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Laura Klimpel
Managing Director
Head of Fixed Income & Financing Solutions

The Depository Trust & Clearing Corporation
570 Washington Boulevard
Jersey City, NJ 07310

Via Electronic Mail (rule-comments@sec.gov)

August 1, 2024

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

Re: *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 Transactions and That for Indirect Participant Transactions, and (ii) to Address the Conditions of Note H to Rule 15c3-3a (Release No. 34-100401; File No. SR-FICC-2024-007) ("Margin Segregation Proceeding Order") and Order Instituting Proceedings to Determine Whether to Approve or Disapprove 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 (Release No. 34-100399; File No. SR-FICC-2024-005) ("Access Model Proceeding Order")*

Dear Ms. Countryman:

The Fixed Income Clearing Corporation ("FICC") appreciates the opportunity to submit this letter in response to the above referenced orders ("Orders") by the Securities and Exchange Commission (the "SEC" or "Commission") instituting proceedings to determine whether to approve or disapprove FICC's proposed changes to its rulebook (the "GSD Rules") (i) to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities (the "Access Model Proposal")[1] and (ii) regarding the separate calculation, collection, and holding of margin for proprietary transactions and that for indirect participant transactions and to address the conditions of Note H to SEC Rule 15c3-3a (the "Margin Segregation Proposal", and collectively with the Access Model Proposal, the "Proposals")[2] and in response to the comments that the Commission has received on the Proposals.

[1] Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed 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, Exchange Act Release No. 34-99817, 89 Fed. Reg. 21362 (Mar. 27, 2024).

[2] Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) to Address the Conditions of Note H to Rule 15c3-3a, Exchange Act Release No. 34-99844, 89 Fed. Reg. 21603 (Mar. 27, 2024).

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FICC is grateful for the thoughtful feedback that market participants and industry associations have provided on the Proposals. FICC has considered that feedback very carefully and seeks in this letter to address many of commenters' recommendations, observations, and questions.[3]

I. EXECUTIVE SUMMARY

The principal purpose of the Proposals is to support and implement the Commission's final rule 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 (the "Treasury Clearing Final Rule")[4] in ways that are consistent with the Securities Exchange Act of 1934 (the "Exchange Act"), and SEC Rule 17ad-22.[5] For reasons set out in FICC's initial statements describing the Proposals as well as in the discussion below, FICC believes that the Proposals are consistent with such legal requirements and would facilitate greater access to Treasury clearing, promote sound risk management, and improve the liquidity and robustness of the Treasury market. FICC is therefore pleased that, with limited exceptions, commenters did not assert that the Proposals should be disapproved or were inconsistent with the Exchange Act, the Treasury Clearing Final Rule, or SEC Rule 17ad-22.

Rather, the majority of the comments were a mix of suggestions and recommendations as to steps FICC can take to further enhance the robustness, accessibility, and liquidity of the Treasury market.[6] FICC deeply appreciates these comments and is committed to achieving many of the same ends articulated by commenters, including more widely available done-away clearing, greater ability of market participants to access clearing in a way that meets their commercial, regulatory, legal, operational, and risk needs, additional enhancements to default management, and balanced margin requirements that allow access while avoiding undue risk.

The limited areas where FICC disagrees with certain comments concern when and how FICC should be taking steps to achieve these goals. In certain cases, such as certain default management matters, FICC agrees that additional rule amendments are appropriate, but that it would be most effective for FICC to propose those amendments after the Commission has ruled on the Proposals so that FICC can carefully tailor proposed default management changes to the relevant access models and margining arrangements. For other issues, such as done-away clearing, FICC believes that the most advisable immediate next step is to observe how the market initially reacts not only to the Treasury Clearing Final Rule, but also to FICC's other ongoing initiatives,

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[3] Capitalized terms used and not otherwise defined in this letter shall have their meanings set forth in the GSD Rules as proposed to be modified by the Proposals ("Proposed Amended GSD Rules").

[4] 89 Fed. Reg. 2714 (Jan. 16, 2024).

[5] 17 C.F.R. 240.17ad-22(e).

[6] A number of commenters requested (i) that the Commission adopt certain interpretations or rules, including in relation to the Treasury Clearing Final Rule, SEC Rule 15c3-1 and Section 17(f) of the Investment Company Act, and (ii) for FICC to take additional actions beyond the scope of the Proposals, e.g., in relation to the Treasury Clearing Final Rule's trade submission requirement.

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before concluding whether additional measures are justified. Recent data indicates that the Proposals, coupled with FICC's engagement with industry on a variety of issues, are already driving a shift toward done-away clearing. In the meantime and outside of the Proposals, FICC continues to engage with industry associations and individual market participants to identify and resolve impediments to done-away clearing and access more generally, whether in relation to accounting, workflows, or outstanding legal issues. As such, FICC believes that the public and private sectors would be best served allowing the results of these initiatives to fully and clearly manifest themselves before moving to consider additional requirements and measures.

Future Proposals. In light of certain commenters' recommendations and questions, FICC will continue to engage with market participants to develop, prioritize, and propose certain changes to the GSD Rules in the near term that would:

- Facilitate porting;
- Allow for settlement of Agent Clearing Member Transactions upon a Netting Member default; and
- Facilitate the ability of a Netting Member to close-out a defaulted customer.

However, as noted above, since these provisions will need to be tailored to the particular access models and margining arrangements and default management processes (among other aspects) that FICC would be expected to have in place once the Commission determines whether to approve or disapprove the Proposals, FICC believes it would be most advantageous to the marketplace to propose these further enhancements in the near future and in any event before the first compliance date of December 31, 2025.

Potential Amendments. At the same time and as discussed in greater detail below, FICC is considering amending the Proposals in order to:

- Clarify that transactions entered into on an inter-dealer broker ("IDB") and similar platforms may be cleared using FICC's Sponsored Member service (the "Sponsored Service"); and
- Provide FICC with the ability to adjust the minimum Segregated Customer Margin Requirement if, among other things, a lower minimum would suffice to reduce backtesting deficiencies comparably to what the proposed $1 million floor would achieve under current market conditions.

Done-Away. In addition to the foregoing changes, FICC will continue to consider many of the other suggestions from market participants to determine whether they are both feasible, consistent with its obligations under the Exchange Act, and supportive of the goals of the Treasury Clearing Final Rule. As noted above, in many cases, FICC does not believe it will be possible for it to make these assessments with accuracy until it can examine the broader market effects arising from this initial stage of implementation around the Treasury Clearing Final Rule.

Such need to examine market developments is perhaps most critical for any consideration of a clearing agency mandating that participants offer done-away clearing. Since the Commission's adoption of the Treasury Clearing Final Rule and FICC's release of the Proposals, there have already been a number of positive market developments indicating that robust done-away clearing

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will be available by the compliance date for the Treasury Clearing Final Rule's trade submission requirement. In particular, existing Netting Members are indicating that they plan to offer done-away clearing, established market participants with robust done-away clearing businesses for other assets classes have announced their intention to enter the Treasury market, and industry associations have actively been working to identify and eliminate impediments to done-away clearing. FICC, for its part, has been actively engaged with industry associations to help market participants identify ways to use existing workflows for done-away Treasury clearing and to address the accounting treatment of done-away transactions. As discussed further below, FICC believes that these present developments are real and sustainable and that the imposition of further regulatory requirements, such as a done-away clearing mandate, would impede and give rise to unintended costs and risks as we approach the critical deadlines for initial implementation of the Treasury Clearing Final Rule.

Assessing the Need for More Engagement. Pursuant to the Treasury Clearing Final Rule, FICC will conduct annual reviews regarding its policies and procedures that aim to facilitate access to clearing. As part of these reviews, FICC will consider, among other topics, the sustainability of FICC's existing access models, the need for additional models or revisions, and the potential applicability of models used in other cleared markets.[7] On top of these required efforts, FICC is in the process of consulting with its Risk Management Advisory Council, and standing up other advisory councils made up of a broad spectrum of market participants to consider additional steps FICC can take to facilitate access to clearing, and other matters raised by commenters. FICC will also continue to conduct regular engagement with both direct and indirect participants to understand how its existing models are functioning and what FICC can do to make it easier, more efficient, and more cost effective for market participants to access clearing. Through these mechanisms, FICC will be able to assess whether the Treasury Clearing Final Rule and these first steps FICC has taken to facilitate clearing access have been effective and whether additional measures are needed.

Educational Initiatives. With regard to commenters' questions about the Proposals (and some of FICC's existing Rules), FICC has sought to provide greater clarity on these matters below. In addition, FICC has undertaken a number of initiatives, including office hours, webinars, educational fora, PowerPoint presentations, a dedicated Treasury clearing microsite with resources regarding FICC and Treasury clearing,[8] and one-on-one conversations with market participants and industry associations, to enhance the market's understanding of FICC's proposed and existing GSD Rules and their legal underpinnings. FICC will continue to pursue these initiatives and welcomes suggestions from market participants as to other ways FICC can provide further information about the GSD Rules or the Proposals.

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[7] See Securities Exchange Act Release No. 99802 (Mar. 20, 2024), 89 FR 21118 (Mar. 26, 2024) (File No. SR–DTC–2024–003); Securities Exchange Act Release No. 99805 (Mar. 20, 2024), 89 FR 21068 (Mar. 26, 2024) (File No. SR–FICC–2024–006); Securities Exchange Act Release No. 99803 (Mar. 20, 2024), 89 FR 21091 (Mar. 26, 2024) (File No. SR–NSCC–2024–003).

[8] See https://www.dtcc.com/ustclearing.

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As we discuss below, the Proposals have a firm statutory basis, are consistent with Section 17A of the Exchange Act and SEC Rule 17ad-22, and would promote the objectives and foundational implementation of the Treasury Clearing Final Rule. Accordingly, we urge the Commission to approve them.

II. RESPONSES TO COMMENTS ON THE PROPOSALS

A. Responses to Comments on Done-Away Clearing

A number of commenters[9] asserted that the Proposals are deficient because they would not mandate that Netting Members offer done-away clearing or prohibit Netting Members from bundling execution and clearing. These commenters contended that a clearing agency can only satisfy the requirements of the Treasury Clearing Final Rule and SEC Rule 17ad-22 more generally if it mandates that Netting Members offer done-away clearing, either in general or if the customer posts margin.

FICC agrees with commenters and the Commission that the availability of robust done-away clearing has the capacity to promote competition, access, and liquidity in the Treasury market. FICC is therefore firmly committed to taking steps to facilitate and promote more done-away clearing. Indeed, the Proposals are designed in significant part to improve the ability of market participants to engage in done-away clearing by expanding the ways in which market participants can access FICC and enhancing market participants' understanding of FICC's access models. As we have discussed in the past, greater access model flexibility increases the ability of indirect participants and direct participants to enter into done-away clearing arrangements that are consistent with their regulatory, operational, legal, commercial, risk and other needs.[10] In addition, by consolidating the prime brokerage and correspondent clearing models into an Agent Clearing Member model (the "ACM Service") that utilizes the same terminology and concepts as the futures commission merchant ("FCM") model through which market participants clear derivatives in the U.S., the Proposals would increase the ability of market participants to leverage existing frameworks to clear Treasury Transactions on a done-away basis.

Available data indicate that the Treasury market is already shifting towards facilitating more done-away clearing and, if the Proposals are approved, FICC believes this shift will become more permanent and profound. In particular, data that FICC has collected from its recent surveys of market participants, as well as market participants' own statements and actions, show that many

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9 See Letter from Joanna Mallers, Executive Director, FIA Principal Traders Group (Apr. 17, 2024) ("FIA PTG Letter") at 3; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (Apr. 17, 2024) ("MFA Letter") at 5; Letter from Jiri Krol, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (Apr. 23, 2024) ("AIMA Letter") at 4; Letter from William C. Thum, Managing Director and Assistant General Counsel, SIFMA Asset Management Group (May 24, 2024) ("SIFMA AMG Letter") at 5.

10 See Letter from Murray Pozmanter, Managing Director, President of DTCC Clearing Agency Services Head of Global Business Operations, and Laura Klimpel, General Manager of FICC, Head of SIFMU Business Development (Dec. 27, 2022) ("FICC Treasury Clearing Proposal Comment Letter").

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Netting Members are preparing to offer done-away clearing services, in many cases through their prime brokerage and cleared derivatives business lines in anticipation of using the ACM Service.

In light of these ongoing market developments, FICC does not believe it is necessary for a clearing agency to implement a done-away mandate to facilitate access to clearing. Further, as one commenter has identified,[11] a clearing agency's imposition of such a mandate could have unintended negative consequences, including market concentration and heightened risk, which could impede these positive market trends and ultimately limit access to clearing. In addition, it is uncertain whether a clearing agency has the legal authority to impose such a mandate. FICC therefore does not believe that the record supports the imposition at this time of a done-away clearing mandate in a manner that is consistent with the requirements of Exchange Act Rule 17ad-22 or Section 17A(b) of the Exchange Act.

FICC also agrees with the Commission's carefully considered view that it is necessary to observe how the Treasury market develops following the implementation of the Treasury Clearing Final Rule and use those observations to determine whether additional measures, such as mandating done-away clearing, are necessary or appropriate.[12] FICC intends to—and indeed is obligated to—examine these developments as part of its annual reviews and through its advisory councils and formal and informal engagement with market participants. As noted above, FICC's existing engagement with market participants has found that a number of Netting Members are already planning to offer done-away clearing without a mandate. Nonetheless, if these future analyses ultimately demonstrate that there remains limited done-away clearing after the Treasury Clearing Final Rule is implemented, FICC will assess what additional steps it can take to facilitate such clearing.

1. The Proposals would improve the ability of market participants to engage in done-away clearing.

As the Commission observed when it adopted the Treasury Clearing Final Rule, FICC's current access models allow for done-away Treasury transactions. In particular, the Sponsored Service and prime brokerage and correspondent clearing services currently permit Netting Members to submit for clearing transactions entered into by an indirect participant with someone other than the Netting Member.[13] With limited exceptions (e.g., in relation to the close-out

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[11] Letter from Robert Toomy, Head of Capital Markets, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (July 31, 2024) ("SIFMA July Letter") at 2.

[12] 89 Fed. Reg. at 2756-57 (noting that while "[s]everal commenters stated that the Commission should require that a U.S. Treasury securities CCA obligate its members to accept done-away transactions and/or that the Commission should prohibit anticompetitive practices at CCPs, including prohibiting clearing members from requiring clients to bundle execution and clearing", the Commission disagrees because "[i]t is appropriate to allow the U.S. Treasury market to take [the Treasury Clearing Final Rule] into account, before determining that additional access models are needed").

