

MEMO# 35561

December 21, 2023

SEC Adopts Final Rule on Mandatory Central Clearing of US Treasury Transactions

[35561]

December 20, 2023

TO: ICI Members
Fixed-Income Advisory Committee
Money Market Funds Advisory Committee
SEC Rules Committee SUBJECTS: Fixed Income Securities
Money Market Funds
Trading and Markets RE: SEC Adopts Final Rule on Mandatory Central Clearing of US Treasury Transactions

On December 13, the SEC adopted a final rule to mandate central clearing and settlement of certain secondary market transactions in US Treasury securities—cash Treasuries and Treasury repo and reverse repo—in which one of the counterparties is a direct participant of a covered clearing agency for such securities. Currently, only the Government Securities Division (GSD) of the Fixed Income Clearing Corporation (FICC) facilitates such clearing.[\[1\]](#)

In comments to the SEC, ICI highlighted numerous concerns about the ability of FICC's existing sponsored clearing model ("Sponsored Service"[\[2\]](#)) to support a Treasury repo clearing mandate for registered funds.[\[3\]](#) In the final release, the SEC acknowledged many of these concerns and requests to mandate certain FICC improvements but did not address most of them. The SEC emphasized in many instances that it cannot pro-actively dictate that FICC adopt certain rule changes as an SRO and can only consider such changes if they are filed by FICC. Accordingly, the final rule—consisting of amendments to Rule 17ad-22(e)(18) and other related rule provisions—was adopted largely as proposed, with certain changes described below.

Implementation Schedule

The SEC established a "phased" implementation schedule setting forth separate deadlines for the different requirements relevant to the clearing mandate. Importantly, the compliance dates for participants to clear cash Treasury and Treasury repo and reverse repo transactions are December 31, 2025 and June 30, 2026, respectively. The SEC notes that this will provide up to two and a half years for compliance, which it believes is

consistent with comments requesting a multi-year implementation schedule.[\[4\]](#)

Prior to these compliance dates, however, FICC will be required to submit some of its own rule changes to comply with the final rule. With respect to rules related to the separation of house and customer margin,[\[5\]](#) clearing agency access,[\[6\]](#) and the broker-dealer customer protection rule,[\[7\]](#) FICC must submit proposed rule changes no later than 60 days after the final rule's publication in the Federal Register, with such changes required to be effective by March 31, 2025. For the requirements to centrally clear US Treasury transactions and monitor such clearing,[\[8\]](#) FICC must submit changes no later than 150 days following the Federal Register publication date, with such changes required to be effective by December 31, 2025 and June 30, 2026 for cash Treasury and Treasury repo and reverse repo transactions, respectively.[\[9\]](#)

Cash Treasury Clearing Mandate

As proposed, the SEC's final rule generally excludes registered funds' cash Treasury security transactions. Although the final definition of "eligible secondary market transaction" does not explicitly include cash Treasury transactions involving registered funds, the SEC stated, in response to comments, that it believes that a specific exclusion is not necessary.[\[10\]](#) The SEC otherwise narrowed the scope of the cash mandate by excluding qualified cash Treasury transactions involving hedge funds and leveraged accounts.[\[11\]](#) Thus, as adopted, the mandate applies more narrowly to (1) interdealer broker (IDB) transactions; and (2) purchases and sales between a FICC member and a counterparty that is a (i) registered broker-dealer; or (ii) government securities dealer, or a government securities broker.

Treasury Repo Clearing Mandate

Similar to the proposal, the SEC's final rule applies a central clearing mandate broadly to Treasury repo and reverse repo agreements in which a FICC direct member is a counterparty, including those with registered funds. The SEC also maintained certain exclusions as proposed,[\[12\]](#) while also including additional exclusions for transactions involving (1) other clearing organizations (e.g., covered clearing agencies, derivatives clearing organizations, or entities regulated as a central counterparty in their home jurisdictions); (2) certain types of affiliated entities (i.e., banks, broker-dealers, futures commission merchants or entities regulated as such in their home jurisdictions); and (3) state and local governments.

