

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104748; File No. S7-2026-03]

## **Notice of an Application of the Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc. for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 in Connection with the Cross-Margining of U.S. Treasury Securities and Related Futures**

January 30, 2026.

On December 11, 2025, the Securities and Exchange Commission (“Commission”) received an application from the Fixed Income Clearing Corporation (“FICC”), a clearing agency registered with the Commission, and the Chicago Mercantile Exchange Inc. (“CME”)<sup>1</sup> to obtain an exemption pursuant to Section 36<sup>2</sup> of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>3</sup> in accordance with the procedures set forth in Exchange Act Rule 0-12.<sup>4</sup> Specifically, FICC and CME are requesting exemptive relief, on behalf of certain of their joint clearing members that are dually-registered as broker-dealers and futures commission merchants, from Section 15(c)(3) of the Exchange Act<sup>5</sup> and Rule 15c3-3<sup>6</sup> thereunder in connection with a program to cross-margin customer positions in U.S. Treasury securities positions cleared by

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<sup>1</sup> The CME is a derivatives clearing organization (“DCO”) registered with the Commodity Futures Trading Commission (“CFTC”).

<sup>2</sup> 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth procedures for filing applications for orders for exemptive relief pursuant to Section 36. The application is attached as an Appendix to this notice (“Application”). Defined terms in this notice are the same as used in the Application, unless we note otherwise.

<sup>5</sup> 15 U.S.C. 78o(c)(3).

<sup>6</sup> 17 CFR 240.15c3-3.

FICC and related futures cleared by CME in a futures account from the period of novation through settlement of a trade. The Commission is publishing this notice to provide interested persons with an opportunity to comment.

## **I. Background**

On December 13, 2023, the Commission adopted rules under the Exchange Act to amend the standards applicable to certain clearing agencies to enhance risk management practices for central counterparties in the U.S. Treasury market and facilitate additional clearing of U.S. Treasury securities.<sup>7</sup> As described in the Treasury Clearing Adopting Release, several commenters discussed facilitating cross-margining of indirect participants' (i.e., customers' or end users') transactions in U.S. Treasury securities with those in U.S. Treasury futures as a method to lower costs of trading and thereby incentivize additional clearing.<sup>8</sup> In response to these comments, the Commission agreed that cross-margining can be beneficial to market participants.<sup>9</sup>

FICC and CME currently have in place a proprietary cross-margining arrangement that allows a broker-dealer that is: (1) registered under Section 15(b) of the Exchange Act<sup>10</sup> and also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity

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<sup>7</sup> See *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 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) ("Treasury Clearing Adopting Release").

<sup>8</sup> See Treasury Clearing Adopting Release, 89 FR at 2750.

<sup>9</sup> *Id.* at 2751. Other organizations also have recommended that the Commission permit clearinghouse/DCO level cross-margining for customers for certain U.S. Treasury securities transactions cleared at a clearing agency and related futures cleared at a DCO, and that the cross-margining occur in a futures account. See *CFTC Global Markets Advisory Committee Advances Key Recommendations*, CFTC Release No. 8860-24 (Feb. 8, 2024); see also Treasury Market Practices Group, Consultative White Paper: *Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices* (Feb. 26, 2025).

<sup>10</sup> 15 U.S.C. 78o(b).

Exchange Act<sup>11</sup> (“CEA”) (a “BD-FCM”), and (2) a joint clearing member of both FICC and CME, acting for itself or for certain non-customer affiliates, to have initial margin requirements for certain FICC-cleared eligible securities positions and certain CME-cleared eligible futures positions calculated in a way that recognizes the risk offsets across those positions. Customers who clear positions at FICC and CME through a joint clearing member are not eligible to have their positions cross-margined under the current cross-margining arrangement. FICC and CME have requested that the Commission permit FICC and CME to extend this existing cross-margining arrangement to customer positions.<sup>12</sup>

To implement a customer cross-margin program, FICC and CME, on behalf of their joint BD-FCM members, filed the Application for exemptive relief from Section 15(c)(3) of the Exchange Act and Rule 15c3-3<sup>13</sup> thereunder under Section 36 of the Exchange Act. Rule 15c3-3 under the Exchange Act,<sup>14</sup> the broker-dealer customer protection rule, requires broker-dealers that hold customer cash and securities to treat these assets in a manner that facilitates their prompt return to the customers if the broker-dealer fails financially. The goal of Rule 15c3-3 is

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<sup>11</sup> 7 U.S.C. 6f(a)(1).

<sup>12</sup> In connection with the Application, FICC also has submitted a proposed rule change to the Commission needed to implement the customer cross-margin program with CME. *See* FICC, *Notice of Filing of Proposed Rule Change to Amend and Restate the Second Amended and Restated Cross-Margining Agreement Between FICC and CME and Amend Related GSD Rules*, Exchange Act Release No. 104485 (Dec. 22, 2025), 90 FR 60791 (Dec. 29, 2025) [File No. SR-FICC-2025-025]. CME and FICC have also submitted a petition for an exemptive order from the CFTC in connection with the proposal. *See* CFTC, *Proposal to Provide Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation*, 90 FR 58525 (Dec. 17, 2025).

<sup>13</sup> 17 CFR 240.15c3-3.

<sup>14</sup> Section 15(c)(3)(A) of the Exchange Act provides, in pertinent part, that no broker-dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (with exceptions for certain securities) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of broker-dealers including, but not limited to, the acceptance of custody and use of customers’ securities and the carrying and use of customers’ deposits or credit balances. 15 U.S.C. 78o(c)(3)(A).

to place a broker-dealer in a position where it is able to wind down in an orderly self-liquidation without the need of financial assistance provided by the Securities Investor Protection Corporation (“SIPC”) through a formal proceeding under the Securities Investor Protection Act of 1970 (“SIPA”), or through proceedings under subchapter III of Chapter 7 of the U.S. Bankruptcy Code (*i.e.*, the stockbroker liquidation provisions).<sup>15</sup>

## **II. Summary of the Application and Proposed Conditions**

FICC and CME request that, pursuant to Section 36 of the Exchange Act, the Commission provide exemptive relief to a firm that is a BD-FCM and a joint clearing member of FICC and CME (“Eligible BD-FCMs”) from Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder to permit Eligible BD-FCMs to hold certain securities and customer assets used to margin, secure, or guarantee such positions in a “futures account” as defined in CFTC Regulation 1.3 and subject to CEA Section 4d(a) and (b) and related CFTC regulations thereunder.<sup>16</sup> As described in the Application, the requested relief would not apply to any transactions that are not novated to FICC and any cash and securities that have been received upon final settlement of any such transactions.<sup>17</sup>

In its Application, FICC and CME state that they currently have in place a cross-margining arrangement that allows a joint clearing member to have the initial margin requirements for certain FICC-cleared Treasury securities and certain CME-cleared Treasury and interest rate futures contracts (together, “Eligible Positions”) calculated in a way that recognizes

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<sup>15</sup> See 15 U.S.C. 78aaa *et. seq.*; see also *Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule*, Exchange Act Release No. 102022 (Dec. 20, 2024), 90 FR 2790, 2791 (Jan. 13, 2025).

<sup>16</sup> See Application, at p.1.

<sup>17</sup> See *e.g.*, notes 1 and 16 in the Application.

the risk offsets across these positions (“Proprietary XM Arrangement”).<sup>18</sup> The Application requests that customers of a firm that is an Eligible BD-FCM (“Eligible Customers”) be permitted to elect to cross-margin for Eligible Positions cleared by the Eligible BD-FCM at FICC and at CME respectively. As described in the Application, the participating Eligible Customer (an “XM Customer”) would be able to designate Eligible Positions that are securities (“XM Securities Positions”) and associated margin to be carried in a futures account that also contains Eligible Positions that are futures (together with XM Securities Positions, the “XM Customer Positions”) and associated margin on the books and records of an Eligible BD-FCM and generally subject to the requirements and protections of the CEA and the CFTC regulations, rather than in a securities account subject to the Exchange Act and the rules thereunder.<sup>19</sup> The XM Customer Positions and associated margin would also, in the event of an Eligible BD-FCM’s insolvency proceeding under SIPA, be subject to subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (*i.e.*, the commodity broker liquidation provisions) and the CFTC’s Part 190 regulations thereunder rather than SIPA or subchapter III of Chapter 7 of the U.S. Bankruptcy Code.<sup>20</sup>

In the Application, FICC and CME describe the features of the “Proposed Customer XM Framework,”<sup>21</sup> including eligible positions, eligible participants, margin calculation and collection, account structure at the clearinghouse and clearing member level, and default

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<sup>18</sup> This arrangement was originally approved by the Commission and CFTC in 2003 and amended in 2023. *See* note 3 and accompanying text in the Application; *see also* section II. of the Application.

<sup>19</sup> *See* section I. of the Application.

<sup>20</sup> *See* section IV.c. of the Application. This bankruptcy treatment would be achieved through the execution of a required non-conforming subordination agreement between the XM Customer and the Eligible BD-FCM. *See* proposed conditions below and section VI. of the Application (discussing the proposed conditions).