[13] Id. at 2757; GSD Rules, Rule 1, definition of "Sponsored Member Trades" (permitting, under the existing Sponsored Member model, the clearing of trades executed "between a Sponsored Member and its Sponsoring Member" or "between a Sponsored Member and a Netting Member") and Rule 8, Section 1 (permitting, under the existing prime brokerage / correspondent clearing model, the clearing of trades between an

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mechanism and capped contingency liquidity facility ("CCLF") calculations for Sponsored Member Trades), many of the same GSD Rules and processes that apply to done-with transactions entered into under the Sponsored Service and prime brokerage and correspondent clearing services apply to done-away Treasury transactions cleared through such services. Indeed, a number of market participants are currently clearing done-away Treasury transactions at FICC today.[14]

Nonetheless, in view of the value of robust done-away clearing to the Treasury market, FICC has sought in the Proposals to take additional meaningful steps to facilitate done-away clearing in a manner that is consistent with the requirements under Section 17A(b)(3)(F) of the Exchange Act and SEC Rule 17ad-22(e)(18)(i) and (iv)(C). Specifically, the Proposals would consolidate the existing prime brokerage and correspondent clearing models into a single ACM Service and include in the GSD Rules additional clarifications regarding the functioning of the model. FICC believes these clarifications will meaningfully facilitate done-away clearing by allowing market participants to identify the similarity between the ACM Service and the FCM model currently used by market participants to clear swaps and futures in the U.S. Such greater understanding would allow market participants to identify how they can leverage policies, practices, procedures, structures and legal and other analyses that have been developed to clear futures and cleared swaps in the U.S. on a done-away basis in order to clear done-away Treasury transactions. This should make it easier for market participants to engage in done-away clearing because it should limit the extent to which market participants would have to develop new procedures and analyses before providing such clearing. We note in this regard that FICC's recent survey data show that a significant number of Netting Members plan to offer clearing using their existing agency clearing or futures business units.[15] For these firms in particular, the ability to leverage existing systems should make it possible for them to offer done-away clearing.

The Proposals would also complement efforts that FICC is undertaking to help Netting Members and their customers identify ways that they can use their existing systems for U.S. cleared derivatives to clear done-away Treasury transactions. In particular, FICC has been actively engaged with Netting Members, customers, trade associations, industry working groups, and vendors to compare operational workflows for cleared swaps with those of cleared Treasury transactions. These comparisons aim to help market participants identify similarities between the workflows as well as differences or challenges that need to be addressed or resolved. Once those differences and challenges are resolved, market participants should be able to utilize similar workflows to those they use for cleared derivatives to clear Treasury transactions. The ACM Service would further progress these efforts by allowing Netting Members to take comfort that

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"Executing Firm . . . and either another Member of the Netting System, Comparison System or another Executing Firm").

[14] Although the bulk of done-away transactions are cash transactions cleared through the prime brokerage and correspondent clearing models, nearly 10% of FICC's Sponsoring Members clear done-away repo transactions through FICC's Sponsored Service.

[15] DTCC White Paper, The U.S. Treasury Clearing Mandate: An Industry Pulse Check (July 2024) ("2024 Treasury Clearing White Paper") at 6.

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similar terms and concepts that undergird the FCM model will support the workflows and systems borrowed from that model to clear done-away Treasury transactions.

One commenter suggested that the Proposal's clarifications and consolidation of the prime brokerage and correspondent clearing models into the ACM Service would not be meaningful given the sophistication of Netting Members.[16] FICC's data demonstrates that this commenter's supposition is unfounded. That data shows that, prior to FICC's publication of the Access Model Proposal and its educational efforts related thereto, 77% of market participants were not very familiar with the prime brokerage and correspondent clearing models.[17] Such lack of familiarity likely prevented these participants from identifying the similarity of these models to the FCM model and thus their ability to leverage existing systems and processes from the cleared derivatives and other businesses to provide such clearing. However, following the publication of the Access Model Proposal, interest in using the ACM Service has increased significantly, with 43% of Netting Members indicating that they would likely clear indirect participant transactions through the ACM Service. A shift from only 23% of the participants believing they have a firm grasp of the model to 43% of Netting Members planning to intermediate indirect participant transactions through the model indicates that the clarifications and consolidation set forth in the Access Model Proposal would have a marked effect on firms' ability to use that model. FICC therefore believes that the Proposal's rule changes would meaningfully facilitate access to clearing.

Moreover, in contrast to one commenter's suggestion, the ACM Service is by no means "merely a rechristened version" of the prime and correspondent clearing models.[18] Rather, it includes features that are not present in the prime brokerage and correspondent clearing models that would facilitate access to done-away clearing. In particular, by providing for the ability to segregate margin, the Proposals would, consistent with FICC's open access approach to clearing, give flexibility to direct participants and indirect participants to determine whether and how to satisfy FICC's margin obligations. For example, some customers may prefer to utilize the ACM Service to enter into done-away Treasury transactions, given the model's similarity to the FCM model with which they may be familiar, but prefer to post margin so that the customer does not bear additional financing costs that would arise from the Netting Member's financing of the margin. In addition, by allowing for net margining of customer positions not subject to segregation in a way that comports with the requirements of the Treasury Clearing Final Rule, the ACM Service would give Netting Members and their customers a way to clear done-away Treasury transactions in a lower cost manner than under a gross margining arrangement. Furthermore, by using terms and concepts similar to those used in the FCM model, including, in particular, clarifications regarding the role of the Agent Clearing Member as agent for the Executing Firm Customer, the ACM Service can provide legal certainty to both Netting Members and their customers.

FICC therefore believes the Proposals would meaningfully facilitate done-away clearing, both through substantive changes that increase flexibility to market participants to access clearing, and through consolidation and clarification of FICC's existing models in a way that would increase

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16 See MFA Letter at 5.

17 DTCC White Paper, Looking to the Horizon: Assessing a Potential Expansion of U.S. Treasury Central Clearing (September 2023) ("2023 Treasury Clearing White Paper") at 9.

18 MFA Letter at 3.

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legal certainty and allow market participants to recognize how they can use existing done-away systems to clear done-away Treasury transactions.

2. *Existing evidence indicates that the Treasury Clearing Final Rule, the Proposals, and industry efforts are already likely to expand done-away clearing.*

FICC believes the market's reaction to the Proposals demonstrates that the Proposals, collectively with the Treasury Clearing Final Rule, would meaningfully increase the amount of done-away Treasury clearing. For example, a recent survey conducted following the publication of the Proposals indicates that 28% of Netting Members expect to facilitate Treasury clearing activity through business units traditionally engaged in done-away clearing of other product types.[19] In addition, one of the largest standalone FCMs that specializes in client clearing has publicly announced plans to become a Netting Member of FICC so that it can clear Treasury transactions for customers.[20]

We also understand that various industry associations, including SIFMA, SIFMA AMG, ISDA, and FIA are actively working to bring buy and sell side participants together to address some of the existing impediments to larger scale done-away clearing. These impediments, which we describe in greater detail below, include (i) particular risks that done-away clearing can present to clearing members if they cannot confirm pre-execution that a transaction satisfies their credit and regulatory requirements, (ii) potential cost issues associated with possibly higher capital and liquidity requirements, and (iii) regulatory questions related to the allocation of responsibilities between Netting Members and executing firms. As discussed below, FICC is actively engaging with these industry associations as well as the broader market to support and develop resolutions to these impediments.

These developments suggest that certain commenters' concerns that Netting Members are engaging in anticompetitive behavior to stifle done-away Treasury clearing are likely misplaced.[21] Available evidence indicates that Netting Members are actively preparing to offer done-away Treasury clearing and are taking steps to ensure they can do so in a manner consistent with their regulatory, operational, legal, commercial, risk and other needs.

FICC, for its part, has been active in discussions with industry associations and individual firms in order to address questions regarding done-away Treasury clearing and to understand whether there are steps FICC can take to further facilitate such clearing. To the extent that these industry associations' work identifies such steps, FICC will eagerly consider them. For example, as described in greater detail below, FICC has been working with a SIFMA working group to help validate and clarify the accounting treatment of done-away Treasury transactions. Further, as

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[19] 2024 Treasury Clearing White Paper at 6.

[20] RJ O'Brien plots expansion into US Treasury clearing, available at https://www.risk.net/markets/7959638/rj-obrien-plots-expansion-into-us-treasury-clearing (announcement of FCM R.J. O'Brien of its plans to offer Treasury Clearing services and join FICC).

[21] See AIMA Letter at 5; MFA Letter at 11.

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mentioned above, FICC has been working with market participants and industry associations to develop operational workflows for done-away clearing, so as to facilitate the ability of market participants to use existing cleared derivatives systems to submit Treasury transactions for clearing. Moreover, FICC is actively supporting SIFMA's and SIFMA AMG's ongoing workstream to develop industry-standard documentation that should facilitate documentation of done-away Treasury transactions.

Furthermore, FICC's other initiatives, including in particular the end-user level cross-margining arrangement that it is developing with CME, may further expand the availability of done-away clearing. That is because the arrangement would provide the greatest margin efficiencies to the extent the customer consolidates its offsetting positions in a single Netting Member. As a result, Netting Members will face competitive pressures to provide done-away clearing so they can potentially be the customer's single Netting Member and earn the fees arising from that role, and customers may be more able to compensate Netting Members for the additional costs associated with done-away clearing because those costs will be offset through greater margin efficiencies.

In addition, FICC intends to continue to monitor the extent to which its efforts are successful in bringing about more done-away clearing. FICC will do this through its annual reviews of its policies and procedures to facilitate access pursuant to SEC Rule 17ad-22(e)(18)(C) as well as its advisory councils and its engagement with market participants. To the extent it identifies more steps that are needed, it will carefully consider those.

FICC will also continue its efforts to educate market participants on the available models and their respective attributes. We note in this regard that one commenter requested more detail regarding how done-away clearing is currently available under the Sponsored Service, including, in particular, how Sponsored Members can be in privity with FICC in a done-away Treasury transaction. FICC is pleased to address questions of this sort and work with industry associations and individual market participants to provide answers and clarity. With regard to this question in particular, as mentioned above, nearly all of the same GSD Rules that apply to done-with Sponsored Member Trades apply to done-away ones. As a result, a Sponsored Member must enter into a Sponsored Member Agreement with FICC and the Sponsoring Member. Thus, Sponsored Members are in the same privity with FICC when they engage in done-away Treasury transactions as they are when they engage in done-with transactions. We remain available to the commenter to provide further detail if helpful.

3. ***A done-away mandate could give rise to unintended consequences such as increased clearing agency risk and a reduction in access to clearing.***

In connection with the Treasury Clearing Final Rule, the Commission examined arguments that it should adopt a done-away mandate. The Commission declined to do so on the basis that it was first necessary to examine the evolution of the market following the implementation of the Treasury Clearing Final Rule, including the revisions to the broker-dealer customer protection formula and the requirement that Treasury CCAs take steps to facilitate access to clearing. As the Commission stated:

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> These changes will present both new obligations, but also potentially new business opportunities, for existing direct participants of the U.S. Treasury securities CCA. It is appropriate to allow the U.S. Treasury market to take these new requirements into account, before determining that additional access models are needed.

We firmly agree. As described above, available evidence indicates that the Treasury Clearing Final Rule, the Proposals, and other efforts by FICC and market participants are leading to a shift towards the expansion of done-away clearing. Accordingly, the record does not currently support a need for a done-away mandate.

Furthermore, were a clearing agency to impose such a mandate at this time, it could increase risk to the clearing agency, and thereby its direct and indirect participants and the Treasury market as a whole. In particular, as one commenter identified,[22] such a mandate could limit the commercial and risk management choices an intermediary could consider in offering clearing services, which in turn could reduce the number of market participants willing to provide such services. A contraction in the availability of direct participants providing clearing services would result in concentration of risk, increased costs, and reduced liquidity in the Treasury market. As a result, it could serve to frustrate the current market developments that are leading toward broader availability of done-away clearing. It is therefore more sensible—and consistent with the Exchange Act and SEC Rule 17ad-22—to wait to see if the steps that FICC and the Commission are taking or have taken will increase done-away clearing.

i. A done-away mandate could expose the clearing agency and its participants to certain risks.

As part of its reasoning for declining to adopt a done-away mandate, the Commission emphasized that "it is best not to remove the ability of a direct participant of a U.S. Treasury securities CCA to determine what risk it will take with respect to guaranteeing transactions to the CCA."[23] We agree with this assessment. Each clearing agency depends on its direct participants to calibrate carefully the risks they are able to take and bring to the clearing agency to manage. Done-away Treasury transactions present unique risks relative to done-with transactions, and clearing agencies need their direct participants to assess those risks with due care and confirm they are able to bear them.

First, done-away Treasury transactions generally present additional liquidity risk to the clearing agency relative to done-with transactions, because done-away Treasury transactions are typically entered into between the customer of a clearing member and either a different direct participant or a different direct participant's customers. As a result, if the customer's clearing member defaults, the clearing agency will likely need to perform the one-sided obligations of the

[22] SIFMA July Letter at 4.

[23] 89 Fed. Reg. at 2757 ("Moreover, in order to encourage market participants to provide services to enable indirect access to central clearing, the Commission believes it is best not to remove the ability of a direct participant of a U.S. Treasury securities CCA to determine what risk it will take with respect to guaranteeing transactions to the CCA").

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customer and will need liquidity to do so. By contrast, in a done-with transaction, the customer enters into the transaction with its clearing member. If the clearing member then defaults, the clearing agency has the option to close out both the obligations to the clearing member and those to the customer (i.e., "both sides of the trade"), with the sole resulting payment obligation being the mark-to-market value of the positions.[24]

In light of the unique liquidity risks associated with done-away Treasury transactions, such transactions generally can be expected to give rise to liquidity requirements at the clearing agency for direct participants. For example, done-with transactions do not affect the maximum liquidity a Netting Member may be required to provide under the CCLF, while done-away ones do. This means that if a Netting Member clears done-away transactions, it may be required to provide more liquidity to FICC to address the default of another Netting Member than would be the case if the Netting Member only cleared done-with transactions. Although FICC has sought to take steps to help Netting Members identify ways to reduce their CCLF obligations,[25] there is no way to eliminate such obligations outright given that done-away Treasury transactions necessarily create liquidity risks that done-with Treasury transactions do not. In addition, if, for the reasons discussed below, a done-away mandate were to lead to a reduction in the number of direct participants willing to provide client clearing services and a resultant concentration of client clearing services in a few large direct participants, that could potentially further increase CCLF requirements across all Netting Members subject to the CCLF because the amount of liquidity needed to address the largest Netting Member exposure could be greater.

It could be detrimental to FICC or any other clearing agency, its direct participants and indirect participants, the Treasury market, and financial stability more generally if direct participants had to assume the risks of providing the greater liquidity necessitated by done-away clearing unless those direct participants independently determined that they would be able to meet these obligations in accordance with their internal risk-management policies and applicable regulatory frameworks. Absent such independent determinations, the clearing agency could be exposed to the risk that the direct participant may not be able to meet its liquidity needs, which could increase the clearing agency's exposure to default risk and associated systemic risk implications.

Second, the fact that done-away Treasury transactions are negotiated and executed away from direct participants may give rise to additional regulatory and economic risks and complications for such direct participants. In a done-with transaction, a direct participant is able to assess the risk of the transaction and address any regulatory issues at the time the transaction is negotiated or executed with the customer. As a result, the direct participant can, before execution, confirm that the size of the transaction or the nature of the collateral is consistent with its risk limits and perform any required regulatory functions (e.g., trade reporting and confirmation

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[24] Both the GSD Rules and those of other U.S. CCPs provide the CCP with the ability to close-out customer and proprietary transactions upon a direct participant default.

