



Invested in America

July 31, 2024

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

Re: SEC “Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities” [Release No. 34-99817; SR-FICC-2024-005]; and “Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transaction and That for Indirect Participants” [Release no. 34-100401; SR-FICC-2024-007]

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to supplement our original comments to the Securities and Exchange Commission (“SEC”) in response to the above referenced rule proposals (“Proposed Rules”) from the Fixed Income Clearing Corporation (“FICC”) and the SEC’s request for additional comments. Given the importance of the U.S. Treasury market and the current implementation timeline, SIFMA continues to work with its members and the broader industry on several work streams that are expected to help ease the implementation of the SEC’s clearing rule (“Clearing Rule”)² and that will allow market participants to meet their clearing obligations and develop the right models, structures and business offerings that are consistent with their risk parameters and commercial expectations.

SIFMA reiterates the comments contained in our letter to the SEC of May 22, 2024 (“SIFMA letter”).³ We take this opportunity to highlight and expand on one issue noted in the SIFMA letter that we believe is important to resolve so that the SEC’s Clearing Rule can be implemented in an efficient manner and in a way that does not disrupt the Treasury market, and,

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

² Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to US. Treasury Securities, 89 FR 2714 and available [here](#) (“Final Rule Release.”).

³ Letter from Robert Toomey, Head of Capital Markets, SIFMA, May 22, 2024, available [here](#).

indeed, meets the goal of the Clearing Rule to significantly expand clearing in the U.S. Treasury and associated repo market.

In the SIFMA letter, we noted, with respect to the Agent Clearing Service, that the off-balance sheet accounting treatment should be confirmed to make this service viable and to allow for “done away” clearing arrangements to be a realistic option. As we said in the SIFMA letter, if the issues noted around the Agent Clearing Service (these may include accounting, capital and documentation) were addressed then this would “negate the need for any rules-based requirement that firms must provide done away services.”

Fundamentally, we believe that the decision of a clearing member of FICC to provide “done away” services—or any services-- to market participants is, and should remain, a commercial and risk decision of each FICC member and such commercial arrangements should not be mandated by rule or otherwise. Mandating the provision of “done away” services could compromise the goals of the Clearing Rules by making the access models less attractive from a business perspective and cause firms to limit the offerings they do make to customers if doing so would mandate other commercial arrangements or transactions that they may not wish to engage in.

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

Background

Several commenters to the SEC’s proposal for the Clearing Rule stated that the SEC should require that a U.S. Treasury clearing agency obligate its members to accept “done-away” transactions.⁴ In approving the Clearing Rule, the SEC addressed these comments directly and noted that while the requirement in the Clearing Rule to clear a class of defined transactions “relates to transactions that the direct participant already has determined to enter into, based on its own business model”, the SEC would not require that the clearing house participant “engage in particular transactions or to offer particular business models.”⁵ The SEC further suggested, in rejecting a requirement to provide “done away” services, that “a requirement to accept done-away transactions would require clearing agencies to, in turn, require their direct participants to transact with their customers in specific ways and limit their ability to offer certain types of pricing services.”⁶

In addition, in its initial filing on the Agent Clearing Service,⁷ FICC indicated that it believed the proposed changes to the Agent Clearing Service “will allow Netting Members and their customers to recognize the similarities between FICC’s indirect access model and FCM agent clearing models and to identify the agent clearing service as a workable ‘done away’ model.” FICC, consistent with the views expressed by the SEC, added no requirement that an

⁴ See Final Rule Release.

⁵ Id.

⁶ Id.

⁷ Securities Exchange Act Release No. 99817 (March 21, 2024, 89 FR 21362, (March 27, 2024) (File No. SR-FICC-2024-005).

FICC member be required under any circumstances to provide “done away” access to clearing services. We believe this reflected a belief that a workable “done away” model will allow firms to make their own decisions on what services to offer their customers.

Discussion

A. A firm’s decision to offer “done away” transaction clearing services is a commercial and risk decision and should not be mandated by rule

SIFMA believes that, consistent with the views expressed by the SEC in its Final Rule Release and the approach taken by FICC in the access rule proposal, any decision to offer “done away” services or specific “done away” transaction clearing to customers is solely a commercial/business decision of clearing members, driven by evaluations of risk. It would be inappropriate and inconsistent with the requirements of the Exchange Act to require that netting members enter into these arrangements.

B. Industry efforts to help create a viable “done away” model

1. Accounting treatment

In the SIFMA letter we noted specifically one important issue that needs to be resolved in order for the FICC access models to present a workable “done away” structure---the balance sheet treatment of these transactions. Specifically, it is important to understand whether certain types of transactions or structures would have a balance sheet impact that could make that class of transactions non-commercial. In order to address this issue the industry is actively working to understand what must be done to assure an accounting/balance sheet treatment that would make the model viable. If changes to the FICC proposals are needed to address industry concerns, we expect to provide feedback to FICC---again with a view toward providing a workable “done away” structure that will permit clearing members to make the appropriate commercial decisions.

2. Standardized documentation

The industry is also engaged in an effort to create market standard documentation that will create efficiencies in on boarding entities that may need to access clearing through current clearing members and through either of the access models currently on offer from FICC. This effort initially is expected to produce documentation for “done with” clearing but SIFMA also expects to follow that effort with standard “done away” documentation. When that work is completed, it will aid in making “done away” clearing a workable commercial model by reducing the time and expense of onboarding non-clearing house members.

3. Path to a viable “done away” model

Once these issues---accounting, capital and documentation---are addressed, and any required changes to the access models at FICC are implemented, we believe that firms will be in

a better position to determine whether and how to offer “done away” clearing. We can expect this to be consistent with each firm’s risk parameters and relationships with customers. Thus, we believe any change to the proposal that would require a clearing member to offer any specific service to its customers---most notably requiring that “done away” clearing be offered under certain conditions---should be rejected. We believe that an access model that addresses the accounting, capital, and documentation issues without any rule-based requirement would be reasonably designed to ensure that FICC has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions and would thus be consistent with Rule 17ad-22(e)(18)(iv)(C).

Conclusion

SIFMA strongly supports efforts to ensure enhanced resiliency, capacity and liquidity within the Treasury market. The SEC’s clearing mandate can lessen risk and provide resiliency benefits if implemented in a way that incorporates rigorous analysis and receives broad market participant understanding and buy-in. However, requirements that would mandate clearing firms to engage in specific types of transactions and relationships with customers are, we believe, counterproductive to the goals of the Clearing Rule and could make clearing unattractive. Firms should be able to make their own commercial and risk decisions as to what to offer and to whom to offer it. The central role that FICC’s rules will play in this significant change to the Treasury market makes it important that those rules are implemented in a way that ensures transparency and does not create negative incentives to clearing. We would be happy to discuss our thoughts on these proposals.

Please feel free to contact me with any questions (rtoomey@sifma.org or 212.313.1124) or for more information, and we thank you for your consideration of this request.

Sincerely,



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

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