<sup>21</sup> *See* section III. of the Application.

management process.<sup>22</sup> Further, FICC and CME describe the treatment of XM Customer Positions and associated margin of an Eligible BD-FCM under the CEA and CFTC regulations, and the treatment of the XM Customer Positions and associated margin in the event of an Eligible BD-FCM's insolvency.<sup>23</sup>

FICC and CME also describe the reasons that they believe support the Commission finding that the requested exemptive relief is consistent with Section 36 of the Exchange Act.<sup>24</sup> These reasons described in detail in the Application include: (1) aligning initial margin requirements more closely with the risk profile of the portfolio; (2) incentivizing XM Customers to post initial margin for XM Securities Positions, rather than rely on their clearing member to do so; (3) incentivizing Eligible Customers to use the same Eligible BD-FCMs for securities and futures clearing and therefore facilitate the development of done-away clearing; and (4) ensure robust protection of customer assets for participating XM Customers.<sup>25</sup>

Finally, in the Application, FICC and CME also propose certain conditions in support of their request for exemptive relief from Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder for the "Proposed Customer XM Framework."<sup>26</sup> Specifically, in the Application, FICC and CME propose that:

- All money, securities, or property received by an Eligible BD-FCM to margin, guarantee, or secure XM Customer Positions or accruing as a result of such trades or contracts, and held subject to the terms of a Commission order shall be carried in a futures account for

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<sup>22</sup> See section III. of the Application.

<sup>23</sup> See section IV. of the Application.

<sup>24</sup> See section V. of the Application.

<sup>25</sup> See section V. of the Application.

<sup>26</sup> See section VI. of the Application; *see also* section III. of the Application for a description of the features of the Proposed Customer Framework.

or on behalf of the XM Customers and shall be deemed to have been received by the Eligible BD-FCM and be accounted for and treated and dealt with as belonging to the XM Customers of the Eligible BD-FCM consistent with CEA Section 4d(a)(2).

- Each Eligible BD-FCM shall enter into a non-conforming subordination agreement with each XM Customer prior to the XM Customer's participation in cross-margining under the Proposed Customer XM Framework, pursuant to which the XM Customer shall specifically agree and acknowledge that (i) its XM Securities Positions and associated FICC-held margin will not receive customer treatment under the Exchange Act or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD-FCM; (ii) its XM Securities Positions and associated FICC-held margin will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; and (iii) claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the Eligible BD-FCM with respect to its XM Securities Positions and associated FICC-held margin will be subordinated to the claims of all other customers, as the term "customer" is defined in 11 U.S.C. 741 or SIPA.<sup>27</sup>
- Cross-margining shall be applied to XM Customer Positions only if both the Eligible Customer and its Eligible BD-FCM agree to participate.
- Positions of an Eligible Customer shall be eligible for cross-margining if such positions are otherwise Eligible Positions under the Proprietary XM Arrangement, as the same may be amended from time to time.

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<sup>27</sup> See section VI. of the Application.

- Each of FICC and CME shall calculate initial margin requirements for XM Customer Positions on a gross basis (i.e., customer-by-customer) using the same margin reduction methodology as used in the Proprietary XM Arrangement.
- FICC and CME shall amend their rulebooks as may be necessary to effect the Proposed Customer XM Framework and the terms of any Commission order.
- Each Eligible BD-FCM shall require each of its XM Customers to deposit, at a minimum, the aggregate amount of initial margin required by each clearinghouse in respect of the XM Customer's XM Customer Positions.
- Each Eligible BD-FCM must be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and must be in compliance with applicable FICC and CME rules and CFTC requirements (including segregation and related books and records provisions) for the futures accounts in connection with the Proposed Customer XM Framework.
- Before receiving any money, securities, or property of an Eligible Customer to margin, guarantee, or secure XM Customer Positions in connection with the Proposed Customer XM Framework, the Eligible BD-FCM must furnish to the Eligible Customer a disclosure document containing (i) a statement indicating that such money, securities, or property will be held in an futures account, and that the Eligible Customer has elected to seek protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such property; and (ii) a statement that the broker-dealer segregation requirements of Section 15(c)(3) of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the



stockbroker liquidation provisions, will not apply to such money, securities, or property of the Eligible Customer.<sup>28</sup>

### **III. Request for Comment**

We request and encourage any interested person to submit comments regarding the Application, including whether the Commission should grant the request. In particular, we solicit comment on the following questions:

1. Do commenters agree with FICC's and CME's reasons described in the Application<sup>29</sup> in support of the Commission finding that the exemptive relief is consistent with Section 36 of the Exchange Act? If so, why or why not.
2. Are there other or alternative conditions not outlined in the Application that the Commission should consider? If so, please describe those conditions.
3. Does the proposed language required in the non-conforming subordination agreement<sup>30</sup> achieve the objectives of: (1) removing customers participating in cross-margining under the Proposed Customer XM Framework from the definition of "customer" under Rule 15c3-3, SIPA, and the stockbroker liquidation provisions with respect to securities or cash held in CFTC futures accounts; (2) not undermining the protections afforded to customers participating in cross-margining under the Proposed Customer XM Framework under the rules of the CFTC, the CEA, and commodity broker liquidation provisions; and (3) not requiring customers participating in cross-margining under the Proposed Customer XM Framework to subordinate their claims, in the event that their customer claims are not fully satisfied by the distribution of

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<sup>28</sup> See section VI. of the Application.

<sup>29</sup> See, e.g., section V. of the Application; see also supra note 25 and accompanying text in this Notice.

<sup>30</sup> See note 27 and accompanying text in this Notice.

- assets held in their CFTC futures accounts, to assets that may be included in the debtor's general estate? Is there alternative language that would be better to achieve these objectives?
4. Should the Commission consider requiring FICC or CME to provide Eligible BD-FCMs and their Eligible Customers with the ability to select a securities account as an alternative to a CFTC futures account as a condition to granting exemptive relief?
  5. Should there be any limitations on the type of customers that may participate in cross-margining under the Proposed Customer XM Framework as a condition to granting exemptive relief? If so, what type of limitation(s)? If not, why not?
  6. Would the exemption requested in the Application have a competitive impact – either positive or negative – on broker-dealers and their customers in the context of clearing for U.S. Treasury securities? What would be the potential benefits and costs of the exemption? Would the exemption and conditions impact investor protection? If so, what would those impacts be?
  7. Should the Commission consider broadening the exemptive relief requested by FICC and CME to be available to any clearing agency and DCO and their joint clearing members with a cross-margining program that meets the conditions of an exemptive order? Why or why not?
  8. If the exemptive relief was broadened, how would the conditions proposed by FICC and CME in the Application be modified?

Comments should be received on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-2026-03 on the subject line.

Paper Comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2026-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/other.shtml>).

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

For further information, you may contact Michael A. Macchiaroli, Associate Director; Raymond A. Lombardo, Assistant Director; Sheila Dombal Swartz, Senior Special Counsel; or Nina Kostyukovsky, Special Counsel at (202) 551-5500, Office of Broker-Dealer Finances, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

Note: The following appendix containing the Application will not appear in the *Federal Register*.

**Appendix: The application for an exemption pursuant to Section 36 of the Exchange Act.**



**Laura Klimpel**  
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December 11, 2025  
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Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
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Re: Request for Exemptive Relief from the Application of Section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-3 Thereunder to Allow Broker-Dealers Registered Under Section 15(b) of the Exchange Act that are Dually Registered as Futures Commission Merchants Pursuant to Section 4f(a)(1) of the Commodity Exchange Act to Hold Certain Assets in a Futures Account that is Subject to the Requirements of Section 4d(a) and (b) of the Commodity Exchange Act and Subchapter IV of Chapter 7 of Title 11 of the United States Code and the Rules and Regulations Thereunder

Dear Ms. Countryman:

Pursuant to Rule 240.0-12 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the Fixed Income Clearing Corporation (“**FICC**”) and Chicago Mercantile Exchange Inc. (“**CME**” and together with FICC, the “**Petitioners**”) respectfully request that the Securities and Exchange Commission (the “**Commission**”) grant, under the circumstances and subject to the conditions and representations set forth in this letter, exemptive relief to certain joint clearing members of the Petitioners that are broker-dealers (“**BDs**”) registered under Section 15(b) of the Exchange Act, and that are also registered as futures commission merchants (“**FCMs**”) pursuant to Section 4f(a)(1) of the Commodity Exchange Act, as amended (the “**CEA**”) (such dually registered entities referred to herein as “**BD-FCMs**”), to permit the Petitioners to extend their existing cross-margining arrangement to customer positions. The expanded cross-margining program would be available to customers of a firm that is a BD-FCM and that is a joint clearing member of FICC (in the capacity of a “**Netting Member**” as defined under FICC’s Government Securities Division Rulebook (the “**FICC Rules**”)) and CME (such joint clearing members, “**Eligible BD-FCMs**”).

Specifically, the Petitioners request that, pursuant to Section 36(a) of the Exchange Act, the Commission provide exemptive relief to Eligible BD-FCMs from Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder to permit Eligible BD-FCMs to hold certain transactions in U.S. Treasury securities that have been novated to FICC and customer assets used to margin, secure or guarantee such positions in a “futures account” as defined in Commodity Futures Trading Commission (the “**CFTC**”) Regulation 1.3 and subject to CEA Section 4d(a) and (b) and related CFTC Regulations thereunder.<sup>1</sup>

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<sup>1</sup> As described below, the requested relief would not apply to any such transactions that are not novated to FICC and any cash and securities that have been received upon final settlement of any such transactions. *See infra* note 16. Accordingly, any such positions and assets would be subject to otherwise applicable securities laws.