[25] See https://www.dtcc.com/-/media/Files/Downloads/Microsites/Treasury-Clearing/GSD-Liquidity-Need-Calculation-and-CCLF-Impact-of-Done-Away-Client-Activity.pdf

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requirements, as well as diligence and Suspicious Activity Reports under anti-money laundering and sanctions regulations). By contrast, in a done-away Treasury transaction, the customer negotiates the terms of, and executes, the transaction away from the direct participant. That means that the direct participant must depend on other processes or parties to confirm the transaction does not give rise to risk or regulatory issues. Other markets have developed mechanisms to address these issues,[26] and as noted above, FICC and industry associations have been working to develop similar workflows and procedures for the Treasury market. However, those efforts are still in development and it remains unclear whether it will be possible to devise a one-size-fits-all approach that still permits intermediaries the necessary flexibility and choice in adapting their respective commercial and risk management approaches to done-away clearing. For example, certain direct participants, such as those that do not have prime brokerage or futures clearing business, may not have the infrastructure, personnel, systems, regulatory licenses, or technology to accommodate the mechanism or mechanisms that the market develops to address these issues. As a result, mandating done-away clearing at this time could force those kinds of direct participants to limit or exit the offering of clearing services and/or address such risks on a more ad-hoc basis. Any of these scenarios can and would expose clearing agency direct participants (and indirectly the clearing agency itself) to significant credit and regulatory risks.

In light of these greater and current risks, FICC believes it would be imprudent and inconsistent with a clearing agency's obligations under the Exchange Act and SEC Rule 17ad-22 to impose a done-away mandate at this time.

ii. A done-away mandate could frustrate the current progress toward done-away clearing by discouraging direct participants from providing clearing services.

In addition to possibly increasing risk in the Treasury market, a done-away mandate could stifle ongoing and positive market developments toward done-away clearing by causing a number of direct participants to cease providing clearing services. This is due to a number of reasons.

First, as discussed above, done-away clearing exposes direct participant intermediaries to risks that are different from, and potentially greater than, those presented by done-with clearing. A number of direct participants could determine that it is preferential for them or more consistent with their safety and soundness obligations simply not to provide clearing services at all than to lose the ability to choose whether and how to undertake these risks.

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[26] For example, in the equity prime brokerage space, a letter issued by the Division of Market Regulation of the Commission with respect to the provision of prime brokerage services dated January 25, 1994 (the "1994 PB Letter") sets out the framework for regulatory compliance in connection with cash transactions executed by a customer with an executing broker for give-up to a prime broker. The industry has since developed documentation—in particular Prime Brokerage Agreement (Form 150) and Prime Brokerage Clearance Services Agreement (Form 151), each available at https://www.sifma.org/resources/general/prime-brokerage/—pursuant to the 1994 PB Letter to document the relationship between the relevant parties and the transaction mechanism.

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Second, it is generally more costly for direct participants to clear done-away Treasury transactions than done-with Treasury transactions. This is because the liquidity risk associated with done-away transactions is greater for the reasons discussed above. At FICC, such greater liquidity risk gives rise to CCLF requirements, which effectively require the Netting Member clearing the done-away Treasury transaction to tie up liquidity in case FICC needs it. That tying up of liquidity presents a cost to Netting Members both directly and through application of the banking regulators' liquidity ratios.[27] In addition, as one commenter suggested,[28] direct participants may be subject to greater capital requirements by offering done-away clearing since it may be more difficult for them to conclude that they have a well-founded basis on which they will be able to exercise close-out netting rights upon a customer default. Although FICC has developed a close-out mechanism for Sponsored Member done-with transactions[29] and provided Netting Members with legal opinions to support the enforceability of such mechanism, that mechanism cannot be utilized for done-away Treasury transactions since it would leave FICC unbalanced. As described below, FICC is eager to work with market participants to develop mechanisms to facilitate close-out of done-away (and other) transactions that do not expose FICC to risk. However, that process may take some time because it will be necessary to consider the risk of not only U.S. customers, but those in other jurisdictions as well. As a point of comparison, FICC understands that, in the cleared derivatives space, market participants are still honing close-out mechanisms for certain types of non-U.S. customers.

Third, done-away clearing may present a number of regulatory challenges for direct participants. As mentioned above, direct participants will need to determine how to allocate responsibility for certain regulatory obligations (and in practical terms, risks) with executing brokers (e.g., in relation to trade reporting and confirmations). In the context of equity prime brokerage, the 1994 PB Letter provides guidance in relation to such allocation. No similar guidance or relief has been given in relation to done-away Treasury transactions. As a result, direct participants and executing counterparties will need to make their own assessments of how they can allocate responsibilities in a way that is most consistent with their regulatory obligations. Market participants may disagree on these questions and, in some cases, the appropriate allocation may depend on the regulatory status of the direct participant and the executing firm (e.g., whether it is registered as a broker or dealer). Furthermore, certain direct participants may not have the requisite licenses and authorities to engage in done-away clearing, given that the role of a direct participant in the context of done-away clearing is simply as agent and guarantor.

Fourth, as one commenter noted, done-away clearing may present accounting considerations that done-with transactions do not.[30] Although SIFMA is actively working to determine the balance sheet impact of done-away transactions and FICC is engaging with SIFMA's working group to resolve that issue, this analysis will necessarily take time.

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[27] See 12 C.F.R. Parts 50.32(e), 249.32(e) and 329.32(e).

[28] See SIFMA July Letter at 3.

[29] See GSD Rules, Rule 3A, Section 18.

[30] See SIFMA July Letter at 3.

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Accordingly, FICC respectfully disagrees with the assertions of certain commenters that there should be no impediment to mandating done-away clearing as long as the customer posts margin.[31] This argument is based on an unsupported (and false) premise that the only considerations around handling done-away clearing relative to done-with clearing are the costs of posting margin. As described above, the challenges associated with done-away clearing go well beyond the costs of posting margin. As a result, conditioning a done-away mandate simply on the posting of margin could expose direct participants to greater risks, require them to bear additional, uncovered costs, and create possible regulatory questions.

These additional challenges could force many direct participants to cease providing clearing services, which cessation would give rise to concentration in the clearing market. That kind of concentration would be an undue burden on competition, which would give rise to higher prices and potentially less flexibility among direct participants to implement arrangements that meet customers' regulatory, operational, legal, commercial, risk and other needs. As a result, FICC believes that these comments would be in tension with the Exchange Act and SEC Rule 17ad-22 and would serve to diminish the naturally expanding market competition that is leading many direct participants to prepare to offer done-away clearing. Therefore, it would be far more appropriate—as the Commission stated—to examine first the extent to which the Treasury Clearing Final Rule and FICC's other initiatives increase done-away clearing before considering a mandate.

iii. A clearing agency's imposition of a done-away mandate could be inconsistent with certain provisions of the Exchange Act.

Section 17A(b)(3)(E) of the Exchange Act provides that "[t]he rules of [a] clearing agency [may] not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants."[32] As the Commission itself has noted, a done-away mandate could be inconsistent with this requirement.[33] That is because for a mandate to be effective, it would likely (as some commenters have observed[34]) need to prohibit the bundling of execution and clearing.[35] Such a prohibition would effectively mean that a Netting Member could not charge lower fees for done-with clearing because that would amount to tying executing to clearing. As a result, a done-with mandate could be viewed as the clearing agency dictating certain pricing terms. Such setting of

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31 See MFA Letter at 8.

32 15 U.S.C. 78q-1(b)(3)(e).

33 89 Fed. Reg. at 2757, n. 421.

34 See MFA Letter at 8.

35 Although in theory a done-away mandate could simply require a direct participant to offer done-away clearing without more, it would not likely be effective unless it is structured so as to prohibit bundling execution and clearing and thereby prevent the Netting Member from forcing customers into done-with transactions through more favorable terms.

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prices is not clearly consistent with Section 17A(b)(3)(E). Accordingly, a done-away mandate could engender legal uncertainty that could serve to slow the shift toward done-away clearing.

In addition, Section 17A(b)(6) of the Exchange Act provides that a clearing agency may not "prohibit or limit access by any person to services offered by any participant therein."[36] Were a clearing agency, as one commenter proposed,[37] to require direct participants to provide done-away clearing services to any customer that posted margin, it could arguably be running afoul of this provision. This is because only customers that post margin would be entitled to done-away clearing, since the services offered to customers who do not post margin could potentially be limited to done-with clearing.

4. It is not clear how a clearing agency can mandate anonymous execution.

Some commenters argued that FICC should take steps to allow customers to avoid disclosing the identity of their execution counterparties to their Netting Members and prohibit Netting Members from restricting the execution counterparties with which their customers trade.[38]

With regard to disclosure, FICC understands customers' concerns regarding confidentiality and is open to working with market participants to understand and appropriately address those concerns. However, at the present time prohibiting a direct participant from knowing the execution counterparty's identity is not feasible from a practical perspective. This is because there is not currently a mechanism in the Treasury market available for someone other than a direct participant to submit transactions and counterparty information to the clearing agency. For example, in other markets (e.g., the U.S. markets for equity securities and cleared derivatives) there are execution facilities or affirmation platforms that provide post-trade settlement market infrastructure with such information. However, in the Treasury market such facilities or platforms are not predominant or do not currently offer similar services. As a result, for a Treasury transaction to be submitted to a clearing agency, the direct participant currently needs to know the identity of the execution counterparty so that it can submit such information to the clearing agency.

FICC is eager to engage with market participants, including potential vendors, to explore mechanisms that can eliminate the need for the direct participant to submit counterparty information to the clearing agency. However, until such mechanisms are in place, it is not feasible for FICC to prohibit a direct participant from knowing the identity of the execution counterparty.

If such a mechanism were to become available in the future, a clearing agency would need to consider whether that mechanism is one that all direct participants can utilize. Certain direct participants, especially those that do not engage in done-away transactions in other markets, may not have the systems, processes, or means to accommodate whatever mechanism is developed, or may need supervisory approval to use such a mechanism. As a result, forcing these firms to utilize

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36 15 U.S.C. 78q-1(b)(6).

37 See MFA Letter at 8.

38 See FIA PTG Letter at 7; MFA Letter at 5.

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such a mechanism could effectively mean forcing them out of clearing, with detrimental consequences for their customers and market liquidity more generally.

With regard to commenters' suggestions related to a Netting Member restricting execution counterparties, FICC notes that Netting Members may, in certain cases, have important and legitimate reasons to know or limit execution counterparties. For example, Netting Members may need to confirm that a customer's proposed execution counterparty has an execution or similar agreement in place with the Netting Member and has performed any obligations set forth in that agreement. An execution counterparty's identity may also be necessary for a Netting Member to assess certain risks, such as potential liquidity requirements under FICC's CCLF.

These issues are likely ones that Netting Members and their customers can address through commercial negotiation (e.g., by requiring representations regarding an execution counterparty's status and commitments from the customer to address losses arising from an execution counterparty failure). As a result, FICC believes that whether and how a Netting Member can restrict execution counterparties should be a commercial consideration that a Netting Member and its customer address in their bilateral documentation, not one dictated by a clearing agency.

Nonetheless, FICC will continue to consider both of these recommendations as part of its continuing assessment of whether there are more things it can do to facilitate access to clearing. If over time FICC identifies that Netting Members are restricting or forcing the disclosure of execution counterparties for competitive, rather than risk-related, reasons, FICC can consider whether there are steps it can take to address such actions.

5. FICC remains open to additional feedback on additional steps to facilitate done-away clearing.

A commenter[39] urged FICC and the Commission to do more to facilitate done-away clearing, without specifying exactly what measures FICC should adopt. As we have sought to make clear, we strongly welcome proposals to improve access to clearing and would be delighted to consider market participants' ideas and suggestions. The initiatives contained in the Proposals are in many ways simply the baseline for further market discussion and innovation in promoting broader access to central clearing in the Treasury market. However, the fact that market participants may in the future identify additional mechanisms to facilitate access without giving rise to some of the detrimental effects of a done-away mandate is not a good reason for disapproving measures, such as the Proposals, which will at present support the same ends. Furthermore, as discussed above, FICC will independently engage in efforts to identify what steps it can take to facilitate additional clearing, including through its annual reviews, advisory councils, and industry engagement. FICC appreciates the time and effort that market participants have made to contribute to FICC's existing efforts and looks forward to continuing to work with firms on this issue.

[39] See Letter from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute (Jun. 20, 2024) ("ICI Letter") at 5.

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B. Rationales of Proposed Access Models

Some commenters[40] asserted that it was not clear to them what use case each of FICC's proposed access models served. These commenters indicated that they did not understand in particular the rationale for allowing customers that post segregated margin to utilize the ACM Service or for having both the Sponsored Service and the ACM Service. In these commenters' views, such access models should be eliminated so as to limit "operational complexity" and "customer confusion."

We respectfully disagree. FICC developed the four indirect access models that would exist if the Proposals were approved (the "Four Models") pursuant to its open access approach to clearing, under which FICC seeks to ensure that the diverse array of Treasury market participants can access clearing through a model that meets their needs. In Annex A attached hereto, we have provided a high-level overview of the benefits that each of the Four Models offers and why certain market participants may wish to use those models. As discussed therein and further below, the models that some commenters challenge may provide critical benefits for others seeking to access clearing. Thus under a smaller range of models, a number of market participants may not be able to access clearing or the Treasury market more generally. Accordingly, FICC believes that these models are necessary and beneficial to the market.

Available evidence supports this view: in the recent survey, market participants expressed interest in using both the Sponsored Service and ACM Service and projected significant transaction volumes for clearing under each of the Four Models.[41] Nonetheless, as noted above, FICC will be required to conduct annual reviews of its access models, which would allow FICC to understand the usage of the Four Models and consider modifications or development of new models as appropriate.

1. FICC must have an "open access" approach to accommodate the needs of diverse participants in the Treasury market.

We note at the outset that, given the diverse types of market participants in the Treasury market, an "open access" approach to clearing is vital to ensuring that firms can access clearing in a way that meets their regulatory, operational, legal, commercial, risk and other needs. Many firms that are active in the Treasury market, such as money market mutual funds, either do not meaningfully participate in other cleared markets or benefit from unique exceptions in those markets that are not available in the Treasury markets. For these institutions, flexibility is critical in allowing them to enter into cleared trades. Were there only one or two models available, many of these institutions would simply be unable to access clearing.

[40] See Walt L. Lukken, President & Chief Executive Officer, The Futures Industry Association ("FIA") (Apr. 18, 2024) ("FIA Letter") at 8; FIA PTG Letter at 8-9; MFA Letter at 6; Letter from Katherine Darras, General Counsel, The International Swaps and Derivatives Association, Inc., (Jul. 18, 2024) at 2-3 ("ISDA July Letter")

[41] 2024 Treasury Clearing White Paper at 3, 7-8.

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We appreciate that, for certain groups of market participants, these limitations may not be familiar and as a result, an additional model may not appear to provide benefits. However, that lack of understanding is not a sufficient basis to reject or discontinue a model, as long as the model serves important benefits for other market participants. Rather, that misunderstanding requires FICC to undertake additional efforts to explain the rationale for the models at issue. As discussed above, we have sought to do that through various educational initiatives and will continue to do so. We also provide in Annex A to this letter a high-level overview of what FICC considers to be possible use cases and advantages of each of the Four Models.

2. The models that commenters questioned can provide important benefits to market participants.

One commenter recommended the elimination of the ability for market participants to elect the ACM Service with margin segregation,[42] while another commenter questioned whether both the Sponsored Service and the ACM Service should be retained.[43]

As noted above, Annex A provides a high level overview of the rationale and benefits of each of the Four Models. With regard to commenters' questions in particular about the ACM Service with segregation, a Netting Member and its customer may prefer to use the ACM Service to access clearing, whether or not the customer posts segregated margin, for a number of reasons. First, a Netting Member and its customer may prefer the ACM Service because the Netting Member will be able to utilize a "financial asset" election to perfect its security interest in the transactions cleared under the service instead of having to file financing statements. By contrast, Netting Members currently have to file financing statements to perfect their security interests in a customer's Sponsored Member Trades. Such financing statements are costly to diligence and file, increase risk to the Netting Members (e.g., due to potential missed or late filings, failures to file continuances timely, deficient filings, or changes in the customer's jurisdiction), and are public. These features can make it more expensive for Netting Members to offer clearing through the Sponsored Service and can also require a customer to make certain representations and covenants, e.g., in relation to its jurisdiction of organization and headquarters, which can be prone to foot fault risk. They can also result in undue public disclosure of the relationship between the Netting Member and its customer. As a result, the ability of a Netting Member to perfect its security interest in transactions cleared under the ACM Service using a financial asset election, rather than a financing statement, can provide significant benefits to both customers and Netting Members, regardless of whether the customer posts margin.

