proposed types of segregated accounts, which could enable indirect participants to calculate margin across correlated positions across clearinghouses. Failing to address cross-margining will result in increased costs for customers and prevent them from utilizing that capital in more productive ways.

Cross-margining is of central importance in evaluating FICC's access models and, therefore, must be considered in connection with the FICC Proposals. At a minimum, however, FICC must provide a timeline for expanding cross-margining for indirect participants in order for them to evaluate access models and prepare for the mandate.

Prohibiting Other Anti-Competitive Practices

The FICC Proposals do not address other potentially anti-competitive practices that may limit indirect participants' access to clearing. For example, FICC rules do not currently prohibit direct members from conditioning access to clearing on the disclosure of an indirect participant's execution counterparty or imposing other limits on the number of counterparties with whom an indirect participant may trade. In order to meet its obligations under the Securities Exchange Act of 1934 (the "Exchange Act") and SEC rules thereunder, FICC should take further action to prevent direct members from imposing unreasonable and anti-competitive conditions to clearing services.

Rationalizing Access Models

The Access Proposal would provide a public roadmap for the types of membership and the different participation models, as well as simplify some rulebook definitions. As stated above, FICC proposes four different indirect access models, the offering of which will be entirely in a direct member's discretion. Market participants therefore have little ability to predict the clearing services direct members will offer or the terms thereof at this time. Moreover, it is unclear what the intended use

cases are for the various models proposed (e.g., it is unclear what the different intended use cases are for the segregated ACS model compared to the segregated Sponsored Model).

Accordingly, and ahead of the current implementation date for these rules (March 31, 2025), FICC should provide an analysis of the expected use cases for each of the four proposed models. Once these new models are established, FICC should publicly disclose which clearing members are utilizing which models, along with other metrics regarding their clearing activity (such as cleared volume and transaction volumes for each model). This will enable indirect participants to assess their current clearing relationship(s) and determine whether there may be other clearing members that provide services more aligned with their business needs.

2. **The Margin Proposal should not provide for a brightline segregated margin requirement of no less than $1 million in cash. Instead, FICC should consider alternatives to achieve the desired policy goals.**

We broadly support the proposed change to segregate customers' margin from that of clearing members. As a part of this otherwise beneficial change, FICC has proposed that the segregated margin requirement be no less than $1 million in cash because (i) it is consistent with the cash minimum for each netting member's margin portfolio and (ii) FICC cannot use the customer's funds to address other losses other than those resulting from the customer. We disagree with this brightline minimum margin requirement and believe there are alternatives that can still achieve the intended policy goals.

We appreciate that, as the Margin Proposal explains, this minimum may be considered appropriate to mitigate risk exposure beyond that of a particular customer's trading; however, it is unclear how this amount will materially improve FICC's risk exposure. It appears that FICC is trying to find an appropriate balance of risk allocation between clearing members and their customers by transferring some of the cost and risk to indirect participants or perhaps creating the optics of equity. However, the $1 million cash requirement seems arbitrary, nor does it seem practical or necessary – especially in the current done with model – to force every customer that elects to segregate their margin from that of their clearing member to be subject to the same minimum charge as the clearing member.

The minimum margin requirement will have myriad negative effects on customers and market liquidity generally. For example, if a customer has multiple clearing relationships and elects to submit activity to FICC through a segregated account associated with each relationship, the customer will need to maintain at least $1 million cash in each account. This will increase costs for customers and prevent them from utilizing that capital in more productive ways. Moreover, such a requirement will likely prevent customers from effectively cross-margining their repo and futures positions.

In addition, if the qualified institutional buyer ("QIB") requirement is eliminated to facilitate access for smaller market participants, these market participants may not be able to afford the $1 million cash requirement. QIBs, by definition, manage more than $100 million in securities on a discretionary basis, so it follows that the $1 million cash minimum could represent a sizable portion of a non-QIB's assets, potentially disincentivizing the non-QIB from pursuing indirect access to FICC. Therefore,

although FICC has proposed to facilitate and increase access to clearing by eliminating the QIB requirement, it nevertheless has, with the $1 million cash minimum, proposed to maintain a high barrier to access for smaller market participants. These two proposals thus appear to work against each other.

Instead of mandating a minimum margin requirement, we believe there are reasonable alternatives that should be considered. First, FICC could require a much lower minimum charge, e.g., $100,000-$250,000 for each segregated account. A second option would be adopting a dynamic minimum charge that is determined on a monthly or quarterly basis as a percentage of the customer's average exposure over that period. The amount of such percentage could be determined so that the minimum would typically fall in the range outlined above, with a cap of $250,000.[10]

3. The SEC should not approve the FICC Proposals until FICC has published a robust legal enforceability analysis.

Section 17A of the Exchange Act and SEC rules promulgated thereunder require FICC provide: (i) for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities and (ii) sufficient information to enable market participants to identify and evaluate risks incurred by participating in FICC. The Margin Proposal provides that segregated customer margin will not be considered an "Actual Deposit" to secure obligations of the netting member to FICC and will also not be part of the "Clearing Fund" used for loss mutualization. Despite this assurance, FICC has not provided a formal analysis regarding the ability of indirect participants to recover funds or securities posted to its direct member in the event of a member's default or FICC failure.

Because the FICC Proposals do not include such analysis and because of the short comment period, we are limited in our ability to meaningfully comment on the FICC Proposals. For example, if a clearing member defaults, what does it mean for the clearing member's customers generally or its individual customers? A thorough explanation and analysis of the default process vis-à-vis each indirect access model will benefit both current and prospective FICC customers, as well as supplement the above clarification and requirement that no segregated customer margin can be used to cover a netting member's default or FICC failure.

4. Any advisory or stakeholder council established under the Governance Proposal must maintain sufficient representation from the customer community.

The Governance Proposal describes how FICC may solicit views of various stakeholders and provides that its access models will be reviewed annually by an advisory or stakeholder council. Specifically,

[10] Although not the subject of this letter, FICC should be able to ensure it is not undercollateralized during times of extreme market volatility if it adopts a new minimum margin requirement that it recently proposed and is still pending. *See* FICC, "Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Adopt a Minimum Margin Amount at GSD", 89 Fed. Reg. 18,991 (Mar. 15, 2024) (the "Minimum Margin Proposal"). FICC already charges its netting members $1 million for each account, and, given the approach it has taken in the Minimum Margin Proposal, we believe it is reasonable for FICC's credit risk analysis to only look at the sponsoring member or the agent who is guaranteeing the customer's performance.

the access models would be reviewed annually to determine whether FICC is providing appropriate and flexible means to facilitate access to clearance and settlement. The annual review would include, among other things, the documentation of instances where transactions are treated differently and whether the variation is both necessary and appropriate.

We appreciate that FICC has proposed to establish a council to consider its access models. However, any such council must include representation from the indirect participant community to ensure that any potential changes to the access models facilitate access to clearance and settlement and do not limit or harm customer access or unnecessarily increase costs.

Therefore, a rule finalizing the Governance Proposal should provide that indirect participants will be allotted at least 50% of the representation on the council. Furthermore, FICC should explicitly describe how and to what extent the feedback and recommendations made by the indirect participant members on the council (or indirect participants at large) will be considered and/or incorporated into the review process and potential changes to the access models.