ICI and others urged the SEC to require FICC to enhance its central clearing infrastructures, in particular its Sponsored Service. While the SEC acknowledged the concerns, it nevertheless took a favorable view towards FICC's sponsored clearing, describing the service as "operational" with increasing usage and emphasizing that FICC is consulting with market participants to enhance its clearing infrastructure where appropriate.[\[13\]](#)

1. Request for Tri-Party Treasury Repo Exemption

ICI requested that the SEC exclude tri-party Treasury repo transactions[\[14\]](#) from the scope of the Treasury repo clearing mandate.[\[15\]](#) The SEC, however, declined to do so, stating that a tri-party agent neither serves nor is regulated as a central counterparty that is subject to additional risk management protections, which puts it in a better position to handle a large, unexpected default.[\[16\]](#) Further, the SEC expressed disagreement that a such an exemption would serve as a "backstop" against future FICC clearing capacity issues.[\[17\]](#) While the SEC acknowledged that increased demand for central clearing could lead sponsoring members to reduce their ability or willingness to facilitate client access to

clearing, it noted that this increased demand could instead (1) encourage new dealers to enter the market, thereby increasing clearing capacity and enhancing competition; and (2) result in FICC considering operational changes to facilitate increased clearing volumes.[\[18\]](#)

2. Challenges of FICC Direct Membership for Registered Funds

ICI noted that the SEC would need to carefully evaluate the ability of a registered fund to become a FICC netting member, given the regulatory restrictions that hinder their ability to contribute to FICC's Capped Contingent Liquidity Facility (CCLF).[\[19\]](#) The SEC pointed out in response that compliance with the clearing mandate does not require a market participant to become a FICC direct participant. However, the SEC stated that it would consider any issues related to the ability of a market participant to participate in FICC.[\[20\]](#)

3. FICC Sponsoring Member Capacity/Give-Up Structure

ICI expressed concerns about the further "scalability" of FICC's Sponsored Service to accommodate a Treasury repo clearing mandate, given that it would depend in part on the available sponsoring member capacity.[\[21\]](#) The SEC acknowledged that the increased demand for sponsored clearing could put pressure on existing sponsoring members and limit their ability or willingness to sponsor additional Treasury repo.[\[22\]](#) However, the SEC also stated that it views the mandate as an opportunity for new dealers to become sponsoring members, which it believes is consistent with FICC statistics that show an increasing number of participating dealer and growing cleared volumes under the Sponsored Service.[\[23\]](#)

ICI also recommended that the SEC encourage FICC to further develop a "give up" structure for Treasury repo clearing to enhance competition and mitigate any future capacity constraints incurred under FICC's Sponsored Service.[\[24\]](#) The SEC acknowledged the potential benefits of a "give up" structure in increasing demand for central clearing and encouraged FICC to consider how best to facilitate "give up" clearing.[\[25\]](#) However, the SEC emphasized that it cannot pro-actively dictate that FICC adopt certain rule changes as an SRO, but rather can only consider such changes if they FICC files them.[\[26\]](#)

FICC Risk Management and Protection of Customer Assets

The SEC adopted several amendments, largely as proposed, to address FICC's netting and margin practices under a clearing mandate. ICI raised several additional concerns about certain facets of FICC's risk management framework for Treasury repo clearing under its Sponsored Service. These concerns, and the SEC's responses, are described further below.

1. Guaranteed Settlement of Start Leg

To promote the objectives of central clearing, ICI requested that the SEC address FICC's lack of guaranteed settlement on the start leg of a Treasury repo transaction that is submitted for clearing between a FICC sponsoring member and sponsored member.[\[27\]](#) The SEC, however, declined to do so. While the SEC acknowledged that this could reduce the benefits of central clearing, it stated that counterparty credit risk is largely addressed by the fact that the start leg is usually settled on a delivery-versus-payment (DVP) basis. However, the SEC also recognized that FICC already clears the start leg under some of its other clearing access models and has stated that it is able to clear the start leg of any repo transaction.[\[28\]](#) The SEC states that it would consider any changes under the Sponsored Service to clear the start leg of repo transactions, if submitted by FICC in the future.[\[29\]](#)

2. Direct Posting of Margin and Relief from Section 17(f) Custody Requirements

To potentially reduce margin-related costs for funds, ICI recommended that the SEC encourage FICC to permit sponsored members to directly post margin to FICC rather than remit fees to a sponsoring member.[\[30\]](#) The SEC agreed that the ability to post margin directly to FICC could lower trading costs for funds, but emphasized that it cannot dictate that FICC adopt certain rule changes as an SRO; rather, it would consider such changes if FICC files them.[\[31\]](#)