Additionally, as the Commission recognized, some customers may prefer the ACM Service even if they post segregated margin because they do not wish to be in privity with FICC for regulatory or other reasons.[44] For other customers, the ACM Service may be preferable because it

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42 See MFA Letter at 7.

43 See FIA PTG Letter at 4.

44 89 Fed. Reg. at 2735 ("The Commission recognizes that if the FCM were to access a U.S. Treasury securities CCA through a model like FICC's Sponsored Service, the CCA would novate the transaction and become the counterparty to the FCM, which, as the commenter has described it, would not be consistent with Rule

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has a simpler onboarding process. Most notably, there is no need for an Executing Firm Customer to execute a Sponsored Membership Agreement with FICC.

For customers located in jurisdictions that are not approved for the Sponsored Service, the ACM Service may not only be a preference, but a necessity. This is because, unlike for Sponsored Service, there is no need for an Executing Firm Customer to be located in a specifically approved jurisdiction. Accordingly, for certain customers, the ACM Service may be the only way they can access clearing.

Lastly, some market participants that are active in the futures and cleared swaps space may simply prefer a model that is familiar to them. For these customers, it would be unduly costly to come up to speed on the legal framework governing the Sponsored Service and the implications of being in privity with FICC, when they can just opt into a regime that they have carefully assessed previously.

Similarly, market participants may prefer the Sponsored Service with or without margin segregation for a variety reasons. First, as a general matter, a large array of indirect participants, including many money market funds, currently access clearing through the service. It would be unnecessarily disruptive and costly to these market participants without any material gain to require that they redocument their relationship under the ACM Service. Second, customers may prefer the Sponsored Service over the ACM Service because they prefer to be in a direct contractual relationship with FICC. Lastly, market participants may prefer the Sponsored Service in light of the more settled regulatory considerations and accounting treatment of transactions cleared using the Sponsored Service as compared to the ACM Service.

In light of the foregoing, FICC believes that each of the Four Models would provide important benefits to market participants. Indeed, FICC developed these models not in a vacuum but after engagement with market participants as to the impediments that they face to access clearing and what steps can be taken to eliminate those impediments. FICC therefore encourages the Commission to approve the Proposals so as to allow market participants to benefit from all Four Models.

Nonetheless, FICC agrees with commenters and the Commission that unused models do not provide benefits to market participants. Accordingly, FICC intends to collect and publish information regarding its various access models, including (1) number of Netting Members enabled to use each model; (2) number of Sponsoring Members enabled to offer done-away clearing; and (3) volumes of trading through each access model, including number of transactions

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1.25(d)(2) with respect to permitted counterparties. However, the requirement to clear eligible secondary market transactions does not require that the FCM use a particular type of model that would make the FCM a counterparty to a CCA. The FCM could access central clearing through an agent clearing model like FICC's Prime Broker or Correspondent Clearing models, in which it would essentially "give up" its transaction to a direct participant for submission without becoming a counterparty to the CCA, which should be consistent with the FCM's obligations under Rule 1.25(d)(2). Therefore, this requirement to clear eligible secondary market transactions does not obligate the FCM to use a model that would necessarily result in a transaction with a clearing agency as the counterparty to the FCM.").

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and total notional. If, based on this data or its other engagement with Netting Members more generally, FICC identifies that a given model is not providing utility to market participants, it can assess what changes to that model could enhance its utility or otherwise choose to eliminate the model. At this time, however, based on its engagement with market participants, FICC believes each of the Four Models would provide important benefits to market participants.

C. Additional Comments Regarding Access Models

In addition to the feedback addressed above, market participants raised a number of questions and suggestions regarding FICC's access models. We wish to address each of these in turn.

One commenter requested that the application of segregation protections be automatic for any Sponsored Member who posts or finances its own margin on the basis that the commenter could not think of why a Sponsored Member who posts or finances its own margin would not wish to have that margin segregated.[45]

FICC respectfully disagrees with the commenter because some market participants may prefer to use the Sponsored Service (or the ACM Service) without margin segregation even where a Sponsored Member (or Executing Firm Customer) posts margin (using its own resources or financed through someone other than the Netting Member). This will likely arise in instances where a Netting Member and its customer agree on posting an amount of customer margin less than the amount calculated by FICC. For example, the Netting Member and the customer may agree for the customer to post margin in such an amount calculated using an agreed methodology, such as the margin methodology applicable to the parties' non-cleared repo transactions. In such a case, the customer would benefit from posting some amount of margin because it would likely face a lower financing charge and credit risk spread than would be the case if the customer posted no margin at all.

However, if the customer and the Netting Member were forced to opt into margin segregation because the customer posted margin, this flexibility would not be available. That is because, as discussed below, the Treasury Clearing Final Rule would effectively require that if the customer's margin is segregated, the Netting Member must satisfy the full amount of the Segregated Customer Margin requirement using assets held for the customer.

Moreover, a customer may simply prefer not to have the margin they post to their Netting Members segregated because the absence of segregation may allow the customer to earn a greater return on the margin, either through yield payable by the Netting Member or by directing the Netting Member to invest the margin in instruments, such as corporate bonds, that are not eligible to be posted to FICC.

More fundamentally, as discussed above, the "open access" approach to access models reflected in the Proposals is intended to maximize flexibility to address the needs of various types of market participants, and the mere likelihood that some (or even a majority of) market

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45 See MFA Letter at 7.

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participants may wish to elect margin segregation when a customer agrees to post margin should not preclude other market participants from electing otherwise.

1. FICC has the capacity to provide each of the access models it has proposed.

One commenter expressed concern about FICC's ability to provide each of the Four Models that would exist if the Proposals were adopted. This commenter stated, incorrectly, that FICC might need to establish individual accounts for each customer.[46] FICC notes that it proposed each model after confirming its ability, from a legal, operational, risk, regulatory, and commercial perspective, to provide such model. These models were carefully considered based on internal and external stakeholder input and are designed to facilitate access in ways that FICC can accommodate. With regard to the commenter's particular concern over individual accounts, FICC confirms that neither the Sponsored Service as proposed to be amended nor the ACM Service would require individual Accounts for each customer. Rather, transactions submitted to FICC by Netting Members on behalf of customers would be recorded in any number of omnibus Accounts, either an Agent Clearing Member Omnibus Account or a Sponsoring Member Omnibus Account.[47] The latter of these two Account types is the one that FICC currently uses to record Sponsored Member Trades.

2. Certain limits on FICC's access models were designed to comport with FICC's operational capabilities and appropriate risk allocation.

One commenter requested FICC explain why the ACM Service is unavailable for "GCF repo transactions" and "brokered transactions".[48] In accordance with the discussion above, these limitations were designed to align FICC's access models with its operational capabilities and with appropriate risk allocation. With regard to GCF Repo Transactions, as explained in the Access Model Proposal, FICC's current operational capabilities do not allow FICC to clear "general collateral" repo transactions through the ACM Service.[49] However, FICC is considering developing such capabilities based on feedback from market participants.

As to Brokered Transactions, FICC does not believe it would be appropriate for transactions cleared through the ACM Service to be treated as Brokered Transactions. The concept of Brokered Transactions aims to capture certain transactions that present lower risk because the

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46 See SIFMA AMG Letter at 12.

47 See Access Model Proposal, 89 Fed. Reg. at 21368 ("Section 7 would provide that Agent Clearing Transactions would be recorded in accounts maintained by FICC on behalf of the Agent Clearing Member, defined as 'Agent Clearing Member Omnibus Accounts'"); Margin Segregation Proposal, 89 Fed. Reg. at 21605 ("FICC establishes and maintains a 'Sponsoring Member Omnibus Account' on its books in which it records the transactions of the Sponsoring Member's Sponsored Members").

48 See FIA PTG Letter at 7.

49 See Access Model Proposal, 89 Fed. Reg. at 21368, n.33.

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party entering into the transactions, namely an IDB in its principal capacity, does not have directional risk in relation to that transaction. Transactions entered into through the ACM Service do not have a similar risk profile.[50] Therefore, it would not be appropriate to treat them as Brokered Transactions under the GSD Rules. We note, however, that the ACM Service would permit a Netting Member to submit for clearing a transaction that a customer enters into on an IDB or similar platform. In addition, FICC intends to amend the Access Model Proposal to clarify that transactions entered into on IDBs and similar platforms may be cleared using the Sponsored Service as well.

3. FICC is very open to considering additional access models if necessary to address market participants' regulatory or other needs.

One commenter requested that FICC develop additional access models. In particular, this commenter recommended that FICC develop an access model that would allow Netting Members that are registered as FCMs to submit transactions entered using futures or cleared swaps customer funds through either a sub-account of the Netting Member's existing Account or through a separate membership category.[51] Another commenter requested clarification from FICC as to "whether branches of a bank or a Netting Member's affiliates can access FICC by the bank's or Netting Member's Direct Membership . . . and request[ed] that FICC confirm that in this instance, the bank's branches and Netting Member's affiliates can establish a separate Margin Portfolio within the Direct Participant's account that would be separately netted and margined, such that they would not have to establish indirect access to FICC."[52]

As noted above, FICC welcomes market participants' suggestions of additional access models that will address regulatory or other impediments to clearing without unduly exposing FICC or its participants to risk. With regard to the suggestion related to FCMs, FICC notes that the GSD Rules, as amended by the Proposals, would allow Netting Members to instruct FICC to establish separate Accounts for certain kinds of transactions and to have such Accounts constitute separate Margin Portfolios. As a result, a Netting Member that enters into transactions using futures, cleared swaps, or foreign futures customer funds could have those transactions recorded in an Account that does not net with the Netting Member's other Accounts for purposes of calculating margin or funds-only settlement amounts. FICC understands that that FCMs may additionally require that the transactions in such Accounts not be netted against one another or against other transactions of the Netting Member in the event FICC ceases to act for the Netting Member (such Netting Member, a "Defaulting Member"). FICC remains in active discussions with

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[50] See also Margin Segregation Proposal, 89 Fed. Reg. at 21604 ("Lastly, the proposed rule changes would modify the terms relating to brokered transactions to require that only transactions that an Inter-Dealer Broker Netting Member executes on the Inter-Dealer Broker Netting Member's own trading platform benefit from favorable loss allocation treatment. FICC believes that making these changes would improve FICC's risk management and promote access by ensuring that its differential treatment of different parties and transactions has a sound risk management justification.").

[51] See FIA Letter at 8.

[52] ISDA July Letter at 5.

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the FCM community regarding this matter and is intending to address it in an upcoming proposed rule filing related to default management.

With regard to the commenter's suggestion that FICC allow affiliates of a Netting Member to access clearing through the Netting Member's direct membership, it is unclear why such access would be necessary. In this regard, FICC intends to engage with the commenter to understand what impediments would prevent Netting Member affiliates from accessing clearing through any of the Four Models and what steps FICC can take to address such impediments. We note, however, that FICC would need to examine carefully whether any mechanism allowing a Netting Member affiliate to access clearing through the Netting Member's direct membership is consistent with the requirement of SEC Rule 17ad-22(e)(6)(i) that FICC calculate, collect, and hold a direct participant's margin for its proprietary transactions separately and independently of that for the transactions of indirect participants (such as affiliates) that access clearing through the direct participant.

As to the commenter's question about branches, FICC notes that FICC's recent proposed rule change to implement the trade submission requirement addresses the treatment of branches and would comport with the commenter's suggestion.[53]

D. Porting and Default Management

The Proposals, coupled with the existing GSD Rules, generally address the treatment of customer transactions and margin in a default scenario. In particular, they make clear that Segregated Customer Margin would not be available to discharge any obligations but those of the Segregated Indirect Participant for whom that margin is held and that, in the event an Agent Clearing Member becomes a Defaulting Member, its Agent Clearing Member Transactions would be closed out similarly to how other transactions of the Netting Member are closed out.[54]

A number of commenters argued that FICC could facilitate access to clearing by adopting additional default management provisions to facilitate porting and settlement of cleared transactions and to address the rights of Netting Members and customers vis-a-vis one another in a default scenario. FICC appreciates these suggestions and is actively considering ways it can implement many of the commenters' recommendations consistently with the approaches of other U.S. central counterparties ("CCPs"). In particular, FICC believes it would be appropriate to adopt additional provisions related to porting, settlement, and the mechanisms for a Netting Member to close out a customer's transactions. However, in order for these changes to be effective in achieving their intended goals, there must first be clarity as to the applicable models, as well as the bilateral documentation governing such clearing arrangements and the applicable requirements related to close-outs in the jurisdictions in which customers are organized. As these issues are settled, FICC will actively consider potential rule changes to address commenters' concerns.

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[53] See Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement, Exchange Act Release No. 34-100417, 89 Fed. Reg. 54602, 54605 (Jul. 1, 2024) ("Trade Submission Proposal").

[54] Proposed Amended GSD Rules, Rule 4 Section 5; Rule 8, Section 5; Rule 22A.

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1. *FICC intends to propose amendments to its Rules to include market standard provisions related to porting once there is greater clarity regarding its customer access models.*

A number of commenters asserted that the Proposals were deficient because they did not expressly provide for the porting of customer positions.[55] FICC appreciates these suggestions and intends to propose amendments to the GSD Rules that would add porting provisions similar to those adopted by other U.S. central counterparties.[56] Based on feedback from market participants, FICC believes that such provisions would make it clearer that porting is possible for FICC-cleared trades. However, FICC believes it will be more efficient to wait until the Commission decides whether to approve or disapprove the Proposals before proposing a specific porting framework. That way, FICC can tailor the porting provisions to the access models and margin arrangements that are available. Accordingly, FICC would ask the Commission to first take final action in respect of the Proposals, after which FICC will seek to propose rule changes to facilitate porting before December 31, 2025.

FICC notes that any porting framework would need to take into consideration the fact that many FICC-cleared customer transactions are overnight. As one commenter identified,[57] porting may not be practical for such transactions because the transactions will generally settle before porting can be completed. The ability to settle is therefore substantially more important than the ability to port, and FICC currently includes provisions to facilitate such settlement in the Sponsored Service.[58]

2. *FICC is open to adopting changes that would permit settling outstanding transactions cleared under the ACM Service upon a Netting Member Default.*

One commenter argued that FICC should have the opportunity to settle the outstanding cleared transactions that a Defaulting Member has cleared through the ACM Service.[59] This commenter noted that the GSD Rules contain a similar provision in relation to the Sponsored Service.[60]

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55 See Letter from Robert Toomy, Head of Capital Markets, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (May 22, 2024) ("SIFMA May Letter") at 4; SIFMA AMG Letter at 8; MFA Letter at 9; Letter from Katherine Darras, Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association, Inc. (Apr. 17, 2024) ("ISDA Letter") at 5.

56 See, e.g., CME Rulebook, Rule 802.G.

57 See ISDA July Letter at 3 n.11 ("Porting would not be useful for overnight trades since those as short-lived and would roll off before the porting could occur.").