## I. INTRODUCTION

FICC is registered as a clearing agency with the Commission under the Exchange Act and is subject to comprehensive regulation thereunder, including Section 17A of the Exchange Act and Exchange Act Rule 17ad-22. In its capacity as a registered clearing agency, FICC operates as a central counterparty and thus is a covered clearing agency under Exchange Act Rule 17ad-22. FICC provides central clearing services both for cash market transactions in U.S. Treasury securities and for repurchase and reverse repurchase transactions involving U.S. Treasury securities (collectively, “**Treasury Securities Transactions**”) in addition to certain other types of fixed income securities transactions. CME is registered as a derivatives clearing organization (“**DCO**”) with the CFTC under the CEA and is subject to comprehensive regulation thereunder, including Section 5b of the CEA, the CFTC’s Part 39 Regulations and other CFTC regulations. As a DCO, CME clears futures and options on futures (together, “**futures**” or “**futures contracts**”) listed for trading on the CME Group exchanges (and transactions in other types of derivatives). Each of CME and FICC is designated by the Financial Stability Oversight Council (“**FSOC**”) as a systemically important financial market utility (“**SIFMU**”).

FICC and CME currently have in place a cross-margining arrangement (the “**Proprietary XM Arrangement**”) that allows a joint clearing member, acting for itself or for certain non-customer affiliates, or a pair of affiliated clearing members, to have the initial margin requirements for certain FICC-cleared Treasury Securities Transactions (“**Eligible Securities Positions**”) and certain CME-cleared Treasury and interest rate futures contracts (“**Eligible Futures Positions**”, and together with Eligible Securities Positions, the “**Eligible Positions**”) calculated in a way that recognizes the risk offsets across those positions.<sup>2</sup> The Commission and the CFTC originally approved the Proprietary XM Arrangement in 2003, and in 2023 approved certain modifications to the arrangement to expand the scope of Eligible Positions, modify the margin methodology to estimate more accurately the risk presented by the cross-margined positions, strengthen the default management coordination between FICC and CME, and simplify the sharing of losses arising out of a joint clearing member default.<sup>3</sup>

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<sup>2</sup> The list of Eligible Positions are set out in Exhibits A and B of the Second Amended and Restated Cross-Margining Agreement between FICC and CME (“**XM Agreement**”), available at [https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc\\_cme\\_crossmargin\\_agreement.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf).

<sup>3</sup> See Order Approving Proposed Rule Change To Amend the Fixed Income Clearing Corporation’s Cross-Margining Agreements With the Chicago Mercantile Exchange, BrokerTec Clearing Company, and the Board of Trade Clearing Corporation and To Eliminate the Cross-Margining Agreement with the New York Clearing Corporation, Securities Exchange Act Rel. No. 49003 (Dec. 29, 2003), 69 Fed. Reg. 712 (Jan. 6, 2004); Order Granting Approval of Proposed Rule Change To Amend and Restate the Cross-Margining Agreement Between FICC and CME, Securities Exchange Act Rel. No. 98327 (Sept. 8, 2023), 88 Fed. Reg. 63185 (Sept. 14, 2023). FICC and CME also recently made certain technical changes to the Proprietary XM Arrangement. See Order Approving Proposed Rule Change To Amend and Restate the Cross-Margining Agreement Between FICC and CME, 90 Fed. Reg. 31043 (July 11, 2025). These changes are principally designed to allow certain non-customer affiliates of joint clearing members to continue to participate in the Proprietary XM Arrangement in accordance with changes FICC recently made to its account structure to implement the Commission’s new rule requiring that clearing agencies that clear transactions in

Currently, customers who clear Eligible Positions at FICC and CME through a joint clearing member that is a BD-FCM are not eligible to have their positions cross-margined under the Proprietary XM Arrangement. However, the Commission, market participants, academics, and others have found that cross-margining systems like the Proprietary XM Arrangement facilitate access to clearing, enhance liquidity in the Treasury market, reduce risk, and otherwise promote the resilience and robustness of the Treasury market.<sup>4</sup>

The Petitioners agree with these views. Cross-margining of Eligible Positions cleared for customers would serve to align the initial margin requirements for customer portfolios with the risk those portfolios present. Such alignment would incentivize customers to maintain more balanced portfolios with lower risk. Moreover, it would encourage customers to post margin for their Treasury Securities Transactions rather than look to their clearing members to do so. As the Treasury Markets Practices Group (“**TMPG**”) recently concluded, a customer’s posting of margin for its Treasury Securities Positions is a prudent risk management tool that can limit the risk the customer presents to its clearing member and in turn the risk that the clearing member

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Treasury securities calculate, collect, and hold margin for transactions in U.S. Treasury securities that a direct participant submits on behalf of an indirect participant separately and independently from margin for the direct participant's proprietary positions. *See* 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, Securities Exchange Act Rel. No. 99149 (Dec. 13, 2023), 89 Fed. Reg. 2714 (Jan. 16, 2024); Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, 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, Securities Exchange Act Rel. No. 101695 (Nov. 21, 2024), 89 Fed. Reg. 93763 (Nov. 27, 2024); Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement of All Eligible Secondary Market Transactions in U.S. Treasury Securities, Securities Exchange Act Rel. No. 101694 (Nov. 21, 2024), 89 Fed. Reg. 93784 (Nov. 27, 2024).

<sup>4</sup> *See* 89 Fed. Reg. 2714, *supra* note 3, at 2751, 2813 (stating that “[The Commission] historically has supported and approved cross-margining at clearing agencies and recognized the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing functions, reducing clearing agency risk by centralizing asset management, and harmonizing liquidation procedures” and emphasizing that “rules requiring segregation of client margin should facilitate cross-margining.”); CFTC Global Markets Advisory Committee Advances Key Recommendations, CFTC Release No. 8860-24 (Feb. 8, 2024) (“For two decades, the CFTC and the [Commission] have approved cross-margining for Treasury securities transactions and Treasury futures, promoting the efficiency and well-functioning of the U.S. Treasury markets—the backbone of the global financial system.”); Group of Thirty Working Group on Treasury Market Liquidity, U.S. Treasury Markets: Steps Toward Increased Resilience (July 2021), available at: <https://group30.org/publications/detail/4950> (“[w]ider use of cross-margining would reduce the risk that increases in initial margin requirements on the futures leg of cash-futures basis trades result in forced sales of Treasury securities....”); Managed Funds Association, Comment Letter on Proposed Rules Regarding 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 (Dec. 21, 2022) (“Cross-margining would lower costs for market participants by allowing them to apply margin across positions submitted for clearing through various clearinghouses.”); Securities Industry and Financial Markets Association & Institute of International Bankers, Comment Letter on 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 (Dec. 22, 2022) (“Reduced margin requirements obtained through cross-margining serve an important function in increasing market liquidity through balance sheet savings and incentivizing risk reduction through hedging.”).

presents to the clearing organization.<sup>5</sup> Further, the posting of margin by a participating customer would reduce the need for the clearing member to finance its customer's margin obligations on their Treasury Securities Transactions, which in turn would bring down the cost of clearing and thus increase the clearing member's clearing capacity. As a result, extending cross-margining to customers would enhance indirect participant access to central clearing for Treasury Securities Transactions.

The Petitioners further believe that allowing customers to participate in the Proprietary XM Arrangement would facilitate implementation of the SEC's recently promulgated rules requiring the clearing of a substantial portion of Treasury Securities Transactions (the "**Treasury Clearing Requirement**").<sup>6</sup> The Treasury Clearing Requirement is "designed to protect investors, reduce risk, and increase operational efficiency."<sup>7</sup> Successful implementation of the requirement, however, depends on the availability of clearing member capacity to ensure customers can universally access clearing for Treasury Securities Transactions. As noted above, allowing customers to avail themselves of cross-margining should make the posting of margin by those customers more attractive. Such posting, as the TMPG has recognized, will likely be critical to ensuring clearing members have sufficient capacity to clear all of the Treasury Securities Transactions that will be in scope of the Treasury Clearing Requirement because it will avoid the need for the clearing member to use its own resources to fund the margin obligations.<sup>8</sup>

In 2024, the CFTC's Global Markets Advisory Committee ("**GMAC**"), which represents a cross section of BDs, FCMs, customers, industry associations, central counterparties, and market infrastructure providers, recommended a framework for extending the Proprietary XM Arrangement to customers.<sup>9</sup>

Consistent with the GMAC's framework, the Petitioners have developed a proposal (the "**Proposed Customer XM Framework**") to extend their existing Proprietary XM Arrangement to positions cleared and carried by a joint clearing member for customers. Specifically, the Petitioners propose to allow customers of a firm that is an Eligible BD-FCM to elect to cross-margin Eligible Positions cleared by the Eligible BD-FCM at FICC and at CME. Under the Proposed Customer XM Framework, the participating customer may designate Eligible Securities Positions (such positions so designated, "**XM Securities Positions**") and associated

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<sup>5</sup> See Treasury Market Practices Group, Consultative White Paper: Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices (Feb. 26, 2025) (recommending that customers, rather than clearing members, post the margin required by FICC in respect of cleared U.S. Treasury repurchase transactions.)

<sup>6</sup> See 89 Fed. Reg. 2714, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> See Treasury Market Practices Group, Consultative White Paper: Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices (Feb. 26, 2025).

<sup>9</sup> See CFTC Global Markets Advisory Committee Advances Key Recommendations, CFTC Release No. 8860-24 (Feb. 8, 2024), [https://www.cftc.gov/media/9591/gmac\\_FICC\\_CME110623/download](https://www.cftc.gov/media/9591/gmac_FICC_CME110623/download).



margin to be carried in a futures customer account that also contains Eligible Futures Positions of the customer (such Eligible Futures Positions together with XM Securities Positions, the “**XM Customer Positions**”) and associated margin on the books and records of an Eligible BD-FCM and generally subject to the requirements and protections of the CEA and the CFTC regulations, rather than in a securities account subject to the Exchange Act and the rules thereunder. The XM Customer Positions and associated margin would also, in the event of an Eligible BD-FCM’s insolvency proceeding under the Securities Investor Protection Act of 1970 (“**SIPA**”), be subject to subchapter IV (commodity broker liquidation) of Chapter 7 of the U.S. Bankruptcy Code (“**Bankruptcy Code**”) and the CFTC’s Part 190 Regulations thereunder (“**Part 190**”), rather than SIPA or subchapter III of Chapter 7.