Further, the SEC acknowledged ICI's concern that direct posting of margin to FICC may raise custody issues for funds under Section 17(f) of the 1940 Act,[\[32\]](#) in particular whether FICC's GSD qualifies as a "securities depository" that can custody fund assets under Rule 17f-4. The SEC stated that it is not opining on whether FICC's GSD would qualify as a "securities depository," given that funds are not required to post margin directly to FICC at this time. To the extent that FICC does custody fund cash or securities in the future, however, the SEC provided, in the final release, temporary no-action relief from Section 17(f) of the 1940 Act for a period of five years, subject to several conditions intended to protect fund assets.[\[33\]](#) According to the SEC, this time would allow FICC to develop and file any relevant rules to accommodate such a potential margin framework, or for market participants to consider other possible frameworks.

The SEC also provided registered funds with temporary no-action relief from Section 17(f) in connection with the use of a member of a national securities exchange as a sponsoring member because the sponsoring member's receipt and posting of margin to FICC, on behalf of a registered fund, may be deemed to be custody for purposes of the 1940 Act. This no-action relief is for a similar period of five years and applies solely in connection with a sponsoring member, that is a member of a national securities exchange, facilitating the posting of margin to FICC on behalf of registered fund that participates in sponsored clearing. To rely on the relief, the fund and its sponsoring member must enter into a written custody contract in compliance with Rule 17f-1 that includes certain provisions intended to protect fund assets.[\[34\]](#)

3. Segregation of Customer Margin and Amendments to Customer Protection Rule

The SEC adopted rule amendments, largely as proposed, to establish new requirements related to FICC netting and margin practices. First, the final rule prohibits FICC from netting proprietary and customer positions with respect to margin.[\[35\]](#) Therefore, a FICC member would be required to calculate, collect, and hold margin for its proprietary positions separately from the margin calculated and collected for customer (i.e., sponsored member) transactions. However, the final rule maintains the flexibility for FICC to determine whether to require margining in a specific manner, i.e., on a gross or net basis.[\[36\]](#) Second, The SEC also adopted rule amendments to Rule 15c3-3a, i.e., the Customer Protection Rule, to permit margin required and on deposit at FICC to be included as a debit item in the Customer Reserve Formula, subject to certain conditions that are intended to protect broker-dealer customers.[\[37\]](#)

ICI noted that these requirements would not impact registered funds currently under the Sponsored Service because they currently do not post margin or hold assets with sponsoring members or FICC, but also acknowledged that FICC could introduce a margin framework in the future to facilitate this arrangement.[\[38\]](#)

In addition, the SEC declined to adopt ICI's recommendation that FICC be required to adopt a "legally segregated, operationally commingled" (LSOC) model that would protect funds from fellow customer risk.[\[39\]](#) The SEC noted that LSOC does not apply for clearing of cash

securities and listed options, and that customer positions and funds in these markets are eligible for protection under the Securities Investor Protection Act (SIPA), unlike other markets that rely on an LSOC approach, e.g., futures and swaps.[\[40\]](#) However, the SEC expressed its understanding that FICC is working on a margin framework that would consist of an LSOC arrangement.[\[41\]](#)

4. Sponsoring Member Default or Insolvency

ICI raised concerns about FICC's role in the case of a sponsoring member default or insolvency, thereby questioning some of the SEC's assumptions about the benefits of FICC-sponsored clearing.[\[42\]](#) Among other things, ICI noted that FICC maintains the sole discretion to decide whether to close out an affected sponsored member's positions or to allow for settlement to occur. ICI also requested that the SEC and FICC clarify the bankruptcy treatment of fund assets in certain respects, in particular how non-defaulting parties, such as funds, can exercise closeout rights.[\[43\]](#)

In response to ICI's concerns regarding the need for additional clarity regarding treatment in bankruptcy of a Sponsoring member, the SEC stated that FICC's rules already address issues related to the enforceability of repo agreements and closeout processes.[\[44\]](#) Moreover, the SEC pointed out that ICI's concerns relate specifically to issues arising from FICC's sponsored clearing model, and that it cannot change how FICC's sponsored clearing model works.[\[45\]](#) As to FICC's inability to guarantee settlement in the case of an insolvent Sponsoring Member, the SEC asserted that FICC should be able to work with a bankruptcy trustee to facilitate settlement. Otherwise, the SEC does not appear to view FICC's ability to terminate these transactions as necessarily detrimental to the broader benefits of the proposed clearing mandate.

