



May 22, 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 Adopt a Minimum Margin Amount at GSD” [Release No. 34-99710; SR-FICC-2024-003]; “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” [Release No. 34-99817; SR-FICC-2024-005]; 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” [Release no. 34-99844; SR-FICC-2024-007]**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC”) in response to the above referenced rule proposals (“Proposed Rules”) from the Fixed Income Clearing Corporation (“FICC”). SIFMA has 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 Treasury market’s depth and liquidity. While, as we noted in our comment on

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<sup>1</sup> 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>.

the SEC’s original proposal on Treasury clearing,<sup>2</sup> 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.

Pursuant to the final SEC clearing rule<sup>3</sup>, FICC has proposed to amend its rules to: (i) improve how market participants can access central clearing of covered Treasury securities transactions and (ii) specify how margin will be calculated, collected and held, including where a direct participant is depositing the margin of an indirect participant in a “segregated account”. In addition, FICC has proposed to amend its rules to include a minimum margin amount (“MMA”).

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

### **Executive Summary**

The SEC Clearing Rule represents the most significant structural change to the Treasury market in many years and implementation of the rules should be done in a careful and analytic manner. We note several areas where we believe the Proposed Rules could be enhanced to ensure a smooth implementation.

**\*\*Liquidation of defaulting Indirect Members:** The Proposed Rules with respect to the Agent Clearing Model should be revised to allow Netting Members to liquidate or transfer positions of defaulting Indirect Participants.

**\*\*Ability to Port:** The Proposed Rules should provide for a porting mechanism.

**\*\*Treatment of Settlement Amounts:** The Proposed Rules should clarify that funds-only settlement amounts are not margin.

**\*\*Cross-margining:** The Proposed Rules should be adapted to facilitate access to cross-margining.

**\*\*Option to use other clearing venues:** The Proposed Rules should permit Netting Members to meet clearing obligations at other clearinghouses.

**\*\*Balance sheet treatment:** FICC should confirm off-balance sheet accounting treatment for Agent Clearing members under the Agent Clearing Service.

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<sup>2</sup> 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](#)).

<sup>3</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, Exchange Act Release No. 99149 (December 13, 2023), 89 Fed.Reg. 2,714 (January 16, 2024) (“Clearing Rule”).

**\*\*Review of the totality of the impact of recent rule changes:** An updated analysis and cost/benefit review is needed of all the recent changes to FICC rules, including the Proposed Rules, minimum margin requirements and special charges for volatile markets

**\*\*Other Regulatory Obligations:** FICC must Consider the possible broad impact on firms' other regulatory obligation including the SEC's Customer Protection Rule (Rule 15c3-3).

**\*\* Treatment of DTCC Stock:** The SEC should permit broker-dealers to treat the common stock of DTCC that such broker-dealers are required to purchase as Direct Members of FICC as an allowable asset under Rule 15c3-1

## **Discussion**

### **1. FICC should revise the Agent Clearing Service Model to allow Netting Members to Liquidate or Transfer Positions of Defaulting Indirect Participants as is Provided for in the Sponsored Service**

In contrast to the rules for the Sponsored Service, the FICC proposals do not provide a close-out mechanism for an Agent Clearing Member with respect to an Executing Firm Customer's position in the event of a default by the Executing Firm Customer. The Sponsored Service model currently provides for the liquidation of a defaulting Sponsored Member's positions. Section 18 of Rule 3A in the FICC GSD Rulebook provides that a Netting Member can close out and calculate a liquidation amount in respect of its positions with a Sponsored Member. This right is not included for Agent Clearing Members.

This means that, under the Proposed Rules, Netting Members acting on behalf of customers under the Agent Clearing model could be left in a position where they need to keep defaulting customers' positions open until the relevant default is resolved---even if the transaction is a term trade---thus constraining the amount of capital such Netting Member can allocate to other customers. Further, being forced to continue to carry the defaulted Executing Firm Customer could destabilize the Netting Member in the event of an Executing Firm Customer insolvency,

FICC may have declined to provide a mechanism for liquidating customer trades under the Agent Clearing model because, in contrast to the Sponsored model, Executing Firm Customers are not members of FICC. Therefore, a "close out amount" cannot be calculated as between the customer and FICC. However, FICC could amend its rulebook to explicitly allow Netting Members to liquidate positions with defaulting customers. Such liquidation, or close-out procedure could then be addressed in account documentation entered into between Agent Clearing Members and their Executing Firm Customers.