58 GSD Rules, Rule 3A, Section 16(b).

59 See FIA PTG Letter at 8.

60 GSD Rules, Rule 3A, Section 16(b).

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FICC agrees with this commenter's suggestion. As a general matter, settlement may in many instances be the most effective and customer-protective way to address a Member default scenario, so long as the receiver or trustee of the Defaulting Member consents. Therefore, FICC is considering amendments to the Proposal that would give FICC the option to effectuate such settlement. However, as explained above, FICC believes it would be more efficient to propose such default management changes after the access models have been approved and adopted, but at the very least before December 31, 2025.

3. FICC is open to adopting changes that would facilitate the ability of Netting Members to close out a defaulted customer.

Some commenters argued that FICC should adopt rules expressly allowing Netting Members to close-out done-with transactions cleared under the ACM Service.[61] As discussed above, the ACM Service was designed to closely resemble the clearing model used in the futures and cleared swap market. To FICC's knowledge, the rulebooks of U.S. derivatives clearing organizations ("DCOs") generally do not prescribe a close-out mechanism for a clearing member to use to close out its customers' trades. Rather, DCOs generally leave it to the bilateral agreement between clearing members and their customers to address how such close-out should be effected.

Nonetheless, FICC remains open to considering, and is eager to engage with market participants on, steps FICC can take to facilitate the ability of Netting Members to address a customer default situation and to promote legal certainty for both done-away and done-with transactions under the ACM Service and the Sponsored Service. Indeed, FICC anticipates discussing what steps it can take in this regard with its Risk Management Advisory Council.

However, any such steps would need to take into account the legal requirements applicable not only to U.S. customers, but also to those organized in different jurisdictions. Indeed, it is our understanding that the difficulties associated with satisfying the well-founded basis requirement in the FCM context are principally in regard to certain types of non-U.S. customers. In addition, any close-out mechanisms should be cognizant of both the documentation governing clearing relationships and the available clearing models. Accordingly, FICC believes it would be premature to propose amendments until the above-referenced current efforts to develop industry documentation for Treasury clearing are complete, market participants have considered and identified what FICC can do to address applicable requirements in non-U.S. jurisdictions in which customers are most likely to be located, and there is greater clarity regarding the available clearing models. Once these matters are resolved, FICC would be pleased to propose language to facilitate the ability of Netting Members to exercise close-out rights.

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[61] See FIA Letter at 12; ISDA Letter at 2; SIFMA May Letter at 3.

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4. FICC does not believe a provision allowing customers to close-out Netting Members or receive payments directly from FICC would be consistent with market practice or practically workable.

One commenter argued that FICC should permit customers to close out their positions with Defaulting Members or, if such is not possible, elect to receive payments directly from FICC.[62] To FICC's knowledge, no U.S. CCP provides in its rules either for customers to have the ability to direct the CCP to terminate trades or to make payments directly to the customer. Rather, consistent with the framework of an intermediated clearing arrangement, CCPs interface directly with clearing members, as agents for their customers.

More importantly, interfacing with Netting Members as agents for their customers is important to FICC from a risk perspective. Netting Members are subject to comprehensive operational requirements and testing that are designed to ensure they have the capability to perform to and receive performance from FICC and that such performance will not expose FICC to operational risks (e.g., systems failures and viruses).[63] Customers are not subject to any such requirements. As a result, FICC cannot establish interoperability with customers without exposing itself, its participants, and the broader market, to significant operational risk.

Although FICC could seek to subject customers to similar comprehensive standards and testing as it applies to Netting Members, FICC believes that would be quite burdensome, if not infeasible, for many customers. Such burdens would likely outweigh any benefits of FICC establishing interoperability with customers, given that in a Netting Member default scenario, FICC would generally close-out trades or settle through the trustee or receiver of the Defaulting Member, and applicable insolvency law would likely prohibit FICC from engaging directly with customers.

5. FICC is open to considering additional default management measures if needed to address market participants' regulatory requirements.

One commenter requested that FICC add to the GSD Rules a confirmation that, in the event of a FCM Netting Member's bankruptcy, (1) any securities purchased with customer funds under a repo agreement may be immediately transferred; and (2) the counterparty has no right to compel liquidation of securities subject to such agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for the resale of the securities to the counterparty if the former exceeds the latter.[64] This commenter noted that these statements would be needed for FCMs to confirm that FICC-cleared repos satisfy applicable CFTC requirements.

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[62] See SIFMA AMG Letter at 6-7.

[63] See, e.g., GSD Rules Rule 3, Sections 6 (Operational Testing Requirements), 7 (General Continuance Standards) and 8 (Specific Continuance Standards).

[64] See FIA Letter at 7.

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FICC is open to considering additional steps it can take to facilitate the ability of FCMs to clear transactions at FICC consistent with their regulatory requirements. However, FICC would like to have greater understanding of the need for these provisions given that the GSD Rules do not currently allow FICC or the pre-novation counterparty to any Defaulting Member to restrict the transfer of securities sold to the insolvent FCM in a repo or make a priority claim in respect of the securities purchased by the insolvent FCM. Accordingly, it is somewhat unclear what the rule change would accomplish. Nonetheless, FICC will continue to engage with the FCM community on this matter.

E. Segregated Customer Margin

1. *The Margin Segregation Proposal's $1 million minimum is supported by data and is critical to ensuring that segregation does not expose FICC and its participants to undue loss.*

A number of commenters asserted that the Margin Segregation Proposal was deficient because it would set a Segregated Customer Margin Requirement floor for each Segregated Indirect Participant of $1 million in cash.[65] These commenters argued that this minimum lacked support and failed to take into account the differences between Netting Members and customers. These commenters contended that FICC should adopt a lower minimum requirement ($100,000 to $250,000), a dynamic minimum based on average exposure subject to a $250,000 cap, or a minimum set by the relevant Netting Member.

FICC disagrees with these commenters' positions. As FICC has noted in the Margin Segregation Proposal, the rationale for the proposed $1 million floor is that this is the same floor that FICC applies to Netting Members. FICC adopted the $1 million floor for Netting Members in 2022 after conducting a comprehensive backtesting impact study that the Commission carefully reviewed.[66] In this impact study, FICC observed that there were increases in reverse repo activity from more Netting Members when there were increases in repo interest rates. This study demonstrated that a $1 million floor would serve to protect FICC and its participants from incurring a loss in the event of a Netting Member failure. Specifically, the study indicated that a $1 million floor would provide an adequate buffer for the additional repo activity and would have mitigated 65 out of 396 backtesting deficiencies (16%) during the period from July 1, 2021 to June 30, 2022. As part of the same study, FICC completed an analysis of alternative floor amounts (including $500,000) and used backtesting performance metrics as the key metric in determining the final amount. Based on the results of the analysis, the $1 million floor was shown to provide an appropriate balance of improving backtesting performance and margin coverage while

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[65] See ISDA Letter at 4-5; AIMA Letter 6-7; MFA Letter at 6-7; SIFMA AMG Letter at 8-9.

[66] See Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change To Increase the Minimum Required Fund Deposit for Government Securities Division Netting Members and Sponsoring Members, and Make Other Changes, 87 Fed. Reg. 65268 (Oct. 28, 2022). FICC raised the minimum margin requirements for Netting Members to be $1 million because FICC's study showed the $1 million minimum would decrease the number of back-testing deficiencies, thereby increasing the number of members for which FICC maintained sufficient coverage at a confidence level of at least 99%.

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minimizing the impact to Netting Members. As the Commission noted when approving the 2022 proposal:

> [B]ased on the Commission's review and analysis of the material submitted by FICC, the proposed increase [of the floor to $1 million] would have provided FICC with additional resources, which would have resulted in a decrease in backtesting deficiencies and thus a reduction in credit exposure to its members under the proposal. Therefore, the Commission believes FICC would improve the probability that the increased minimum margin amount it collects is sufficient to cover FICC's credit exposure to those members, particularly in instances where the defaulted member's clearing activity abruptly increases following a period of low or no activity because FICC would have additional resources available to cover that additional exposure before collecting additional margin for that increased activity. This increase could reduce the possibility that FICC or its non-defaulting members face losses from the close-out process, in the event that FICC were to have to allocate losses amongst non-defaulting losses pursuant to its Rules.[67]

Available data since FICC adopted the $1 million floor further support its efficacy as a risk mitigant. Since FICC increased the minimum Required Fund Deposit to $1 million in 2022, backtesting deficiencies were reduced by 12% as a result. For the period from December 5, 2022 to June 30, 2024, the $1 million floor eliminated 24 backtesting deficiencies (reducing 206 to 182 backtesting deficiencies). This timeframe from 2022 to the present included the market volatility following the collapse of Silicon Valley Bank. In assessing the 12-month period of moderate market volatility from July 1, 2023 to June 30, 2024, the $1 million floor reduced deficiencies by 22% (reducing 68 deficiencies to 53). This represents a material reduction of backtesting deficiencies at FICC. Accordingly, the $1 million floor has served to meaningfully reduce the risk of a Netting Member default to FICC and its participants notwithstanding volatility in interest rates that has been relatively unusual over the past two decades.

FICC sees no compelling reason, and commenters did not explain, why the same data fail to support applying a $1 million margin floor to Segregated Indirect Participants. As is the case with a Netting Member's Clearing Fund, the Segregated Customer Margin posted by an individual Segregated Indirect Participant needs to be enough—on its own—to address losses arising from the Segregated Indirect Participant's positions. Otherwise, such losses may be mutualized, with harm to FICC, its non-defaulting Netting Members, and the market as a whole. The reason why the Segregated Customer Margin needs to be sufficient to cover the losses arising from the customer's positions is that under the Margin Segregation Proposal, FICC would only be able to use Segregated Customer Margin posted by an individual Segregated Indirect Participant to satisfy *that particular customer's* obligations.[68] FICC would not be able to look to any other Segregated

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[67] Id. At 65270.

[68] See Margin Segregation Proposal, 89 Fed. Reg. at 21604 ("FICC would only be able to use such segregated margin to satisfy the obligations of the customer for whom such margin is held.").

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Customer Margin. Accordingly, each Segregated Indirect Participant's portfolio presents a risk to FICC that is equivalent to the risk of a proprietary portfolio of an individual Netting Member.[69]

Moreover, FICC believes the risk cited by the Commission of inconsistent activity giving rise to dramatic changes in risk exposure is arguably more pronounced for customers than for Netting Members. First, customers may clear through multiple Netting Members, and shifts of activity between Netting Members have the same effect on FICC's risk exposure as the customer establishing or closing out positions. This is because a Segregated Indirect Participant's portfolio at each such Netting Member is treated entirely independently and FICC cannot look to Segregated Customer Margin posted by the Segregated Indirect Participant through one Netting Member to address the Segregated Indirect Participant's transactions cleared by another Netting Member. As a result, even if the Segregated Indirect Participant's overall activity remains steady, FICC could see dramatic shifts in its risk simply because the Segregated Indirect Participant shifts the Netting Members it uses as its intermediary at FICC. Second, FICC has a general understanding of each Netting Member's business and, through its collection and monitoring of financial information, may be able to identify whether there may be significant swings in activity. By contrast, FICC does not collect the same information on individual customers' business or finances. As a result, FICC is much less likely to know when there may be significant swings in its risk exposures. Finally, individual customers likely have a far more diverse array of business models and interest rate considerations than Netting Members. As a result, the possibility of inconsistent activity is potentially greater.

In addition, FICC notes that margin segregation under the Proposals is entirely voluntary. To the extent that the $1 million floor may be too high for certain customers, such customers can simply agree with their Netting Member not to elect margin segregation, in which case, as already discussed above, the customer can post lower margin or no margin at all to the Netting Member based on the parties' bilateral agreement.

Commenters did not identify any data supporting the lower figures they have proposed that a small Netting Member that transacts only for its proprietary account presents less risk (or is more easily able to afford the $1 million) than a customer that likewise transacts only for its account. Furthermore, calibrating the requirement differently for Segregated Indirect Participants as compared to small Netting Members would create a competitive disparity as between those who access FICC directly as Netting Members and those who access FICC indirectly, which disparity would arguably be at odds with Section 17A(b)(3)(I) of the Exchange Act.

Nonetheless, in response to industry feedback and in order to ensure that the minimum Segregated Customer Margin Requirement does not impose an undue burden on Segregated Indirect Participants, FICC will review the floor amount for Segregated Customer Margin as part of ongoing internal surveillance and risk management monitoring procedures. FICC believes that it would be prudent to have the ability to adjust the floor proactively to the extent that FICC identifies as part of these reviews that activity levels, margin performance observed through

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69 Although FICC could look to the Netting Member's own Clearing Fund, that Clearing Fund is calibrated to cover only the risk of the Netting Member's proprietary and customer positions other than those of the Segregated Indirect Participants. As a result, in the event of the Netting Member's default, the Clearing Fund may not be available to meet the obligations arising from a Segregated Indirect Participant's positions.

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backtesting, and other measures indicate that FICC would be able to continue to manage the risks presented to it and meet its regulatory risk management obligations (including, for example, its 99% backtesting coverage target) with a lower minimum Segregated Customer Margin Requirement. Therefore, FICC intends to amend the Margin Segregation Proposal to provide that the minimum margin floor will initially be set at an amount of $1 million but may be adjusted by FICC subject to certain specified conditions being met and governance required to change the amount. FICC would also commit, in the GSD Rules, to review and adjust the minimum Segregated Customer Margin Requirement if data shows that this amount is not necessary for FICC to meet its risk management goals and regulatory obligations. However, until available data in fact demonstrates a different floor would not expose FICC, its Netting Members and customers, and the broader U.S. financial system to increased risk, FICC believes it is most appropriate as a starting risk management approach for Segregated Customer Margin to apply the same $1 million floor amount it otherwise applies to Netting Member margin today.

2. If a customer opts into segregation, FICC is unable to collect less margin from that customer than the full amount needed to address the customer's positions.

One commenter requested that FICC explain "why it is appropriate to calculate a [Segregated Indirect Participant's] margin requirement 'as if they were a netting member,' even though the margin calculation for direct members covers both initial margin and guaranty fund contributions (and customers are not expected to be contributing to the guaranty fund)."[70] Another commenter asserted that FICC should allow customers that do not post the full amount of the margin needed to cover their positions to opt to have the margin they post segregated.[71]

In response to these comments, FICC notes that, unlike DCOs and certain other CCPs, FICC does not currently separate the collateral it collects from participants into "initial margin" to cover the risk of the Netting Member's or its customer's positions and "default fund" or "guarantee fund" to cover potential tail risks. Rather, substantially all of the collateral that FICC collects is margin based on the risk of the positions at issue.[72] As FICC has noted in the past, it welcomes further dialog with the industry and its supervisors regarding the optimal structuring of its risk management resources.[73] However, those discussions will require careful consideration of a variety of issues. In particular, because FICC is a clearing agency, it would need to assess with its supervisors how establishing and maintaining a separate guaranty fund could be pursued in a

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[70] FIA PTG Letter at 8.

[71] See MFA Letter at 6.

[72] One component of FICC's Clearing Fund calculation, i.e., the Excess Capital Premium, is based on the Netting Member's own capital position relative to its margin requirements. However, FICC would not require Segregated Indirect Participants to be subject to such component; only the Netting Member is and would continue to be subject to this charge.

[73] 2023 Treasury Clearing White Paper at 17.