## II. EXISTING PROPRIETARY XM ARRANGEMENT

FICC and CME adopted the Proprietary XM Arrangement two decades ago to enhance access to clearing for proprietary Eligible Positions of clearing members and facilitate more risk appropriate margin calculations. Since then, certain clearing members have utilized the arrangement to align more closely their margin requirements with the aggregated risk of their positions and do so without exposing FICC and CME to greater risk.

In 2023, based on their experience with the Proprietary XM Arrangement, FICC and CME proposed amendments to expand the scope of Eligible Positions available for cross-margining, expand the scope and efficiency of the margin offsets available to cross-margining participants, and improve the efficiency and effectiveness of the default management process. The CFTC and the Commission reviewed and approved the amendments.<sup>10</sup>

Under the Proprietary XM Arrangement, Eligible Positions of a participating clearing member are identified and treated as a combined portfolio for margin calculation purposes. Both FICC and CME use their own margin models on the combined portfolio and jointly apply a margin savings percentage to the portfolio based on the more conservative result. Each of FICC and CME then applies an initial margin requirement based on the calculation using its margin model as reduced by that margin savings percentage (such calculation, the “**XM Calculation Methodology**”).

To ensure that FICC and CME can benefit from the combined portfolio and associated initial margin, as part of the XM Agreement, FICC and CME have entered into a limited cross-guaranty (“**Cross-Guaranty**”). Pursuant to the Cross-Guaranty, each clearinghouse (as “**Guarantor**”) agrees that, subject to specified conditions, it will pay the other (as “**Beneficiary**”) amounts owing by a defaulted clearing member to the Beneficiary in accordance with an agreed upon calculation methodology. The Cross-Guaranty provides the Guarantor with subrogation rights such that the Guarantor would be able to claim reimbursement from the defaulted clearing member for amounts paid by the Guarantor to the Beneficiary in respect of amounts due from

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<sup>10</sup> See 88 Fed. Reg. 63185 (Sept. 8, 2023). As noted, *supra* note 3, FICC and CME also recently made certain technical changes to the Proprietary XM Arrangement, which the Commission and CFTC approved in July 2025.

such clearing member pursuant to the Cross-Guaranty. The Guarantor would then be able to look to the value of such clearing member's Eligible Positions cleared at the Guarantor and associated initial margin held at the Guarantor to satisfy such reimbursement obligation.

In addition to the XM Agreement between FICC and CME, each participating clearing member (or pair of affiliated clearing members) is also required to sign a Cross-Margining Participant Agreement, which—among other things—provides for the grant of a security interest and subjects the clearing member to the terms of the XM Agreement, which includes reimbursement obligations, cross-default provisions in respect of the clearing member, and clearing member representations.

Under the existing Proprietary XM Arrangement, the Petitioners each separately hold the margin associated with the Proprietary XM Arrangement, subject to each of their applicable regulatory requirements and subject to the aforementioned cross-guarantees.

### III. PROPOSED CUSTOMER XM FRAMEWORK

The Proposed Customer XM Framework would have the following features:<sup>11</sup>

- *Eligible Positions.* The scope of positions eligible for the customer-level cross-margining arrangement would be identical to the Eligible Positions under the existing Proprietary XM Arrangement.<sup>12</sup>
- *Eligible Participant.* Any person that is a “futures customer” (as defined in CFTC Regulation 1.3)<sup>13</sup> and a “public customer” (as defined in CFTC Regulation 190.01)<sup>14</sup> of an Eligible BD-FCM would be eligible to participate in cross-margining so long as the customer has Eligible Futures Positions cleared at CME

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<sup>11</sup> The Petitioners have also submitted a petition for an exemptive order from the CFTC in connection with the Proposed Customer XM Framework (the “**Proposed CFTC Order**”).

<sup>12</sup> In connection with the Proposed Customer XM Framework, the Petitioners will also seek to amend the XM Agreement, subject to all applicable regulatory approvals, to set out the Proposed Customer XM Framework under the same agreement.

<sup>13</sup> 17 C.F.R. § 1.3 (defining “futures customer” as “any person who uses [an FCM], introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or any option on such contract; *Provided, however,* an owner or holder of a proprietary account as defined in this section shall not be deemed to be a futures customer within the meaning of sections 4d(a) and 4d(b) of the [CEA], the regulations in this chapter that implement sections 4d and 4f of the [CEA] and § 1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a futures customer within the meaning of the [CEA] and §§ 1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the [CEA].”).

<sup>14</sup> 17 C.F.R. § 190.01 (defining “public customer” as “(1) With respect to [an FCM] and in relation to: (i) The futures account class, a futures customer as defined in § 1.3 of this chapter whose futures account is subject to the segregation requirements of section 4d(a) of the [CEA] and the regulations in this chapter that implement section 4d(a), including as applicable §§ 1.20 through 1.30 of this chapter....”).

and Eligible Securities Positions cleared at FICC (such customers, “**Eligible Customers**”). As a result, eligibility would be limited to persons that would be eligible for the full protections of the Part 190 distributional rules discussed below in the unlikely event of an Eligible BD-FCM insolvency.

- *Voluntary Participation.* Cross-margining would be applied to XM Customer Positions only if both the Eligible Customer and its Eligible BD-FCM agree to participate (any participating Eligible Customer, an “**XM Customer**”).
- *Margin calculation and collection.* Initial margin at each clearinghouse for an XM Customer’s XM Customer Positions would be calculated on a gross basis (i.e., customer-by-customer), with potential margin reductions for XM Customer Positions calculated using the same XM Calculation Methodology as used in the Proprietary XM Arrangement. Eligible BD-FCMs would be required to collect from each XM Customer, at a minimum, the aggregate amount of initial margin required by each clearinghouse in respect of the XM Customer’s XM Customer Positions.<sup>15</sup> FICC and CME would each hold initial margin as calculated using the XM Calculation Methodology.
- *Account Structure at Clearing Member Level.*
  - Within its internal books and records, an Eligible BD-FCM would be required to carry (i.e., record) all of an XM Customer’s XM Customer Positions and associated margin, including XM Securities Positions and associated margin held at FICC (such margin, “**FICC XM Customer Margin**,” and collectively with such XM Securities Positions, the “**FICC Customer Property**”), in a futures account as defined in CFTC Regulation 1.3, subject to CEA Section 4d(a) and subject to the CFTC’s related regulations as modified by the Proposed CFTC Order.<sup>16</sup> To the extent the Eligible BD-FCM may hold futures customer funds for an XM Customer’s cross-margined futures account in excess of the amount

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<sup>15</sup> For example, suppose that FICC calculates the margin requirement for an XM Customer’s XM Securities Positions to be \$100 without taking into account the risk offsets of the combined portfolio, and \$30 after taking into account such risk offsets (i.e., the risk offsets would give rise to a 70% reduction), and CME calculates the margin requirement for an XM Customer’s Eligible Futures Positions to be \$200 without taking into account the risk offsets of the combined portfolio, and \$50 after taking into account such risk offsets (i.e., the risk offsets would give rise to a 75% reduction). The controlling margin saving percentage would be the more conservative result, which would be 70% (i.e., the lower of the 70% reduction calculated by FICC and the 75% reduction calculated by CME). Accordingly, the Eligible BD-FCM would be required to post \$30 (i.e., \$100 minus a 70% reduction) to FICC and \$60 (200 minus a 70% reduction) to CME and collect \$90 from the XM Customer (i.e., the \$30 posted to FICC plus the \$60 posted to CME).

<sup>16</sup> Because Eligible Securities Positions are limited to certain Treasury Securities Transactions that have been novated to FICC, neither a securities transaction that has not been novated to FICC, securities delivered under a novated Treasury Securities Transaction that has settled, nor cash proceeds of such a transaction would constitute an Eligible Securities Position subject to the Proposed Customer XM Framework.

required by FICC and CME, the Eligible BD-FCM would be required to hold such funds on a segregated basis with a permitted depository consistent with its regulatory obligations under the CEA and CFTC regulations.