The Proposed Rules should permit Netting Members to transfer a defaulting customer's positions to the Netting Member's Proprietary Account or Agent Clearing Member Omnibus Account to flatten open positions of the defaulting Executing Firm Customer. This would provide additional flexibility for Netting Members who act as Agent Clearing Members to address defaulting customer positions.

## **2. The Rules should Provide a Mechanism Allowing Customers to “Port”, or Transfer, Transactions to Another Netting Member**

The Proposed Rules do not currently provide a mechanism to allow indirect Participants to “port”, or transfer, their transactions from one Netting Member to another. An indirect participant may desire such an ability to transfer its positions in the event it is experiencing issues with a Netting Member, including where a Netting Member is approaching insolvency or simply where it chooses to enter into a clearing arrangement with another Netting Member. Not specifically providing for the ability to port, may force a market participant to limit its activity because of its analysis of the risk profile of clearing through its current Netting Member(s). Permitting porting will encourage market participants to continue to be active in this market as they can trade consistent with their own risk assessments and develop arrangements with counterparties and Netting Members consistent with those assessments.

The ability to port positions is an important feature of the cleared swaps and futures market.<sup>4</sup> With appropriate limitations (acceptance of the transferee, sufficient margin), we believe this important risk management tool should be available and specifically provided for in FICC’s rules.

## **3. FICC should Specifically Clarify that Funds-Only Settlement Amounts Are Not Margin**

The SEC should require FICC to provide specific assurance that funds-only settlement amounts will be treated as settlement payments rather than cash margin. FICC’s guidance on this matter is necessary for market participants to accurately gauge their obligations and to ensure compliance with FICC’s applicable margin segregation rules. While the FICC Proposals do not appear to treat funds-only settlement amounts as client-delivered margin subject to segregation, the absence of an explicit carve-out necessitates further clarification.

## **4. FICC should Detail and Explain How its Rules Will be Adapted to Facilitate Access to Cross-Margining Solutions for both Direct Participants and Indirect Participants**

The SEC should require FICC to include in the Proposed Rules a provision for cross-margining U.S. Treasury transactions cleared at FICC with transactions cleared through other clearinghouses.

Cross-margining programs significantly lower the costs of clearing to market participants by permitting them to calculate risk-based margin requirements against positions in different financial products that may be cleared at different clearinghouses. Market participants rely heavily on such cross-margining programs available under different regulatory regimes and would expect to have similar flexibility to cross-margin transactions involving U.S. Treasury securities that will be cleared at FICC and other clearinghouses.

The Proposed Rules, however, do not address whether any cross-margining programs would be available to participants and how current proposals to separately account for house and

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<sup>4</sup> CME Rule 853.A.

customer margin would be affected by them. We recognize that FICC and the CME have proposed a cross-margining program that would allow a customer to trade U.S. Treasury securities out of a futures account. However, this proposal has not been finalized and, when it is, it will likely have an impact on the way Netting Members calculate, collect and hold customer margin requiring FICC to revisit the rules. We believe it would be more efficient to incorporate this concept within the rules now as this will allow market participants to be in a good position to offer comments on a proposal to operationalize cross-margining and its interaction with FICC rules.

**5. The Rules should not Preclude FICC Netting Members From Satisfying the Clearing Mandate by Clearing Through Other Clearing Venues**

The SEC should require FICC to make clear that members would not be precluded from fulfilling clearing obligations by clearing at other clearinghouses. It is important for FICC to confirm or provide clarification that the Proposed Rules will not prohibit or disincentivize Netting Members from clearing transactions through another clearing agency should another clearing agency enter the market. We are particularly concerned about language that states, or implies, that a Netting Member must clear certain transactions with FICC.

**6. FICC should confirm Off-Balance Sheet Accounting Treatment for Agent Clearing Members under the Agent Clearing Service**

In order to ensure the success of the Agent Clearing Model, FICC should ensure that the structure permits an Agent Clearing Member to treat any transaction for a client as off-balance sheet. Without such determination and clarity, the Agent Clearing Service may be capital intensive so that firms would not be incentivized to undertake the arrangements contemplated by the rules.