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manner consistent with applicable regulation. Until that assessment is concluded, FICC must collect a single margin amount for each Margin Portfolio.

In addition, the Treasury Clearing Final Rule effectively prohibits FICC from incorporating into the Netting Member's proprietary margin calculation the risks arising from its customer's positions. Rather, that rule requires FICC to calculate separately and independently the margin for a direct participant's positions from those the direct participant carries for customers.[74] Accordingly, FICC effectively must calculate a Segregated Indirect Participant's margin requirement as if it were a Netting Member. It cannot shift part of the margin requirements to the Netting Member.

Furthermore, were FICC to allow segregation of margin posted by customers even if the customer did not fund all of the margin for its positions, it would give rise to undue competitive disparities that the Treasury Clearing Final Rule, in particular the amendments to SEC Rule 15c3-3a, aimed to remedy. Those amendments provide that a broker-dealer may record a debit in the customer and PAB reserve formulas for margin it collects from customers and on-posts to FICC, but only if the broker-dealer collects from the customer the full amount of margin required for the customer's positions. Accordingly, a broker-dealer is effectively precluded from collecting from customers only a portion of the margin that their positions require and on-posting that amount to FICC. Were FICC to allow segregation of customer margin even if the customer did not fully fund its margin obligations, such would effectively allow non-broker-dealer Netting Members to offer what broker-dealers cannot, i.e., permitting their customers to post a portion of the margin required by FICC and on-post that margin to FICC. This ability would place such Netting Members at a competitive advantage relative to broker-dealer Netting Members. Such an advantage would not only be in tension with Section 17A(b)(3)(I) but would also undermine the entire purpose behind the amendments to SEC Rule 15c3-3a. Accordingly, FICC does not believe it would be appropriate or consistent with its obligations to allow customers that post less than their full margin requirement to elect for that margin to be segregated.

3. Requiring Netting Members to offer segregation would be inconsistent with FICC's "open access" approach, expose Netting Members to possible risks, and lead to market concentration and reduced liquidity.

Some commenters asserted that the Margin Segregation Proposal should be revised to require Netting Members to offer customers the ability to opt-in to margin segregation.[75] As discussed above, FICC believes that its open access approach, which allows direct and indirect participants to select the access method and associated terms that are most consistent with their commercial, regulatory, risk, operational, and legal considerations, is the best way to facilitate access to clearing. As the Commission itself has recognized and as discussed above, such an approach is more consistent with Section 17A(b)(3)(E) of the Exchange Act than one that would

[74] SEC Rule 17ad-22(e)(6)(i).

[75] See MFA Letter at 4; AMG Letter at 6.

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mandate a Netting Member offer a particular service or clearing model.[76] Accordingly, FICC does not believe it would be appropriate or consistent with its obligations under the Exchange Act and SEC Rule 17ad-22 for a clearing agency to mandate that Netting Members offer segregation.

Indeed, FICC notes that Netting Members may have a variety of regulatory and other reasons not to offer segregation. From a regulatory perspective, segregation involves FICC establishing a custody relationship with a Netting Member, with the Netting Member in turn providing custodial services for customers. Certain Netting Members, such as firms that rely on the Commission's "Nine Firms Letter,"[77] may not have the regulatory authority to provide such custody services to U.S. or other customers. Accordingly, a requirement to offer such services could effectively force such Netting Members to cease providing customer clearing services entirely. Such a result would serve to increase concentration in the Treasury market and reduce liquidity. FICC does not believe such a measure would serve the ends of the Treasury Clearing Final Rule or be consistent with Section 17A(b)(3)(I) of the Exchange Act.

4. *Although FICC is open to considering further methods by which customers can post margin directly to FICC, such arrangements are likely to present serious practical challenges and risks.*

One commenter argued that FICC should create a mechanism that allows indirect participants to post margin directly to FICC without intermediation of a Netting Member.[78] The same commenter also asserted that the Proposals did not adequately address how interest earned on Segregated Customer Margin would be treated.

Although FICC remains eager to discuss with mutual funds and other market participants the steps that FICC can take to facilitate access to clearing, FICC is concerned that allowing the direct posting of margin would likely present sizable practical challenges and risks. As discussed above in relation to direct settlements between FICC and indirect participants, eliminating the role of a Netting Member as an intermediary and processing agent would require FICC to establish relationships directly with customers. As many commenters noted, the documentation and onboarding needed to establish a large number of new account relationships can be quite burdensome. Were FICC to establish relationships directly with customers, such an approach could involve thousands of documentation and onboarding exercises. This approach would not simply be burdensome; it would likely be fundamentally infeasible. In addition, it could expose FICC to

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[76] 89 Fed. Reg. at 2722 ("FICC has no role in the relationship between a direct participant and the direct participant's customers, and, indeed, the Exchange Act provides that its rules cannot impose any schedule of prices, or fix rates or other fees, for its participants' services. FICC's direct participants will remain free to determine what services they will offer to their customers, and at what price, thereby providing the ability for the direct participants to differentiate themselves from their competitors.") See also Section II.A above (responding to comments recommending that FICC mandate that Netting Members offer done-away clearing).

[77] Letter re: Securities Activities of U.S.-Affiliated Foreign Dealers from Richard R. Lindsey, Director, Division of Market Regulation to Giovanni P. Prezioso, Cleary, Gottlieb, Steen & Hamilton (April 9, 1997) ("Nine Firms Letter").

[78] See ICI Letter at 13.

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significant operational risk, since, as discussed above, customers are not subject to the same operational requirements as Netting Members.

Furthermore, in the case of margin in particular, FICC would likely need to document direct posting margin relationships through triparty agreements among FICC, the Netting Member, and the customer (and potentially the customer's or FICC's custodians as well). As in other asset classes, such triparty relationships would present novel and complex issues, including in relation to which party is entitled to give instructions at which time. These issues would require careful legal and risk analysis to resolve so as to ensure that both FICC and the Netting Member are able to obtain the margin when needed and have perfected security interests in the collateral.

Although FICC is willing to consider these issues further and steps it can take to ameliorate the above concerns, FICC's conversations with market participants indicate that the absence of direct posting of margin is not a significant barrier to accessing clearing. FICC notes in this regard that it is not aware of similar arrangements being used by CCPs in the United States and that, while there are somewhat similar arrangements available in Europe, FICC understands that they are only used in rare situations. However, FICC intends to engage with market participants about this proposal as part of its general efforts to identify ways to facilitate greater access to clearing, including through its advisory councils.

In addition, FICC will seek to understand from market participants whether FICC's existing Centrally Cleared Institutional Triparty ("CCIT") service may enable registered investment companies and other indirect participants to access central clearing consistently with their regulatory, operational, risk, legal, and other constraints. The CCIT service permits cash lenders to engage in general collateral triparty repo transactions with FICC Netting Members without requiring the posting of margin by the lender or a guarantee or other support from a Netting Member for the lender's obligations. FICC believes that this service can facilitate the ability of cash lenders to clear transactions entered into with third parties in an efficient manner and is eager to understand whether there are ways the service can be adjusted or revised to achieve that goal.

With respect to interest earned on Segregated Customer Margin, FICC would be happy to engage with the commenter to explain further how any interest earned on Segregated Customer Margin would be treated under the Margin Segregation Proposal. In brief, all Segregated Customer Margin would, in the case of cash, be held in interest bearing deposit accounts and, in the case of securities, in securities accounts, in each case at a Federal Reserve Bank or commercial bank. Each such account would be clearly labeled as held by FICC for the benefit of its Netting Members' customers and segregated from other assets that FICC maintains at such custodians. FICC, in turn, would credit all such margin to securities accounts on its books and records for each Netting Member. Each Netting Member would be expected, in turn, to credit such margin to an account on its books and records for the relevant customer, though that would ultimately be a question of the bilateral documentation between the customer and the Netting Member.

Interest may be earned on Segregated Customer Margin either because it is paid by the bank or Federal Reserve Bank at which FICC maintains Segregated Customer Margin consisting of cash or because a distribution occurs on Segregated Customer Margin consisting of securities. In the case of the former, FICC would pay the interest directly to the Netting Member, so the

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Netting Member may further credit such cash to the account it has established for the customer. In the case of the latter, such cash would be treated as other Segregated Customer Margin consisting of cash. In either case, the rate at which interest is paid would depend on the terms of the applicable deposit agreement or security. FICC believes this approach to interest is consistent with that adopted by other U.S. CCPs but would be happy to engage further with the commenter on this matter.

5. The Segregated Customer Margin Proposal aims to eliminate fellow customer risk, even though the Treasury Clearing Final Rule does not require that.

One commenter expressed concern that the Margin Segregation Proposal would not fully eliminate "fellow customer risk" since it would provide for allocation of Current Net Settlement Positions *pro rata* among certain Segregated Indirect Participants whose positions are carried in the same Segregated Indirect Participants Account.[79] Another commenter requested clarification that the security interest granted by a customer in the Segregated Customer Margin would only apply to that specific customer's obligations to FICC, and not those of other customers.

FICC notes at the outset that, in adopting the Treasury Clearing Final Rule, the Commission specifically declined to mandate that FICC and other clearing agencies that clear Treasury transactions ("Treasury CCAs") adopt a "legally segregated and operationally commingled" ("LSOC") model. In doing so, the Commission stated, "[t]he Commission continues to believe that it would not be appropriate to require an LSOC model for U.S. Treasury security CCAs, because customer positions and funds in the market for cash securities and listed options would be eligible for protection under SIPA, unlike in other markets which use an LSOC model."[80] Accordingly, although the Segregated Margin Proposal is designed to dramatically reduce if not completely eliminate fellow customer risk, any presence of such risk should not be a basis for disapproving the Proposals.

The mechanism that FICC has proposed to minimize fellow customer risk in the Segregated Margin Proposal is an express prohibition on FICC using Segregated Customer Margin held in respect of one Segregated Indirect Participant for the obligations of any other person (the "Margin Use Prohibition"). As a result, the default of one Segregated Indirect Participant should not generally cause another Segregated Indirect Participant to lose its margin. Although the Proposals do not state that the security interest in relation to Segregated Customer Margin only secures the obligations of the particular customer for whom that margin is held, such a limitation is not needed to ensure that margin is only available for the obligations of the particular customer for whom it is held. The Margin Use Prohibition suffices to achieve this goal. In addition, to FICC's knowledge,

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79 See SIFMA AMG Letter at 10.

80 89 Fed. Reg. at 2755.

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other U.S. CCPs' rulebooks do not include such a limitation on the CCPs' liens of the sort that the commenter proposed.[81]

With regard to the allocation of Current Net Settlement Positions, we note that the provision the commenter mentions aims to address a situation in which FICC is not aware of the allocation of such positions to individual Segregated Indirect Participants.[82] In such a situation, FICC needs to have a mechanism in place to ensure that it can collect margin in relation to such positions. In light of the requirement under the Treasury Clearing Final Rule that FICC calculate margin for customer positions separately and independently from margin for a Netting Member's proprietary positions, FICC is not able to allocate the margin obligations arising from Current Net Settlement Positions to the Netting Member's portfolio. Instead, such margin must be allocated to customer positions, and if the margin for such positions is segregated, satisfied using assets held for Segregated Indirect Participants.

After careful consideration and analysis, FICC determined that it would be most equitable when it is not aware of the allocation of Current Net Settlement Positions among customers, to allocate such positions *pro rata* to customers who are long or short the relevant securities. FICC believes this approach is a fair way to allocate such positions and the associated margin obligations. However, it remains open to considering the matter further with market participants.

The same commenter also expressed concern that the Segregation Margin Proposal allows FICC to withhold Segregated Customer Margin if the Netting Member has failed to perform obligations on account of any Segregated Indirect Participant.[83] FICC notes that such withholding right is not equivalent to the ability to use margin and so does not implicate fellow customer risk. Rather, the provision is simply designed to ensure that FICC is not forced to return margin until it has had time to confirm that any margin it is holding is being held for a Segregated Indirect Participant that has both an excess that should be returned and no outstanding obligations on its cleared transactions.

6. The Margin Segregation Proposal provides for segregated margin to be held at a qualified custodian and insulated from loss mutualization and other uses.

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[81] See, e.g., CME Rulebook, Rule 819 ("Each Clearing Member hereby grants to the Clearing House to secure obligations of such Clearing Member to the Clearing House a first priority and unencumbered security interest and lien against any property, cash, securities or collateral deposited with, transferred or pledged to, or otherwise where control is given to the Clearing House by such Clearing Member. Clearing Members shall take any action that may be required by the Clearing House to create, preserve, perfect, validate or enforce any such security interest.").

[82] This type of situation is most likely to arise in the event a Segregated Indirect Participant has failed in its obligation to deliver securities.

[83] See SIFMA AMG Letter at 10-11.

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One commenter noted that the Margin Segregation Proposal did not clearly address all of the conditions of the no-action relief permitting FICC to hold assets of funds registered under the Investment Company Act of 1940 (the "Investment Company Act", and such funds "Registered Investment Companies") subject to certain conditions (the "40 Act Relief")[84] issued by the Commission staff in connection with the Treasury Clearing Final Rule.[85] In particular, the commenter noted that the 40 Act Relief requires that (i) "the entity that FICC uses to custody such margin is an eligible fund custodian under the Investment Company Act and the applicable rules thereunder"; (ii) "the margin provided by a [Registered Investment Company] is not subject to loss mutualization or allocation"; (iii) "the margin provided by a [Registered Investment Company] is not used by FICC for any purpose other than in connection with that [Registered Investment Company]'s default as a Sponsored Member"; and (iv) "the account into which a registered fund's margin is deposited is governed by a contract by and among the [Registered Investment Company], its Sponsoring Member, and FICC providing for an arrangement consistent with" the 40 Act Relief.

FICC believes the Margin Segregation Proposal satisfies these requirements. With regard to item (i), FICC confirms that all Segregated Customer Margin would be held at either the Federal Reserve Bank of New York or a commercial bank. FICC would be happy to engage with the commenters or others on additional information regarding its intended custodians.

With regard to item (ii), as discussed above, FICC designed the segregation arrangement reflected in the Margin Segregation Proposal so as to protect Segregated Customer Margin from fellow customer risk (i.e., the risk that one customer incurs a loss on account of a default of another customer). In particular, the Margin Segregation Proposal expressly provides that FICC may only use Segregated Customer Margin held in respect of a Segregated Indirect Participant to discharge that particular Segregated Indirect Participant's obligations.[86] As discussed above, although FICC retains the right not to return margin to a Netting Member if the Netting Member has failed to perform its obligations on account of any Segregated Indirect Participant, such right is not equivalent to the ability for FICC to use the margin. Rather, the provision is simply designed to ensure that FICC is not forced to return margin until it has had time to confirm that any margin it is holding is being held for a Segregated Indirect Participant and that the Netting Member has no outstanding payment or margin obligations.

With regard to item (iii), the Margin Segregation Proposal provides that FICC may only use Segregated Customer Margin of a Segregated Indirect Participant to secure or settle the

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[84] 89 Fed. Reg. at 2728.

[85] See ICI Letter at 9-11.

[86] See Proposed Amended GSD Rules, Rule 4 Section 5 ("On each Business Day, the Corporation shall calculate the portion of Segregated Customer Margin that supports each Segregated Indirect Participant's Transactions. The Corporation shall only use that portion (i) to secure or settle the performance of the obligations of that Segregated Indirect Participant, and the performance of the obligations of the Sponsoring Member or the Agent Clearing Member, as applicable, with respect to the obligations of that Segregated Indirect Participant; and (ii) for investment in U.S. Treasury securities with a maturity of one year or less. The Corporation may not use Segregated Customer Margin supporting one Segregated Indirect Participant's Transactions to secure or settle another Segregated Indirect Participant's Transactions or any other Transactions of any other person.")