- An XM Customer would only be permitted to designate its Eligible Securities Positions cleared through the Eligible BD-FCM as XM Securities Positions to be carried in a futures account if such account also contains the customer's Eligible Futures Position(s).
- Each XM Customer would be required to agree to have its FICC Customer Property carried in a futures account and enter into a subordination agreement pursuant to which it would agree that its claim for the return of FICC Customer Property will not receive customer treatment under the Exchange Act or SIPA and that such property will not be treated as "customer property" as defined in Section 741 of subchapter III (stock broker liquidation) of Chapter 7 of the Bankruptcy Code in a liquidation of the Eligible BD-FCM.<sup>17</sup>
- *Account Structure at Clearinghouse Level.*<sup>18</sup>
  - CME would record all Eligible Futures Positions on its books and records.
  - CME would hold associated margin posted to CME as required by CEA Section 4d, CFTC Regulations 1.20, 1.49, 39.15(b)(1) and (c), and 39.36(g) in the same manner as it treats all other futures customer margin.
  - FICC would record an XM Customer's XM Securities Positions along with other FICC-cleared positions of the XM Customer in an account on its books and records for recording the Eligible BD-FCM's XM

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<sup>17</sup> This would be consistent with the approach approved by the Commission and CFTC in connection with other cross-margining arrangements. *See* Order Approving Proposed Rule Change to Expand the One-Pot Cross-Margining Program with New York Portfolio Clearing, LLC to Certain "Market Professionals", Securities Exchange Act Rel. No. 66989 (May 15, 2012), 77 Fed. Reg. 30032 (May 21, 2012); Order Approving a Proposed Rule Change To Expand the OCC/CME Cross-Margin Program to Market Professionals on a Temporary Basis Through November 30, 1993, 56 Fed. Reg. 61458 (Dec. 3, 1991). This approach would also be consistent with the approach adopted in permitting the portfolio margining of swaps and security-based swaps that are credit default swaps. *See* Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Cleared Swaps and Security-Based Swaps That Are Credit Default Swaps, Securities Exchange Act Rel. No. 93501 (Nov. 1, 2021), 86 Fed. Reg. 61357 (Nov. 5, 2021); Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps, Securities Exchange Act Rel. No. 68433 (Dec. 14, 2012), 77 Fed. Reg. 75211 (Dec. 19, 2012); Order, Treatment of Funds Held in Connection with Clearing by LCH SA of Single-Name Credit Default Swaps, Including Spun-Out Component Transactions (Nov. 1, 2021); Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (Jan. 14, 2013).

<sup>18</sup> For a graphic depiction of the account structure, *see* Exhibit A.

Customers' transactions (the "**FICC XM Customer Position Account**"), which would constitute a new type of Indirect Participants Account as defined in the FICC Rules.

- FICC would credit FICC XM Customer Margin to an account on FICC's books and records in the name of the Eligible BD-FCM for the benefit of its XM Customers (the "**FICC XM Customer Margin Account**"). This is consistent with how FICC treats Segregated Customer Margin under the FICC Rules today; such margin is credited to an account on FICC's books and records (i.e., the "Segregated Customer Margin Custody Account") that FICC maintains for a Netting Member for the benefit of such Netting Member's Segregated Indirect Participants.<sup>19</sup>
- To hold FICC XM Customer Margin, FICC would use an account it has established at the Federal Reserve Bank of New York ("**FRBNY**") for the purpose of holding "Segregated Customer Margin" under the FICC Rules, which is customer margin that a Netting Member of FICC has designated for segregation in accordance with the FICC Rules (the "**Existing FRBNY Segregated Account**"),<sup>20</sup> and account(s) at one or more bank(s) insured by the Federal Deposit Insurance Corporation (each, a "**Bank**") in the name of FICC and clearly labeled and acknowledged by the Bank as held for the benefit of XM Customers (each, a "**Segregated Bank Account**").
- The Existing FRBNY Segregated Account is maintained consistently with Note H of Exchange Act Rule 15c3-3a. In connection with the Proposed Customer XM Framework, FICC would seek to amend the FICC Rules to provide that the Existing FRBNY Segregated Account may hold cash FICC XM Customer Margin in addition to Segregated Customer Margin (but no other assets), and the written notice from the FRBNY in connection with the Existing FRBNY Segregated Account would be amended to specify that the cash in the Existing FRBNY Segregated Account is also held pursuant to the cross-margining order issued by the Commission in response to this petition and the related Proposed CFTC Order.
- Each Segregated Bank Account would be separate from the accounts holding FICC's own assets, margin for the Eligible BD-FCM's proprietary positions, and margin for positions of any Eligible BD-FCM's customers that do not participate in cross-margining.

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<sup>19</sup> See FICC Rules, Rule 2B, Section 3.

<sup>20</sup> See FICC Rules, Rule 2B, Section 3; Rule 4, Section 1(a).

- *Cross-Guaranty and Pledge.* The Proposed Customer XM Framework would utilize the same default management process as the existing Proprietary XM Arrangement, and the same Cross-Guaranty as the existing Proprietary XM Arrangement. In addition, the Eligible BD-FCM would, as under the existing Proprietary XM Arrangement, grant FICC and CME a lien on the XM Customer Positions and associated margin in order to secure the obligations arising in respect of each XM Customer's XM Customer Positions. Furthermore, FICC and CME would take steps to perfect CME's security interest in the FICC XM Customer Margin.<sup>21</sup>

As described in greater detail below, the goal of these features is to allow XM Customers and their clearing members to obtain the critical benefits of cross-margining without compromising customer protection. In particular, these features are designed to ensure that the assets of participating customers remain subject to robust protections designed to allow customers to recover their assets fully and quickly in an Eligible BD-FCM liquidation scenario.

#### IV. SAFEGUARDS FOR CUSTOMERS

##### *a. Customer Protection under Exchange Act Rule 15c3-3*

Section 15(c)(3) of the Exchange Act, as implemented through Exchange Act Rule 15c3-3, is part of the securities customer protection regime that protects customers in the event that a registered BD enters into liquidation or insolvency. As the Commission has observed, “[u]nder Exchange Act Rule 15c3-3, a broker-dealer must, in essence, segregate customer funds and fully paid and excess margin securities held by the firm for the accounts of customers.”<sup>22</sup> Under the rule, a “securities account” is “an account that is maintained in accordance with the requirements of section 15(c)(3) of the [Exchange] Act (15 U.S.C. 78o(c)(3)) and § 240.15c3-3.”<sup>23</sup>

Exchange Act Rule 15c3-3 contains two principal requirements related to a BD's protection of customer property unless the BD is exempt from the rule.<sup>24</sup> First, it contains a requirement that a BD maintain physical possession or control of certain customer securities. Second, it contains a requirement that a BD set aside customer funds in a “Special Reserve Bank Account for the Exclusive Benefit of Customers” (the “**Reserve Bank Account**”).

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<sup>21</sup> As under the existing Proprietary XM Arrangement, the Cross-Guaranty would serve to provide each of FICC and CME with the benefit of the margin held at one another as well as the value of the Eligible Positions. However, the manner in which FICC and CME propose for FICC to hold XM Customer Margin would allow for FICC and CME to perfect CME's security interest in such margin through control under the UCC, which perfection would serve as an additional credit enhancement.

<sup>22</sup> Securities Exchange Act Rel. No. 68433 (Dec. 14, 2012), 77 Fed. Reg. 75211, 75213 (Dec. 19, 2012).

<sup>23</sup> 17 C.F.R. § 240.15c3-3(a)(14).

<sup>24</sup> See 17 C.F.R. § 240.15c3-3(k).

With regard to the first requirement, a BD must maintain physical possession or control of customer securities that have been fully paid for as well as “excess margin securities.”<sup>25</sup> Under Exchange Act Rule 15c3-3, a security is in a BD’s physical possession or control if it is: (i) “represented by one or more certificates in the custody or control of a clearing corporation or other subsidiary organization of either national securities exchanges or of a registered national securities association, or of a custodian bank . . . the delivery of which certificates to the broker or dealer does not require the payment of money or value;” (ii) carried for the account of any customer by a BD and in an omnibus credit account in the name of the BD with another BD dealer in compliance with Regulation T; (iii) the subject of a bona fide item of transfer; (iv) in the custody of a foreign depository, clearing agency, or custodian bank; (v) in the custody or control of a bank; (vi) held in or in transit between the offices of the BD or a subsidiary of the BD; or (vii) held in another location approved by the Commission.<sup>26</sup>

With respect to the second requirement, Exchange Act Rule 15c3-3 requires a BD to set aside certain funds in the Reserve Bank Account.<sup>27</sup> To determine the amount of assets that must be held in the Reserve Bank Account, the BD must use the formula set out in Exchange Act Rule 15c3-3a, which lists a number of “credits” and “debits” that are used as a part of the formula.<sup>28</sup> Under the formula, a BD must net such credits against such debits. If there is a net credit amount, the BD must deposit such amount in the Reserve Bank Account. The funds deposited in the account must be cash or certain “qualified securities.”<sup>29</sup> The amount required to be deposited in the Reserve Bank Account must generally be calculated on a weekly basis.<sup>30</sup>

These protections are designed “to protect customers by segregating their securities and cash from the carrying broker-dealer’s proprietary business activities.” Such segregation ensures that if the “broker-dealer fails financially, the customer securities and cash should be readily

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<sup>25</sup> 17 C.F.R. § 240.15c3-3(b). Exchange Act Rule 15c3-3(a)(5) defines “excess margin securities” as “[margin securities] carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer’s account or [margin accounts] which the broker or dealer identifies as not constituting margin securities.” 17 C.F.R. § 240.15c3-3(a)(5).

<sup>26</sup> 17 C.F.R. § 240.15c3-3(c)(1)-(7).

<sup>27</sup> 17 C.F.R. § 240.15c3-3(e)(1).

<sup>28</sup> 17 C.F.R. 240.15c3-3(e); 17 C.F.R. 240.15c3-3a.

<sup>29</sup> 17 C.F.R. § 240.15c3-3(e)(1). A qualified security is defined as a “security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.” 17 C.F.R. § 240.15c3-3(a)(6).