Clarity around this point will result in firms being more likely to be in a position to consider whether to provide this service broadly. The Agent Clearing Service will only be a success if firms can determine, as a business and risk matter, whether and how to offer done away clearing. We believe that addressing these issues will negate the need for any rules-based requirement that firms must provide done away services.

**7. The SEC should Require FICC to Consider, Review and Update the Analysis of the Proposed MMA in light of all Recent Changes to Margin requirements Including the Proposed Rules**

**a. More data/analysis is needed from FICC before giving effect to the proposed rule change to better understand liquidity risk**

FICC should provide further data and analysis of the MMA proposal in light of the Proposed Rules and other changes that have been implemented with respect to margin levels. FICC should demonstrate that the cumulative effect of this proposal, along with other margin

changes<sup>5</sup>, does not unnecessarily increase margin requirements past reasonable and necessary levels over periods of volatility. The cumulative impacts of all these changes remain unknown and the potential to limit activity and the consequent impact to liquidity had not been comprehensively studied.

It is impossible to properly assess the impact of the rule change with the limited data provided by FICC. Specifically with respect to the MMA proposal, we are concerned that the MMA rule as proposed could have significant negative liquidity and pro-cyclical impacts in an environment where clearing increases significantly and encompasses a large portion of the Treasury market. As noted above, this is on top of other margin requirements.

A lack of data prevents a proper assessment of the impact of the MMA proposal on individual firms and the system as a whole. FICC's proposal is based on a single impact study period and relies on averages to make the case that the impact of the proposed rule change will be modest, masking the actual impact of MMA proposal. The back testing provided shows the daily impact would be extremely uneven, being either 0% or a factor significantly larger than the ~20% average noted by FICC. Many days in FICC's selected impact study period show a greater than 50% increase in margining requirements.

As noted above, the presentation of average daily data over FICC's selected impact study period (July 2021 – July 2023) masks the true impact of the MMA Proposal. A better measurement of liquidity impact would be peak aggregate additional margin required (for both a 1 day & 5-day period). The impact over the March 2020 period of stress should be analyzed. And, in light of the fact that mandatory clearing is expected to increase the amount of cleared transactions in FICC by \$4 trillion per day, it is crucial that the impact of the MMA proposal is analyzed and understood. It is interesting that FICC cites poor performance of its existing VaR model during March 2020 as a driver for the MMA proposal yet does not show how MMA would have performed over that historical stress period. We would guess that the systemic impact in March 2020 could be much more significant than any time during the chosen impact study period, but without FICC providing the data, we can't be sure how significant such impact would be.

**b. Minor changes should be made to make the proposed rule less procyclical in a manner that reasonably balances enhancing margining and adverse system impacts.**

The MMA proposal has potential to materially impact system liquidity, notably in times of stress. It does not adequately address impact on system liquidity or explore anti-procyclicality measures as suggested by several industry groups and regulators following an examination of the “dash for cash” in March 2020. The aggregate daily average increase in VaR Charges over the impact study period was approximately \$6 billion. As discussed above, this is an average over the two-year period – the largest liquidity drain will be significantly greater than this.

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<sup>5</sup> See, for example, “Collection of Special Charge at Volatile Market Events”, Memo from FICC to Government Securities Division Members, April 12, 2024. FICC will collect a special charge from Netting Members on days immediately before certain data releases if certain market conditions are met.

Given that there are known trade-offs between procyclical nature of margining and adverse impacts to the market, it is surprising that FICC did not address or explore procyclicality at all in the MMA proposal. We suggest that FICC should consider revising the MMA proposal to include one or more anti-procyclical measures such as:

- Using an average (or weighted average) of the existing VaR figure and the proposed MMA when MMA rises above the existing VaR
- Phasing-in posting additional margin when MMA charges are triggered, with the additional margin required under the rule called in stages, reaching 100% over three or more days, for example.
- Defining targets for maximum % increase in margin caused by MMA over specified time periods (e.g. one day, five days)
- Limiting use of intraday margin calls, especially in stressed markets

Such changes would help to smooth out increases and decreases in margining to avoid extreme reactions to changes in volatility.

c. **Lack of transparency, quick implementation, together with a lack of tools and resources do not support market preparedness.**