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obligations of such Segregated Indirect Participant.[87] The only situation in which FICC would use such margin for such purposes would be in the event the relevant Segregated Indirect Participant defaulted on its obligations to FICC, either because the relevant Netting Member, as processing agent for the Segregated Indirect Participant, failed to perform the obligations of the Segregated Indirect Participant to FICC or because FICC ceased to act for the Netting Member or the Segregated Indirect Participant on account of the Netting Member or Segregated Indirect Participant being insolvent.

We note that the circumstances in which FICC would be able to utilize a Segregated Indirect Participant's margin are substantially similar to the circumstances in which a DCO would be able to utilize margin posted by a customer, including Registered Investment Company customer, in connection with a cleared swap or futures transaction. DCO rules generally provide that, in the event a customer's clearing member defaults to the DCO (e.g., because it is insolvent), the DCO may close out the customer's positions and apply the customer's margin (and in the context of futures, other customers' margin) to the customer's undischarged obligations.[88] The DCO has this ability regardless of whether the customer actually performed its obligations to its clearing member, since a DCO, like FICC, is not generally able to know whether or not the customer actually performed any obligations to its clearing member. Any such performance is of no consequence to the DCO since the DCO, like FICC, has no mechanism to obtain the assets a customer has deposited with the clearing member. The Commission and the staff of the Commission's Division of Investment Management have confirmed that a DCO's ability to

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[87] Id.

[88] See, e.g., CME Rulebook, Rule 802.A ("Upon the default of a Base Clearing Member, Base Collateral shall be applied by the Clearing House to discharge any loss to the Clearing House associated with such default (a 'Loss'). . . . A Loss resulting from any customer's position in any futures held in a futures segregated account, or any swap position in a Base Product or foreign futures position that is commingled with such futures positions in such segregated account, shall be satisfied by application of performance bond, excess performance bond, other collateral and settlement variation gains held in the Base Clearing Member's customer account in a manner consistent with section 4d(a) of the CEA and CFTC Regulation 1.20 (collectively, 'Base Futures Customer Collateral'). A Loss resulting from any customer's position in any foreign futures held in a secured account shall be satisfied by application of performance bond, excess performance bond, other collateral and settlement variation gains held in the Base Clearing Member's customer account in a manner consistent with Commission Regulation 30.7 (collectively, 'Base Futures 30.7 Customer Collateral')."); Default Rules of LCH Limited, Section 6 ("The steps which may be taken by the Clearing House under Rule 3 in respect of the Defaulter or otherwise are: . . . to effect a closing-out in respect of an open contract of the Defaulter [and] to sell any security deposited by or for the account of the Defaulter pursuant to (i) Regulation 20 (Margin and Collateral) (ii) or, in the case of a Defaulter who is an FCM Clearing Member, FCM Regulation 14 (Margin and Collateral) . . . ."); Ice Clear U.S. Inc., Rules, Rule 302 ("In the event that at any time a Monetary Default occurs on the part of any Clearing Member (the 'Defaulting Clearing Member'), then the following assets shall be applied to the Defaulted Obligation, in the following order of priority: (i) If and to the extent a Monetary Default relates to a Contract carried in any customer account carried by the Corporation for a Defaulting Clearing Member, the Guaranty Fund deposit, margin and other assets held by the Corporation for all house accounts of the Defaulting Clearing Member shall be applied, and if the President, with the concurrence of the Chair, or, in the absence of the Chair, three (3) Directors, at least one (1) of whom is not an employee of the Corporation or an employee of any Affiliated Person of the Corporation, so determines, the margin held by the Corporation for all customer accounts of the Defaulting Clearing Member may be applied, to pay the Defaulted Obligation. . . .").

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exercise remedies against collateral under these circumstances is consistent with Section 17(f) of the Investment Company Act.[89]

We also note that FICC's ability to utilize a Segregated Indirect Participant's margin is consistent with the ability of a non-defaulting party under an uncleared repo transaction to exercise remedies against the collateral of a Registered Investment Company on account of a default of the Registered Investment Company's agent. As under the GSD Rules, Annex IV to the industry-standard Master Repurchase Agreement published by SIFMA provides that an "Act of Insolvency" in respect of a counterparty's agent constitutes an Event of Default under the Master Repurchase Agreement with respect to the counterparty, such that the non-defaulting party can close-out the transactions and exercise remedies against the counterparty's collateral. As with the DCO rules, this provision applies regardless of whether the counterparty has delivered any performance to its processing agent.

Finally, with regard to item (iv), FICC notes that the account at FICC to which FICC would credit Segregated Customer Margin would be governed by the GSD Rules, which is a set of contractual terms that only becomes binding and applicable on a Segregated Indirect Participant through the Segregated Indirect Participant's entry into the Sponsored Member Agreement with FICC and the Sponsoring Member. Accordingly, the account should be viewed as subject to and governed by a triparty agreement among the Sponsored Member, FICC, and the Sponsoring Member.

7. *Additional Questions Regarding Segregated Customer Margin*

One commenter sought additional clarification regarding Segregated Customer Margin, including (i) whether Netting Members other than broker-dealers can elect segregation for their customers, (ii) whether a customer may segregate margin obtained through a margin financing arrangement, and (iii) why excess margin would only be returned to Netting Members on request, and not be returned automatically.[90]

On question (i), any Sponsoring Member or Agent Clearing Member, regardless of whether registered as broker-dealers, would be able to designate an Account as a Segregated Indirect Participants Account. Such a designation would cause margin posted in respect of the positions recorded in such account to be segregated. As discussed in the narrative to the Margin Segregation Proposal, FICC believes that making segregation available to all Netting Members would ensure that there are not undue competitive disparities between market participants.[91]

On question (ii), the Margin Segregation Proposal aims to align with the requirements of Note H to SEC Rule 15c3-3a. Note H generally requires that margin consist of customer cash or securities but provides limited exceptions to this requirement. In order to ensure this requirement is satisfied, the Margin Segregation Proposal would require a Netting Member to represent that it

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[89] See 17 C.F.R. § 270.17f-6; Chicago Mercantile Exchange, SEC No-Action Letter (Dec. 19, 2017).

[90] See FIA PTG Letter at 7-9.

[91] See Margin Segregation Proposal, 89 Fed. Reg. at 21617.

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intends to meet all Segregated Customer Margin Requirements using cash or securities held for Segregated Indirect Participants with the Netting Member, except to the extent the Netting Member temporarily uses its own securities in accordance with the conditions set forth in Section (b)(1)(iii) of Note H to SEC Rule 15c3-3a. As a result, so long as margin posted by a Segregated Indirect Participant consists of cash or securities held for a Segregated Indirect Participant with a Netting Member (or, to the extent permitted by Note H to Rule 15c3-3a, of the Netting Member's proprietary securities), the margin may be segregated. The Proposal does not impose limitations on how a Segregated Indirect Participant may obtain any such cash and securities deposited with a Netting Member (though FICC would note that if the Segregated Indirect Participant obtains such cash and securities through financing and the Netting Member is a broker-dealer, the Netting Member may not be able to obtain a debit in the SEC Rule 15c3-3a reserve formula).

On question (iii), we note that when the Commission adopted the Treasury Clearing Final Rule, it specifically decided not to adopt a requirement to "push" excess margin to Netting Members.[92] The Commission made this decision based on feedback from market participants to the Proposed Treasury Clearing Rule explaining that Netting Members do not have the capability to accept such unsolicited excess. The Proposals accordingly follow the same approach, pursuant to which FICC would notify Netting Members of any margin excess twice a day. Indirect participants are free to negotiate with their Netting Members terms pursuant to which the Netting Member will demand a return of such excess.

F. Responses to Other Comments and Questions

1. The Proposals have firm legal underpinnings.

Some commenters argued that the Commission should not approve the Proposals until FICC provides indirect participants with a legal analysis on the enforceability of the Proposals, including the protection of Segregated Customer Margin in the event of a Netting Member insolvency.[93] FICC understands the importance to market participants of legal certainty. It is for this reason that, in developing the segregation arrangement, FICC leveraged well-established legal concepts, including the same Article 8 of the Uniform Commercial Code ("UCC") that a number of CCPs and other institutions utilize to enhance legal certainty as to the treatment of assets on an intermediary default.[94]

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92 89 Fed. Reg. at 2767.

93 See AIMA Letter at 7; MFA Letter at 8-9; and SIFMA AMG Letter at 11.

94 In particular, the Netting Member and customer's bilateral clearing agreement may contain a "financial asset election", pursuant to which the parties would agree that the assets that intermediary holds for the customer are "financial assets" credited to a "securities account" for purposes of Article 8. As a result of this election, the customer would be "entitlement holders" and their rights to the assets held by the Netting Member would be "security entitlements", and the Netting Member would be a "securities intermediary." Under Article 8, financial assets held by a securities intermediary are held for the benefit of the entitlement holders. Specifically, UCC Article 8-503 provides that "[t]o the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except

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In addition, even though to FICC's knowledge no other U.S. CCP commissions opinions for the benefit of indirect participants, FICC has engaged outside counsel to provide an analysis on the treatment of Segregated Customer Margin in the event of an FICC or Netting Member insolvency. This opinion confirms that, so long as customers and their Netting Members make clear that their relationship is a custodial one, Segregated Customer Margin would not form part of FICC's general estate or that of the Netting Member upon either institution's insolvency. Rather, such assets would be reserved for customers. FICC has made this guidance available to indirect participants upon request on a non-reliance basis. In addition, FICC understands that industry associations, such as SIFMA and SIFMA AMG, intend to prepare similar analyses based on the documentation they are preparing to document treasury clearing relationships. Furthermore, FICC has commissioned and will continue commissioning opinions from outside counsel confirming the enforceability of the close-out netting, novation, and CCLF provisions of the GSD Rules.

2. ***It would be inequitable and inconsistent with other CCPs' rules for FICC and its participants to bear any losses resulting from a Netting Member's failure to verify legal entity identifiers.***

One commenter stated that it is difficult in practice for a Netting Member to verify the legal entity identifiers ("LEIs") of its customers. Therefore, this commenter argued, FICC should not require an Agent Clearing Member to indemnify FICC for losses arising from the Agent Clearing Member's failure to maintain current LEIs of its Executing Firm Customers on file with FICC, unless such failure is a result of the Agent Clearing Member's gross negligence, willful misconduct, or fraudulent conduct.[95] FICC does not believe this change would be equitable or consistent with SEC Rule 17ad-22, since the change would shift to FICC, and by extension its direct and indirect participants, the risk that an Agent Clearing Member fails to maintain current LEIs of its customers. The Agent Clearing Member is much better placed than FICC to monitor changes to a customer's LEI and to implement mechanisms, such as representations and covenants, to ensure that it is notified of a change to LEI. Although FICC would not generally expect an Agent Clearing Member's failure to keep a current LEI on file with FICC to give rise to significant liability, if it did, FICC and the other Netting Members and their customers should not be the ones to bear the costs. We note that the Proposal's approach is also consistent with the overarching principle that applies to the GSD Rules, that a Netting Member is generally responsible for the losses it causes, as well as the indemnification standard applicable to Sponsoring Members in connection with customer LEI information (which standard has been approved by the Commission)[96] The standard is also generally consistent with those followed by other U.S. CCPs.[97]

as otherwise provided in Section 8-511." The exceptions in Section 8-511 only apply in situations in which the securities intermediary has pledged its entitlement holders' financial assets to a third party.

95 See ISDA Letter at 5.

96 GSD Rules, Rule 3A, Section 2(c).

97 See, e.g., CME Rulebook, Rule 439 ("A Member or former Member shall indemnify and hold harmless the Exchange and CME Group Inc., including each of their respective subsidiaries and affiliates (collectively, the indemnified parties) and their officers, directors, employees, and agents, for any and all losses, damages,

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3. *FICC has been working with market participants to help them assess the accounting treatment of the access models that would exist if the Proposals were adopted.*

Some commenters requested that FICC clarify the accounting treatment of the ACM Service. In particular, these commenters asked that FICC confirm whether done-with transactions cleared under the ACM Service would be eligible for off-balance sheet treatment.[98] Some, as mentioned above, requested clarity regarding the accounting treatment of done-away transactions.[99] We note that U.S. CCPs do not generally provide accounting guidance or commission accounting opinions. Rather, each clearing member is generally responsible for conducting its own accounting analysis. However, in order to aid market participants in understanding FICC's various access models and thereby facilitate greater access to clearing, FICC has been deeply engaged with market participants on this issue. In particular, FICC has hosted information sessions with market participants and their advisors concerning the accounting treatment of Agent Clearing Transactions and prepared materials to aid market participants in assessing the various accounting considerations related to the ACM Service.[100] FICC will continue working with market participants to consider these issues.

4. *Funds-only settlement is settlement.*

Several commenters requested that FICC clarify the legal treatment of certain payment flows, namely funds-only settlements ("FOS") that are paid between FICC and Netting Members twice each business day and are analogous to variation margin or variation settlement. Although the Proposals do not purport to make any material adjustments to FOS, commenters asked that

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costs and expenses (including attorneys' fees) incurred by the indemnified parties as a result (directly or indirectly) of such Member's violation or alleged violation of Exchange Rules or state or federal law."); National Securities Clearing Corporation Rules and Procedures, Rule 39 ("Any participant delivering instructions as provided above, or on whose behalf a Special Representative, Approved SFT Submitter, TPA Member, TPP Member, or Investment Manager/Agent Member, shall deliver instructions as provided above, shall indemnify the Corporation, and any of its employees, officers, directors, shareholders, agents, and participants who may sustain any loss, liability or expense as a result of (a) any act done in reliance upon the authenticity of any instruction received by the Corporation, (b) the inaccuracy of the information contained therein or (c) effecting transactions in reliance upon such information or instruction against any such loss, liability or expense so long as such transactions are effected in accordance with such information and instructions even though they are inaccurate or not authentic and so long as the person asserting a right to indemnification shall not have knowledge of such inaccuracy or lack of authenticity at the time of the event or events giving rise to such loss, liability or expense.").

[98] See FIA Letter at 10; SIFMA May Letter at 5.

[99] See SIFMA July Letter at 3.

[100] DTCC, FICC'S Client Clearing Workflows and Related Accounting Considerations, available at https://www.dtcc.com/-/media/Files/Downloads/Microsites/Treasury-Clearing/FICC-Client-Clearing-Models-and-Related-Accounting-Considerations.pdf.

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FICC confirm whether FOS payments constitute settlement payments rather than cash margin.[101] FICC confirms that it views FOS payments as constituting settlements that discharge outstanding payment obligations, rather than as collateral. FICC would be pleased to engage with market participants to understand what steps FICC can take to provide greater certainty and clarity to market participants on this issue.

5. *FICC is actively pursuing an end-user-level cross-margining arrangement.*

A number of commenters requested that FICC incorporate into the Proposals terms related to customer-level cross-margining.[102] While FICC is actively pursuing an end-user level cross-margining arrangement with CME,[103] it is not feasible at this time for FICC to include provisions in the GSD Rules related to such arrangement, since the details and terms thereof are not yet finalized. However, any such amendments to the GSD Rules would be proposed and open for industry comment at a later time. We note further that the Commission, in adopting the Treasury Clearing Final Rule, recognized that market participants, including indirect participants, can benefit from cross-margining arrangements and encouraged FICC to consider such potential benefits. However, the Commission did not condition any of the Treasury Clearing Final Rules' requirements on the availability of customer-level cross-margining. Accordingly, the availability of end-user level cross-margining should not impact whether the Proposals should be approved.