<sup>30</sup> 17 C.F.R. § 240.15c3-3(e)(3). We note that the Commission recently adopted amendments to require certain broker-dealers to provide such calculations on a daily basis. The compliance date for this new requirement is June 30, 2026. *See* Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule, Securities Exchange Act Rel. No. 102022 (Dec. 20, 2024), 90 Fed. Reg. 2790 (Jan. 13, 2025); Extension of Compliance Date for Required Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule, Securities Exchange Act Rel. No. 34-103320 (June 25, 2025), 90 Fed. Reg. 27990 (July 1, 2025).

available to be returned to the customers....”<sup>31</sup> In particular, it ensures that, in the event of the BD’s insolvency, there should be a sufficient amount of “customer property” to satisfy customers’ “net equity” claims against the BD in a proceeding under SIPA or subchapter III of Chapter 7 of the Bankruptcy Code.<sup>32</sup>

Under the Proposed Customer XM Framework, the customer protection provisions applicable to futures accounts would apply to the XM Securities Positions rather than those applicable to securities accounts. Specifically, XM Customers would be required to explicitly acknowledge that their XM Securities Positions would not receive customer treatment under the customer protection regime under SIPA and the Exchange Act. Instead, all XM Customer Positions and associated margin would be carried in a futures account at an Eligible BD-FCM pursuant to the Proposed CFTC Order. Consequently, these assets would be entitled to protection under the CEA and the CFTC regulations promulgated thereunder, including Part 190, which are described in detail below.<sup>33</sup>

***b. Customer Protection for Participating Customers under CEA Section 4d and Related CFTC Regulations***

Under CEA Section 4d and the CFTC’s implementing regulations, an FCM is prohibited from commingling futures customer property with the proprietary funds of the FCM and is prohibited from using such segregated customer property other than to satisfy the obligations of the particular customer to whom it belongs. Specifically, an FCM must “treat and deal with all money, securities, and property received by [the FCM] to margin, guarantee, or secure the trades or contracts of any customer . . . or accruing to such customer as the result of such trades or contracts, as belonging to such customer,” and “money, securities, and property [of a customer] shall be separately accounted for and shall not be commingled with the funds of [the FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held,” subject to limited exceptions for operational commingling of funds belonging to different customers or actions permitted by a CFTC rule, regulation or order.<sup>34</sup> A person (including a DCO) that has received such futures

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<sup>31</sup> Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule, 90 Fed. Reg. 2790, 2794 (Jan. 13, 2025).

<sup>32</sup> *See id.* (“if the failed carrying broker-dealer is liquidated under SIPA, the customer securities and cash should be isolated and readily identifiable as ‘customer property’ and, consequently, available to be distributed to customers ahead of other creditors”); *see also* 15 U.S.C. § 78III; 11 U.S.C. Chapter 7, Subchapter III.

<sup>33</sup> Aside from Exchange Act Rule 15c3-3 and SIPA, participating customers would be entitled to all of the other protections set forth in the Exchange Act and U.S. securities laws more generally. This is because an Eligible BD-FCM would be required to comply with all otherwise applicable U.S. securities laws in relation to XM Securities Positions, except (subject to the terms and conditions set forth herein) for Exchange Act Section 15(c)(3) and Rule 15c3-3.

<sup>34</sup> CEA § 4d(a)(2); 7 U.S.C § 6d(a)(2). The Proposed CFTC Order would be one such order which would permit the commingling of property associated with an XM Customer’s XM Securities Positions and the futures customer property of such XM Customer.



customer property from an FCM must not “hold, dispose of, or use any such [] property as belonging to the depositing [FCM] or any person other than the customers of such [FCM].”<sup>35</sup>

If, to effect the Proposed Customer XM Framework, the Proposed CFTC Order permits the XM Securities Positions and associated margin to be carried by an Eligible BD-FCM in a futures account subject to CEA Section 4d(a) and (b), then such positions and margin must be segregated and separately accounted for accordingly. In addition, a number of protections under CFTC Regulations 1.20 to 1.30 for futures customer property would similarly apply to such XM Securities Positions and associated margin held in a futures account, including:

- CFTC Regulation 1.20, which provides for futures customer funds to be segregated and separately accounted for;
- CFTC Regulation 1.22, which imposes restrictions on an FCM’s ability to use futures customer funds to meet the obligations of another customer;
- CFTC Regulation 1.25, which limits the type of assets in which FCMs are permitted to invest customer funds;
- CFTC Regulation 1.23, which imposes restrictions on an FCM’s ability to withdraw customer funds from segregation;
- CFTC Regulation 1.26, which imposes segregation requirements for the deposit of instruments purchased with futures customer funds; and
- CFTC Regulation 1.29, which imposes restrictions on an FCM’s allocation of losses from investment of customer funds to customers.

FCMs are also subject to other CFTC regulations that serve to reduce the risk to which customer assets in a futures account may be exposed. For example, CFTC Regulation 1.11 requires FCMs to establish, maintain, and enforce a risk management program to mitigate the risks potentially impacting the ability to protect customer assets. Under CFTC Regulation 1.17, FCMs are required to maintain minimum capital levels to ensure they are solvent and financially stable enough to protect customer assets. And, CFTC Regulation 1.32 requires that FCMs accurately compute the amount of customer funds required to be segregated at the close of each business day. Under the Proposed Customer XM Framework, each of these requirements would apply to an Eligible BD-FCM with respect to XM Securities Positions and associated margin carried in a futures account.

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<sup>35</sup> CEA § 4d(b); 7 U.S.C § 6d(b).

***c. Treatment of Participating Customer Positions and Associated Margin of an Eligible BD-FCM Under Part 190 of the CFTC Regulations***

Subchapter IV of Chapter 7 of the Bankruptcy Code and Part 190 provide that, in the insolvency of an FCM, “customer property” shall be distributed to “customers” ratably on the basis of their “net equity” claims, in priority to all other claims (except administrative claims related to the administration of customer property).<sup>36</sup> The Proposed Customer XM Framework is designed to ensure that all FICC Customer Property (i.e., the XM Securities Positions and associated FICC-held margin held) would constitute “customer property” for this purpose and that all participating XM Customers’ claims therefor would constitute “net equity” claims of “customers” (with the status of “public customers” as defined in Part 190). Such treatment is designed to provide XM Customers with the same priority right to receive distributions on their allowed claims with respect to the FICC Customer Property as other public customers of the insolvent Eligible BD-FCM have in respect of their futures positions and associated margin.

***i. FICC Customer Property as “Customer Property” under Part 190***

There are a number of prongs of the customer property definition which support the treatment of FICC Customer Property as futures customer property that benefits from the customer property protections afforded by Part 190.

First, Part 190 includes within the scope of customer property any property “held by or for the account of the debtor, from or for the account of a customer,” including “property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract” (emphasis added).<sup>37</sup> As discussed above, FICC would credit margin it collected in connection with an XM Customer’s XM Customer Positions to a FICC XM Customer Margin Account which would be in the name of the Eligible BD-FCM for the benefit of its XM Customers. Similarly, FICC would record such XM Customer Positions in a FICC XM Customer Position Account which would be an account of the Eligible BD-FCM that is established for the purpose of recording the transactions of XM Customers. XM Customers would constitute futures customers for purposes of Part 190 because the Eligible BD-FCM would carry Eligible Futures Positions on their behalf.<sup>38</sup> Accordingly, the margin FICC collected in connection with an XM Customers’ XM Securities Positions and such XM Securities Positions themselves would be held “for the account” of (i.e., in an account in the name of) the Eligible BD-FCM “for the account of” (i.e., for the benefit of) its futures customers. In addition, the Eligible BD-FCM would record on its books and records the FICC Customer Property as being held in the FCM’s futures customer

<sup>36</sup> 17 C.F.R. § 190.09; 11 U.S.C. Chapter 7, Subchapter IV.

<sup>37</sup> 17 C.F.R. § 190.09(a)(1)(i)(A); *see also* 11 U.S.C. § 761(10) (defining customer property to include “cash, a security, or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer” and “property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract”); 7 U.S.C. § 24(a)(1) (“Notwithstanding title 11, the [CFTC] may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11, by rule or regulation—that certain cash, securities, other property, or commodity contracts are to be included or excluded from customer property”).

<sup>38</sup> *See* Note 41 below.

account. Thus, the FICC Customer Property would also be appropriately viewed as held by the Eligible BD-FCM for the account of futures customers.

Moreover, as mentioned above, an Eligible BD-FCM would be required to grant a lien on the FICC Customer Property to CME to secure the obligations of the Eligible BD-FCM in respect of the XM Customer's Eligible Futures Positions cleared by CME. The Eligible BD-FCM would likewise require each XM Customer to pledge FICC Customer Property to the Eligible BD-FCM to collateralize the XM Customer's obligations arising under its CME-cleared Eligible Futures Positions. Because the Eligible Futures Positions are "commodity contracts" within the meaning of Part 190,<sup>39</sup> the FICC Customer Property would thus also constitute customer property on account of being "property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract."

In addition, Part 190 includes within the scope of customer property "cash, securities, or other property" that is "segregated for customers on the filing date."<sup>40</sup> As described above, FICC would credit margin posted in respect of XM Customers' XM Customer Positions to a FICC XM Customer Margin Account on its books and records, which account would hold exclusively FICC XM Customer Margin. In addition, the Eligible BD-FCM would be required, consistent with CFTC Regulation 1.20, to separately account for all XM Customers' margin and positions. Thus, FICC Customer Property would also be "segregated for customers on the filing date" and therefore be "customer property" under Part 190.

Accordingly, FICC Customer Property would qualify as "customer property" under Part 190 by virtue of being (1) property "held by or for the account of the debtor, from or for the account of a customer," including "property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract," and/or (2) "cash, securities, or other property" that is "segregated for customers on the filing date."

ii. XM Customer Positions and Margin at FICC as Allowable "Customer" "Net Equity" Claims under Part 190

An XM Customer's claims for FICC Customer Property in relation to its XM Customer Positions would be allowable "net equity" claims of a "customer" under Part 190 against customer property in the futures account class because they would be within the scope of the "net equity" definition of the Bankruptcy Code and would be incorporated into step 1 of the "net equity" calculation set out in CFTC Regulation 190.08(b).