Industry and regulatory reviews of margining during the COVID Crisis recommend improvements and best practices that include increasing the transparency in how margin is calculated to enable participants to identify risks, costs, etc. Robust data and tools allow market participants to better predict margin calls from clearing agencies providing central counterparty services. So far, FICC has failed to provide any significant amount of transparency to prepare market participants for implementation of the MMA proposal. To help avoid surprises and disruptions in the market, FICC should:

- Provide members both VaR calculations (the existing VaR calculation and the MMA calculation) daily;
- Provide a calculator for firms to calculate their MMA ahead of implementation of implementation of the MMA proposal; and
- Phase-in implementation of the MMA proposal, including a parallel run period where MMA is calculated but not called.

There is no clear benefit to approving the change based on the limited impact study, no transparency, and quick implementation versus the potential adverse effects of the rule change on the market.

Given the important role FICC plays in the Treasury market, SIFMA supports collection of appropriate levels of margin to ensure the safety and soundness of the clearing house. FICC needs to ensure that margin levels meet the needs of the clearinghouse and are at the right level to provide protection for the activities of this vitally important infrastructure piece. However,

this should not be done in a way that could drive some market participants from the market as this could lessen available liquidity and limit the diversity of market participants types----such diversity is an important and beneficial feature of the Treasury market.

FICC should cover its risk exposure to members with a risk-based margin system that provides adequate protection to the clearinghouse and does so in a manner that limits adverse market liquidity impacts and material market disruptions backed up by rigorous data and analysis and in light of all the other changes to the clearing structure and increased volumes. We believe that the current MMA proposal and the accompanying analysis does not take into consideration the significant changes coming to the Treasury market through enhanced required clearing and the associated significant increase in volumes that will go through the clearinghouse. This proposed rule should not be approved until further detailed analysis is done and that analysis should incorporate expected increases in cleared volumes and incorporate the totality of the impact of changes in margin regimes in that analysis.

#### **8. FICC must Consider the Possible Broad Impact on Firms' Other Regulatory Obligation**

SIFMA believes that FICC needs to consider the possible broad impact of the Proposed Rules on firms' other regulatory compliance obligations, including the SEC's customer protection rule (Rule 15c3-3).

#### **9. The SEC should Permit Broker-Dealers to Treat the Common Stock of DTCC that such Broker-Dealers are Required to Purchase as Direct Members of FICC as an Allowable Asset under Rule 15c3-1**

In connection with the Clearing Rule, the SEC amended Rule 15c3-3 to permit margin required and on deposit at FICC to be included as a debit item in the customer reserve formula, subject to certain conditions. The amendment to Rule 15c3-3 allows more efficient use of margin and capital for cleared trades relative to current market practice, which is important given the significance of the Clearing Rule in that it provides relief for broker-dealers that are Direct Members.

The SEC has previously permitted Series A Preferred Stock issued by the Depository Trust Corporation (DTC), for which a broker-dealer is required to purchase under DTC's clearing fund formula to be considered an allowable asset. There are many similarities between the Series A Preferred and the Common Stock: Purchases of each were mandatory for certain broker-dealers, purchasers of such stock are limited to direct participants, firms that cease to be direct participants are required to sell their Stock, the method for payment is automated as set forth in the FICC Rulebook.

The requested change in treatment of the DTCC Common Stock will provide relief with respect to broker-dealers that are Direct Members of FICC with respect to their Net Capital calculations. The current common share purchase price required by DTCC is \$59,327.12 per share. For 50,908 shares issued and outstanding, this results in an aggregate outstanding share value of over \$3 billion. Net Capital relief could be significant (and warranted), especially as the

usage of FICC's services will increase for those broker-dealers providing clearing services to indirect participants.

## **Conclusion**

SIFMA strongly supports 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. FICC has been pro-active in informing market participants of the models available to them and to the structures that they plan to meet the SEC's requirements and the needs of the markets. The central role that FICC's rules will play in this change makes it important that those rules are implemented in a way that ensures transparency and confidence. 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 me with any questions ([rtoomey@sifma.org](mailto:rtoomey@sifma.org) or 212.313.1124) or for more information, and we thank you for your consideration of this request.

Sincerely,



Robert Toomey  
Head of Capital Markets  
Managing Director/Associate General Counsel

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