6. *Commenters did not articulate any particular compliance challenges from non-U.S. Netting Members or customers in respect of the Proposals.*

Finally, one commenter argued that FICC should address cross-border implications of the Proposals and provide a framework for compliance by non-U.S. Netting Members and customers, including any limitations on such customers to post margin.[104] FICC would be delighted to work with non-U.S. market participants to address particular cross-border issues the Proposals raise. However, commenters did not identify in response to the Proposals any particular compliance challenges from non-U.S. Netting Members or customers in respect of the Proposals.[105] In addition, any limitations related to the posting and segregation of margin by a non-U.S. customer should not, as discussed above, present any prohibitive compliance burdens so long as Netting Members and customers retain the ability to decide voluntarily whether customer margin will be segregated.

III. THE PROPOSALS SHOULD BE APPROVED

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[101] See FIA Letter at 11; ISDA Letter at 6; and SIFMA May Letter at 4.

[102] See AIMA Letter at 5; FIA PTG Letter at 5; MFA Letter at 9-10; SIFMA May Letter at 4-5; and SIFMA AMG Letter 9-10.

[103] See FICC-CME Customer Position Cross-Margining Structure, available at https://www.cftc.gov/media/9591/gmac_FICC_CME110623/download.

[104] See SIFMA AMG Letter at 12-13.

[105] Certain commenters have identified compliance challenges in response to FICC's Trade Submission Proposal. FICC is actively reviewing these and other comments on that proposal and expects to address such comments in due course.

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A. The Access Model Proposal Should be Approved

For the reasons discussed above, the Access Model Proposal is consistent with requirements identified in the Access Model Proceeding Order as grounds for disapproval under consideration.

1. The Access Model Proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act because it would facilitate the ability of market participants to access clearing.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest. The Access Model Proposal is consistent with this requirement because, as explained above, it would facilitate access to clearing and enhance the ability of direct and indirect participants to enter into clearing arrangements. The Access Model Proposal would do this by, among other things, consolidating the prime brokerage and correspondent clearing models into a single ACM Service and elaborating on the functionality of the model so that market participants can identify the similarity of the model to the FCM model. As a result, the Access Model Proposal would facilitate the ability of participants to enter into clearing arrangements for FICC-cleared positions by leveraging the policies, practices, procedures, structures and legal and other analyses they have developed for the FCM model. In addition, the Access Model Proposal would expand and clarify the scope of market participants that are eligible for FICC's clearing services under different models. As a result, the proposed changes would lead to lower costs for clearing and greater market liquidity, which in turn would help promote the prompt and accurate clearance and settlement of securities transactions and protect the public interest. We note that no commenters have asserted that the Access Model Proposal is inconsistent with Section 17A(b)(3)(F).

2. The Access Model Proposal is consistent with SEC Rule 17ad-22(18)(i) because it would eliminate distinctions and requirements that are not necessary for risk purposes and enhance public understanding of FICC's participation criteria and access models.

SEC Rule 17ad-22(e)(18)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities. The Access Model Proposal is consistent with this requirement because it would eliminate certain eligibility criteria for indirect participants, namely the requirement that a Sponsored Member be a qualified institutional buyer or similar entity (the "QIB Eligibility Criterion"), and distinctions between categories of direct participants, including Category 1 and Category 2 Sponsoring Members. FICC has determined that these distinctions and requirements are not necessary for risk management purposes. As a result, their deletion would facilitate fairer and more open access to FICC. Furthermore, the Access Model Proposal would enhance the public disclosure of FICC's

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participation criteria by providing a public road map of access models and simplifying certain definitions. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(18)(i).

3. ***The Access Model Proposal is consistent with SEC Rule 17ad-22(18)(ii) because it would facilitate access without frustrating the ability of Netting Members to ensure they have the resources and operational capability to clear transactions.***

SEC Rule 17ad-22(e)(18)(ii) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. The Access Model Proposal is consistent with this requirement because, as discussed above, it would facilitate greater access for indirect participants without compromising Netting Members' ability to make decisions about the risks they can bear or forcing them to take on increased operational risk. More specifically, the Access Model Proposal would enhance the ability of market participants to clear done-away Treasury transactions, but do so in a way that (unlike would be the case if a done-away mandate were adopted) allows Netting Members to consider and determine what risk mitigants, financial resources, and operational procedures they need to clear such transactions. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(18)(ii).

4. ***The Access Model Proposal is consistent with SEC Rule 17ad-22(18)(iv)(C) because it would enhance market understanding of the models that FICC offers and eliminate distinctions and requirements that are not necessary for risk management.***

SEC Rule 17ad-22(e)(18)(iv)(C) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the covered clearing agency provides central counterparty services in transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. The Access Model Proposal is consistent with this requirement because, as explained above, it would enhance market understanding of the ways in which market participants can access clearing and eliminate distinctions and requirements in FICC's eligibility criteria that are not needed for risk purposes. As a result, it would make it easier for direct participants and indirect participants to access clearing. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(18)(iv)(C).

5. ***The Access Model Proposal is consistent with SEC Rule 17ad-22(e)(19) because it would facilitate access without exposing FICC to additional risks that could arise from a done-away clearing mandate or interoperability with indirect participants.***

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SEC Rule 17ad-22(e)(19) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. The Access Model Proposal is consistent with this requirement because, as explained above, the proposed changes would facilitate greater access to clearing without exposing FICC to the greater independent participant risk that could arise from either eliminating the ability of Netting Members to determine whether and how they can clear certain transactions or establishing interoperability with indirect participants, which are not subject to the same comprehensive operational requirements as Netting Members. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(19).

6. ***The Access Model Proposal is consistent with SEC Rule 17ad-22(e)(23)(i) because it simplifies definitions and enhances understanding of FICC's access models.***

SEC Rule 17ad-22(e)(23)(ii) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The Access Model Proposal is consistent with this requirement because it would simplify definitions, provide a roadmap of FICC's access models, eliminate unnecessary distinctions and requirement, and clarify the functionality of the ACM Service. All of these features would make it easier for direct and indirect participants to identify and evaluate the risks, fees, and other material costs they incur over clearing at FICC. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(23).

B. ***The Margin Segregation Proposal Should be Approved***

For the reasons discussed above, the Margin Segregation Proposal is consistent with requirements that the SEC identified in the Margin Segregation Proceeding Order as grounds for disapproval under consideration.

1. ***The Margin Segregation Proposal satisfies the requirements of Note H of SEC Rule 15c3-3.***

SEC Rule 15c3-3 under the Exchange Act permits margin required and on deposit at a U.S. Treasury securities CCA to be included as a debit item in a registered broker-dealer's customer reserve formula, subject to the conditions specified in the rule. The Margin Segregation Proposal is consistent with this provision because the proposed amendments relating to the Segregated Customer Margin are designed to, and do, satisfy the conditions specified in Note H to SEC Rule 15c3-3a and thereby would allow broker-dealer Netting Members to recognize a debit in respect of Segregated Customer Margin posted to FICC. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with SEC Rule 15c3-3.

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2. The Margin Segregation Proposal satisfies Section 17A(b)(3)(F) of the Exchange Act by clarifying and expanding the ways market participants can access clearing.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest. The Margin Segregation Proposal is consistent with this requirement because the proposed amendments would (i) clarify FICC's Account structure and margin calculation methodology, which would improve market participants' understanding of FICC's margin framework, and (ii) create a segregation arrangement that would allow broker-dealer Netting Members to collect margin pursuant to SEC Rule 15c3-3 and eliminate an existing competitive disparity. These changes would improve flexibility for market participants to use different clearing models that better suit their regulatory, operational, legal, commercial, risk and other needs and thereby facilitate greater cooperation between Netting Members and customers and improve access to clearing. Such improved access to clearing would in turn lead to lower costs and greater market liquidity, which in turn would help promote the prompt and accurate clearance and settlement of securities transactions and protect the public interest. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with Section 17A(b)(3)(F).

3. The Margin Segregation Proposal satisfies SEC Rule 17ad-22(e)(4)(i) by ensuring FICC collects margin amounts that are reflective of risk.

SEC Rule 17ad-22(e)(4)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The Margin Segregation Proposal is consistent with this requirement because the proposed amendments would, as discussed above, (i) require FICC to calculate, collect, and hold margin for Netting Members' proprietary positions separately and independently from that for their customers' positions and (ii) ensure that FICC provides segregation in a way that does not expose it to undue risk, including through the carefully calibrated $1 million floor for Segregated Indirect Participants. These changes would enhance the ability of FICC to manage the risk of the transactions it clears and settles and cover its credit exposure to its participants with a high degree of confidence. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with SEC Rule 17ad-22(e)(4)(i).

4. The Margin Segregation Proposal satisfies SEC Rule 17ad-22(e)(6)(i) by providing for FICC to calculate, collect, and hold margin for Netting Members' proprietary positions separately and independently from that for their customers' positions.

SEC Rule 17ad-22(e)(6)(i) requires that a covered clearing agency establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from

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a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities. The Margin Segregation Proposal is consistent with this requirement because the proposed change to FICC's Account and Margin Portfolio structure would ensure that FICC calculates, collects, and holds margin for a Netting Member's proprietary positions separately and independently from the margin for the positions the Netting Member clears for customers. We note that no commenters have asserted that the Access Model Proposal is inconsistent with SEC Rule 17ad-22(e)(6)(i).

5. ***The Margin Segregation Proposal satisfies SEC Rule 17ad-22(e)(18)(iv)(C) by expanding the way market participants can access clearing and eliminating competitive disparities.***

SEC Rule 17ad-22(e)(18)(iv)(C) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the covered clearing agency provides central counterparty services in transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. The Margin Segregation Proposal is consistent with this requirement because the proposed change would (i) clarify FICC's Account structure and margin calculation methodology which would improve market participants' understanding of FICC's margin framework and (ii) create a segregation arrangement that would allow broker-dealer Netting Members to collect margin pursuant to SEC Rule 15c3-3 and eliminate an existing competitive disparity. These changes would improve flexibility for market participants to use different clearing models that better suit their regulatory, operational, legal, commercial, risk and other needs and thereby improve access to clearing. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with SEC Rule 17ad-22(e)(18)(iv)(C).

6. ***The Margin Segregation Proposal satisfies SEC Rule 17ad-22(e)(19) by ensuring FICC collects sufficient margin for customer positions.***

SEC Rule 17ad-22(e)(19) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. The Margin Segregation Proposal is consistent with this requirement because the proposed change would (i) separately and independently calculate margin for proprietary and customer transactions, (ii) adopt a method for allocating Net Unsettled Positions to individual customers for purposes of calculating margin requirements, and (iii) establish a $1 million cash floor for Segregated Customer Margin. These changes would ensure that the margin FICC collects reflects the separate risk profiles of the Netting Member's proprietary portfolio and the portfolio of customer transactions and that FICC will have sufficient margin to address the risk of customer

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transactions. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with SEC Rule 17ad-22(e)(19).

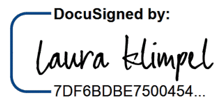
7. The Margin Segregation Proposal satisfies SEC Rule 17ad-22(e)(23)(ii) by providing greater clarity on FICC's margin calculation methodology.

SEC Rule 17ad-22(e)(23)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The Margin Segregation Proposal is consistent with this requirement because the proposed change would clarify FICC's margin methodology and move that methodology to a designated location. These changes would make it easier for both Netting Members and customers to identify and price the potential margining costs. We note that no commenters have asserted that the Margin Segregation Proposal is inconsistent with SEC Rule 17ad-22(e)(23)(ii).

* * *

As we noted at the beginning of this letter, FICC is grateful for this opportunity to engage and offer further views on the important issues and concerns raised by the commenters in response to the Proposals and as highlighted in the Orders. FICC welcomes the opportunity to further engage with both the public and private sectors as the Treasury market continues its collective journey towards implementation of expanded central clearing.

Very truly yours,



Laura Klimpel
Managing Director
Head of Fixed Income and Financing Solutions
The Depository Trust & Clearing Corporation

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Annex A

This annex provides a high-level overview of FICC's views regarding some of the possible use cases and advantages of each of the Four Models. FICC notes that this annex is summary in nature and not exhaustive of possible considerations market participants may need to bear in mind when selecting which model to use to clear transactions.[106]

<table>
<tr><th>Model</th><th colspan="2">Use Case / Advantage</th></tr>
<tr><td>ACM Service (without segregation of margin)</td><td rowspan="2">• The ACM Service uses similar concepts and terms as the FCM clearing model. As a result, Netting Members and customers that participate in the U.S. cleared derivatives market would be able to leverage legal analyses, structures, policies, and procedures utilized for the FCM model to clear transactions under the ACM Service.
• Given the greater intermediation of the ACM Service, a Netting Member would be able to utilize a "financial asset" election to perfect its security interest in transactions cleared under the ACM Service without having to file a UCC financing statement. Both Netting Members and customers may find this beneficial since UCC financing statements give rise to costs, risk, and publicity.
• The ACM Service involves a simpler onboarding process than the Sponsored Service.
• The ACM Service would not impose the same jurisdictional requirements on Executing Firm</td><td>• If margin is not segregated, Clearing Fund requirements for customer transactions under the ACM Service would be calculated on a net basis across all Executing Firm Customers whose transactions are recorded in the same Account. As a result, the aggregate margin obligations could be substantially lower than under the Sponsored Service. This reduction could make it more economical for the Netting Member to clear using the ACM Service.</td></tr>
<tr><td>ACM Service (with segregation of margin)</td><td>• If margin is segregated, Netting Members would not bear the costs of financing margin obligations for customer positions. This saving could be passed onto customers without exposing customers</td></tr>
</table>

[106] This annex also does not represent legal or accounting advice; market participants should consult with their legal counsel and other external advisers regarding the matters below.

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<table>
<tr><th>Model</th><th colspan="2">Use Case / Advantage</th></tr>
<tr><td></td><td>Customers as the Sponsored Service imposes on Sponsored Members. As a result, certain Executing Firm Customers that cannot access clearing through the Sponsored Service could gain such access through the ACM Service.
• The ACM Service would not require privity with FICC. Customers may prefer the absence of privity for regulatory or other reasons.</td><td rowspan="2">to FICC, fellow customer, or Netting Member risk.[107]</td></tr>
<tr><td>Sponsored Service (with margin segregation)</td><td rowspan="2">• The Sponsored Service has been in existence for nearly two decades, and Netting Members and customers have carefully examined its treatment for legal, regulatory, accounting, and other purposes. These customers would be able to leverage these existing analyses to clear using the service, whether margin is segregated or not.
• FICC is in privity (a direct contractual relationship) with Sponsored Members under the Sponsored Service. Some customers may view such privity as beneficial to having a fully intermediated relationship with FICC.</td></tr>
<tr><td>Sponsored Service (without margin segregation)</td><td>• Many customers have clearing agreements in place with Netting Members for the Sponsored Service without segregation. As a result, retaining the option for firms to use the Sponsored Service without segregation would allow these firms to continue to utilize their existing agreements (as well as associated operational processes).</td></tr>
</table>

[107] This assumes that the Netting Member and the customer enter into an agreement making clear that the relationship between them in respect of Segregated Customer Margin is custodial in nature.