CFTC Regulation 190.01 defines "customer" to include "the owner of a portfolio cross-margining account covering commodity contracts and related positions in securities (as defined

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<sup>39</sup> 17 C.F.R. § 190.01 (defining commodity contracts to include "[a] futures or options on futures contract executed on or subject to the rules of a designated contract market...").

<sup>40</sup> 17 C.F.R. § 190.09(a)(ii)(A); *see also* 11 U.S.C. § 761(10)(A) (defining customer property to include "other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer").

in section 3 of the Exchange Act) that is carried as a futures account or cleared swaps customer account pursuant to an appropriate rule, regulation, or order of the” CFTC.<sup>41</sup> As described above, an Eligible BD-FCM would be required to carry all FICC Customer Property in a futures account on its books and records. Accordingly, each XM Customer would be a “customer” within the meaning of Part 190.

CFTC Regulation 190.08 prescribes a five-step process for calculating a customer’s net equity “based on the customer property, including any commodity contracts, held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor.”<sup>42</sup> The first step of that process, set out in CFTC Regulation 190.08(b)(1), requires consideration of the sum of:

- (A) The ledger balance;
- (B) The open trade balance; and
- (C) The realizable market value, determined as of the close of the market on the last preceding market day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

The “ledger balance” is calculated by (A) adding, among other things, (1) “[c]ash deposited to purchase, margin, guarantee, secure, or settle a commodity contract,” (2) “[c]ash proceeds of liquidations of any securities or other property [held by or for the debtor from or for the futures account]”, and (3) “gains realized on trades” and (B) subtracting, among other things, losses realized on trades.<sup>43</sup> The “open trade balance” is calculated by “subtracting the unrealized loss in value of the open commodity contracts held by or for [the customer’s futures account] from the

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<sup>41</sup> 17 C.F.R. § 190.01; *see also* 11 U.S.C. § 761(9)(A) (defining “customer” to include “with respect to [an FCM] — (i) entity for or with whom such [FCM] deals and that holds a claim against such [FCM] on account of a commodity contract made, received, acquired, or held by or through such [FCM] in the ordinary course of such [FCM]’s business as [an FCM] from or for a commodity contract account of such entity; or (ii) entity that holds a claim against such [FCM] arising out of— (I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph; (II) a deposit or payment of cash, a security, or other property with such [FCM] for the purpose of making or margining such a commodity contract; or (III) the making or taking of delivery on such a commodity contract...”).

<sup>42</sup> 17 C.F.R. § 190.08; *see also* 11 U.S.C. § 761 (defining “net equity” as “subject to such rules and regulations as the [CFTC] promulgates under the [CEA], with respect to the aggregate of all of a customer’s accounts that such customer has in the same capacity— (A) the balance remaining in such customer’s accounts immediately after— (i) all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery; and (ii) all obligations of such customer in such capacity to the debtor have been offset; plus (B) the value, as of the date of return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus (C) the value, as of the date of transfer, of— (i) any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and (ii) any cash, security, or other property of such customer transferred to such other person under section 766 of this title to margin or secure such transferred commodity contract.”); 7 U.S.C. § 24(a)(5).

<sup>43</sup> 17 C.F.R. § 190.08(b)(1)(ii).

unrealized gain in value of the open commodity contracts held by or for such account.”<sup>44</sup> For purposes of these calculations, securities positions and associated collateral held in a futures account pursuant to a CFTC-approved cross-margining program are treated as customer property held in a futures account class.<sup>45</sup>

Accordingly, under Part 190, cash FICC XM Customer Margin would form part of the ledger balance because it is cash deposited to margin and secure commodity contracts, while the FICC XM Customer Margin consisting of securities and in-the-money XM Securities Positions would be property held by or for the insolvent Eligible BD-FCM for the XM Customers’ futures account. The XM Customers’ XM Securities Positions could also be viewed as part of the open trade balance because they would be securities positions held in a futures account pursuant to a CFTC-approved cross-margining program. To the extent open XM Securities Positions were liquidated or otherwise resulted in realized gains, those amounts would form part of the ledger balance. Therefore, under Part 190, XM Customers would have allowable net equity claims for FICC Customer Property and the proceeds thereof.

Accordingly, XM Customers’ claims in respect of its FICC Customer Property, as well as other XM Customer Positions and associated margin (i.e., the Eligible Futures Positions and CME-held margin), would be treated identically to the claims of other futures customers in respect of futures customer property in the event the Eligible BD-FCM became subject to an insolvency proceeding under Part 190. As a result, an XM Customer would have “net equity” claims for such positions and margin, which would entitle customers to priority rights to “customer property” *pari passu* with all futures customers of the Eligible BD-FCM with the status of public customers.<sup>46</sup>

### iii. Porting

One of the mechanisms of Part 190 that is designed to facilitate not only a full recovery for customers, but a rapid one, is porting.<sup>47</sup> In particular, Part 190 allows—and indeed requires—the trustee for an Eligible BD-FCM to seek to port customer positions and associated margin to a transferee FCM.<sup>48</sup> FICC has submitted proposed amendments to the FICC Rules that would

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<sup>44</sup> 17 C.F.R. § 190.08(b)(1)(iii).

<sup>45</sup> 17 C.F.R. § 190.01 (paragraph (2) of the definition of “account class”).

<sup>46</sup> Because the Proposed Customer XM Framework would not require that positions and funds of XM Customers be held separately from the futures positions and associated margin of other futures customers, the XM Customers’ claims will not be subject to subordination to other futures customers’ positions. *Cf.* 17 C.F.R. § 190, Appendix B (providing for cross-margined customers to be subordinated to other futures customers in certain circumstances if the positions and funds of such customers are held separately from the futures positions and associated margin of other futures customers pursuant to a CFTC order that requires such segregation).

<sup>47</sup> 17 C.F.R. § 190.00(c)(4) (“In a proceeding in which the debtor is a futures commission merchant, this part sets out a policy preference for transferring to another futures commission merchant, or ‘porting,’ open commodity contract positions of the debtor’s public customers along with all or a portion of such customers’ account equity.”).

<sup>48</sup> 17 C.F.R. § 190.04(a).

expressly allow the porting of positions carried for Executing Firm Customers and Sponsored Members and associated margin in the event FICC ceased to act for an Agent Clearing Member or Sponsoring Member (as such terms are defined in the FICC Rules). Such amendments would facilitate the ability of FICC and CME or a defaulting Eligible BD-FCM's SIPA trustee to port XM Customer Positions and associated margin in the event an Eligible BD-FCM became subject to an insolvency proceeding under Part 190.<sup>49</sup> Such amendments were filed as proposed rule changes under Section 19(b) of the Exchange Act. On September 16, 2025, FICC submitted certain proposed modifications to the amendments in response to market participant feedback.<sup>50</sup> The Commission has instituted proceedings to determine whether to approve or disapprove these proposed rule changes (as modified by the proposed modifications).<sup>51</sup>

## **V. COMMISSION EXEMPTIVE RELIEF UNDER SECTION 36 OF THE EXCHANGE ACT**

As described above, the Petitioners request that the Commission provide exemptive relief to Eligible BD-FCMs from the application of Exchange Act Section 15(c)(3) and Rule 15c3-3 thereunder pursuant to Exchange Act Section 36(a)(1), which provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”<sup>52</sup>

For the reasons set forth in Section IV above, the Petitioners believe that granting the requested relief to support the Proposed Customer XM Framework would be in the public interest and consistent with the protection of investors.

When it adopted the Treasury Clearing Requirement, the Commission noted that it

historically has supported and approved cross-margining at clearing agencies and recognized the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing

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<sup>49</sup> Notice of Filing of Proposed Rule Change To Modify the GSD Rulebook Relating to Default Management and Porting With Respect to Indirect Participant Activity, 90 Fed. Reg. 26656 (June 23, 2025).

<sup>50</sup> Notice of Filing of Amendment No. 1, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the GSD Rulebook Relating to Default Management and Porting With Respect to Indirect Participant Activity, 90 Fed. Reg. 45850 (September 23, 2025). FICC has also submitted a response letter addressing comments received on the original proposed rule change. *See* Letter from Laura Klimpel, Managing Director, Head of Fixed Income and Financing Solutions, The Depository Trust & Clearing Corporation (September 29, 2025).

<sup>51</sup> 90 Fed. Reg. 45850, *supra* note 50.

<sup>52</sup> 15 U.S.C. § 78mm.

functions, reducing clearing agency risk by centralizing asset management, and harmonizing liquidation procedures.<sup>53</sup>

The Proposed Customer XM Framework would promote these benefits. First, by recognizing the risk offsets between XM Customer Positions at FICC and CME, the resulting initial margin requirement under the Proposed Customer XM Framework would more closely align with the risk profile of the portfolio. This alignment would incentivize participating customers to enter into risk-reducing transactions because doing so would reduce the amount of margin such customers would be required to post. In turn, the reduced overall risk resulting from such risk offsets would limit the Eligible BD-FCM's (and by extension, each of FICC's and CME's) exposure to such customers.

Second, the Proposed Customer XM Framework may also incentivize XM Customers to post initial margin for XM Securities Positions, rather than rely on their clearing member to do so. This shift would not only further reduce the clearing member's risk to the customer, but it would also free capital and reduce clearing costs. Currently, it is common practice for Eligible BD-FCMs to use their own assets to satisfy the FICC initial margin requirements associated with FICC-cleared positions that Eligible BD-FCMs carry for Eligible Customers.<sup>54</sup> This increases the costs to Eligible BD-FCMs of offering customer clearing services and limits their capacity to do so. These capacity constraints can be especially significant for smaller clearing members. Indeed, FICC understands from its engagement with market participants that the significant funding needed to meet initial margin requirements for customer positions constrains the ability of broker-dealers with smaller balance sheets to clear a significant portion of the transactions they enter into with customers. These constraints not only serve to make it harder for Eligible Customers to access clearing, but also place smaller firms at a disadvantage relative to ones with larger balance sheets.

Although the Commission's recent amendments to Exchange Act Rule 15c3-3a are intended to make it possible for Eligible BD-FCMs to collect initial margin from their customers and on-post that margin to FICC, many Eligible Customers may continue to expect their Eligible BD-FCMs to continue satisfying the FICC initial margin requirements absent additional benefits such Eligible Customers may derive from posting their own margin. The TMPG has expressed concern that such continued funding of margin would "not be sustainable" in light of the Treasury Clearing Requirement.<sup>55</sup>

However, under the Proposed Customer XM Framework, an Eligible Customer's securities positions would be eligible for a margin reduction only if its Eligible BD-FCM requires the Eligible Customer to deposit margin at least equal to the amount required by FICC and CME in respect of the Eligible Customer's cross-margined positions. It would thus incentivize Eligible

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<sup>53</sup> See 89 Fed. Reg. 2714, *supra* note 3, at 2751.

<sup>54</sup> See Treasury Market Practices Group, Consultative White Paper: Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices (Feb. 26, 2025).

<sup>55</sup> *Id.* at 11.

Customers to post such margin, which would likely result in an associated cost reduction from their Eligible BD-FCMs. Such posting would, in turn, make it less expensive for Eligible Customers to access clearing and serve to reduce Eligible BD-FCMs' risk to their Eligible Customers, preserve Eligible BD-FCMs' liquidity, and increase their overall clearing capacity.

In addition, the foregoing features would make it more feasible for smaller Eligible BD-FCMs to provide clearing services to customers. In particular, by eliminating the need for Eligible BD-FCMs to post initial margin for customer positions, the Proposed Customer XM Framework would make it possible for broker-dealers with smaller balance sheets to clear a greater share of transactions they enter into with customers. While some of these broker-dealers may need to register to become FCMs in order to provide such clearing services under the Proposed Customer XM Framework, the significant savings related to margin, coupled with the improved risk management outlook, should serve as powerful incentives to obtain such registrations. Not only would increased clearing capacity for smaller broker-dealers serve to preserve the competitiveness of such broker-dealers, but it would also expand Eligible Customer choice.

Third, the Proposed Customer XM Framework would incentivize Eligible Customers to use the same Eligible BD-FCMs for securities and futures clearing and therefore facilitate the development of done-away clearing in the U.S. Treasury market that would improve competition and liquidity for customers. Currently, an Eligible Customer does not generally have an incentive to clear its futures positions at CME through the same Eligible BD-FCM that clears its securities positions at FICC, even when those positions are risk-offsetting. As a result, even if an Eligible Customer has offsetting positions, it may use two different Eligible BD-FCMs to clear those positions.

By reducing the overall margin obligations of an XM Customer's positions and the associated costs of such margin, the Proposed Customer XM Framework would create a strong incentive for the XM Customers to use the same Eligible BD-FCM to clear its offsetting futures and securities positions. Such consolidation of positions within a single Eligible BD-FCM would serve to reduce the risk to Eligible BD-FCMs of XM Customers' positions because the positions would be more balanced and risk neutral. This risk-reduction benefit, coupled with the elimination of the need for the Eligible BD-FCM to fund the customer's margin obligations and the costs and risks associated therewith, would create a strong incentive for Eligible BD-FCMs to offer done-away clearing to Eligible Customers. For such Eligible BD-FCMs, carrying positions entered into by the customer with other parties would provide a potential opportunity to reduce the risk of the customer's futures positions and earn clearing revenue without the cost of funding the customer's margin obligations. Thus, the Proposed Customer XM Framework would contribute to the market's ongoing efforts to encourage done-away clearing for Treasury transactions and realize the associated benefits for market participants and would align with the Commission's recommendation that clearing agencies "take all appropriate steps to accommodate 'done-away' trades."<sup>56</sup>

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<sup>56</sup> See 89 Fed. Reg. 2714, *supra* note 3, at 2817.



Finally, the Proposed Customer XM Framework would ensure robust protection of customer assets for participating XM Customers is therefore consistent with the protection of investors. As discussed above, participating XM Customers would have the full protections of the CFTC's requirements applicable to customer assets in futures accounts as well as the Part 190 distributional rules. As described above, the CFTC's regulations set forth a number of customer protection requirements, including a requirement that futures customer funds be segregated and separately accounted for, restrictions on an FCM's ability to use customer funds to meet the obligations of another customer, limits on the type of assets in which FCMs are permitted to invest customer funds, restrictions on an FCM's ability to withdraw customer funds, segregation requirements for the deposit of instruments purchased from investment of futures customer funds, and restrictions on an FCM's allocation of losses from investment of customer funds to customers.<sup>57</sup> These protections, coupled with the Part 190 provisions that would treat XM Customers as "customers" that are "public customers" with "net equity" claims and FICC Customer Property as "customer property," aim to ensure that, in the event of an Eligible BD-FCM's failure, an XM Customer should be able to recover fully and quickly.

## **VI. CONCLUSION AND SUMMARY OF REQUEST FOR RELIEF**

The Petitioners respectfully request that the Commission grant exemptive relief, pursuant to Exchange Act Section 36(a)(1),<sup>58</sup> to permit Eligible BD-FCMs to hold XM Securities Positions and customer assets used to margin, secure or guarantee such positions in a futures account that is subject to the requirements of Section 4d(a) and (b) of the CEA and subject to Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder, rather than in a securities account subject to Section 15(c)(3) of the Exchange Act and Exchange Act Rule 15c3-3.

Exchange Act Section 36(a)(1) provides that the Commission may grant exemptions from provisions of the Exchange Act and the rules thereunder if doing so is in the public interest and is consistent with the protection of investors.

As set forth above, the Petitioners believe that the exemption would benefit the Petitioners, Eligible BD-FCMs and Eligible Customers and would be in the public interest and consistent with the protection of investors. Accordingly, in the view of the Petitioners, the requested exemption satisfies the requirements of Exchange Act Section 36(a)(1).

The Petitioners request such relief subject to the following conditions:

- All money, securities, or property received by an Eligible BD-FCM to margin, guarantee, or secure XM Customer Positions or accruing as a result of such trades or contracts, and held subject to the terms of the Order shall be carried in a futures account for or on behalf of the XM Customers and shall be deemed to have been received by the Eligible BD-

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<sup>57</sup> See Section b above.

<sup>58</sup> *Id.*

FCM and be accounted for and treated and dealt with as belonging to the XM Customers of the Eligible BD-FCM consistent with CEA Section 4d(a)(2).

- Each Eligible BD-FCM shall enter into a non-conforming subordination agreement with each XM Customer prior to the XM Customer's participation in cross-margining under the Proposed Customer XM Framework, pursuant to which the XM Customer shall specifically agree and acknowledge that (i) its XM Securities Positions and associated FICC-held margin will not receive customer treatment under the Exchange Act or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD-FCM; (ii) its XM Securities Positions and associated FICC-held margin will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; and (iii) claims to "customer property" as defined in SIPA or 11 U.S.C. § 741 against the Eligible BD-FCM with respect to its XM Securities Positions and associated FICC-held margin will be subordinated to the claims of all other customers, as the term "customer" is defined in 11 U.S.C. § 741 or SIPA.
- Cross-margining shall be applied to XM Customer Positions only if both the Eligible Customer and its Eligible BD-FCM agree to participate.
- Positions of an Eligible Customer shall be eligible for cross-margining if such positions are otherwise Eligible Positions under the Proprietary XM Arrangement, as the same may be amended from time to time.
- Each of FICC and CME shall calculate initial margin requirements for XM Customer Positions on a gross basis (*i.e.*, customer-by-customer) using the same margin reduction methodology as used in the Proprietary XM Arrangement.
- FICC and CME shall amend their rulebooks as may be necessary to effect the Proposed Customer XM Framework and the terms of the Order.
- Each Eligible BD-FCM shall require each of its XM Customers to deposit, at a minimum, the aggregate amount of initial margin required by each clearinghouse in respect of the XM Customer's XM Customer Positions.
- Each Eligible BD-FCM must be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and must be in compliance with applicable FICC and CME rules and CFTC requirements (including segregation and related books and records provisions) for the futures accounts in connection with the Proposed Customer XM Framework.
- Before receiving any money, securities, or property of an Eligible Customer to margin, guarantee, or secure XM Customer Positions in connection with the Proposed Customer XM Framework, the Eligible BD-FCM must furnish to the Eligible Customer a disclosure document containing (i) a statement indicating that such money, securities, or property will

be held in an futures account, and that the Eligible Customer has elected to seek protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such property; and (ii) a statement that the broker-dealer segregation requirements of Section 15(c)(3) of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such money, securities, or property of the Eligible Customer.

If the Commission or its staff should have any questions or require further information regarding this submission, please do not hesitate to contact any of the following individuals:

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By: Suzanne Sprague  
Name: Suzanne Sprague

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Exhibit A:  
X-M Account Structure

X-M Account Structure