5. FICC Interaction with Sponsored Members

ICI noted the challenges that FICC-sponsored members have encountered with engaging with FICC to address problems with Treasury repo transactions that were submitted via the Sponsored Service, including situations where the sponsoring member is in default.[\[46\]](#) The SEC responded that the Sponsored Service, by design, does not facilitate direct access to FICC—rather, the sponsoring member acts as a processing agent for all the sponsored member's cleared transactions. Should FICC choose, in the future, to enable more direct interaction between a sponsored member and FICC itself, the SEC stated that it would consider such a change when FICC submitted a rule filing.[\[47\]](#)

FICC Recordkeeping Concerns

ICI emphasized that FICC needs to adopt a robust recordkeeping framework, reconciliation process and internal controls to oversee positions and handle its collection and holding of margin, should FICC choose to offer that arrangement. ICI noted that FICC currently relies on its direct members and designated agency banks to maintain relevant records.[\[48\]](#) The SEC noted in response that FICC has not sought to adopt such an arrangement, but that it would consider a change if or when FICC submitted a rule filing. The SEC further disagreed with ICI's concern that FICC does not maintain records of sponsored member positions.[\[49\]](#)

1940 Act Diversification Requirements

ICI explained the need for clarity, under a Treasury repo clearing mandate, regarding registered funds' satisfaction of the issuer diversification requirements under the 1940 Act. First, ICI requested that the SEC confirm that complying with the Treasury repo clearing mandate through FICC sponsored clearing would continue to satisfy the "collateralized

fully" standard under Rules 5b-3 and 2a-7 under the 1940 Act, including allowing for "look-through treatment" for purposes of those rules.^[50] Second, ICI requested relief for funds to engage in centrally cleared Treasury reverse repo transactions without being subject to 1940 Act diversification limits.

The SEC acknowledged the first request, but it did not provide explicit confirmation that centrally cleared Treasury repo would satisfy the "collateralized fully" standard. However, the SEC did explicitly state that Treasury reverse repo transactions are currently not eligible for look-through treatment and, thus, the Treasury repo clearing mandate would likely limit the extent to which some registered funds, in the future, will be able to engage in Treasury reverse repo agreements.^[51]

ICI also raised concerns that a Treasury repo clearing mandate would adversely affect money market funds' credit ratings because FICC could become a significant, concentrated counterparty through the novation process. The SEC acknowledged this concern, but stated that it does not have the authority to adjust the rating criteria and methodologies of Nationally Recognized Statistical Rating Organizations (NRSROs), nor can it anticipate how NRSROs may respond to the final rule.^[52] The SEC further stated that, in the absence of changes by the NRSROs, money market funds may need to either alter their investment strategies to substitute other investments for Treasury repo or transact Treasury repo with non-FICC members.^[53]

Implementation Costs

ICI expressed concern that a Treasury repo clearing mandate would impose significant technological, operational, and legal costs and burdens to funds to develop the capacity to clear via FICC.^[54] The SEC acknowledged that these costs, such as those required to establish a relationship with a sponsoring member under FICC's Sponsored Service, would be high. Further, the SEC recognizes that the costs of paying fees to a sponsoring member that facilitates access may also be high. However, the SEC emphasized that there will be countervailing benefits such as increased Treasury market resiliency, liquidity (through increased dealer netting offsets), and reduced counterparty risk, that justify the costs.^[55] Further, the SEC believes that some of the costs to be incurred by market participants are "commensurate with the risks and particular attributes of [their] transactions."^[56]

Nhan Nguyen
Assistant General Counsel, Securities Regulation

Notes

^[1] Standards for Covered Clearing Agencies for US Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to US Treasury Securities, Exchange Act Release No. 34-99149 (Dec. 13, 2023) ("Final Rule"), available at <https://www.sec.gov/files/rules/final/2023/34-99149.pdf>. Given that FICC currently is the only covered clearing agency (CCA) offering clearing and settlement services for US Treasuries, this memo will refer to FICC with respect to any obligations imposed upon a CCA under the SEC's final rule. The SEC acknowledged concerns about the resulting concentration of risk in FICC arising from the mandate, but states that FICC, as a covered clearing agency that is designated as systemically important, is subject to a robust supervisory framework. Id. at 26-31.

[2] The SEC estimates that there are now approximately 350 sponsoring members and approximately 2,200 sponsored members that participate in FICC's Sponsored Service. During the 12-month period ending on August 15, 2023, the total dollar value of daily repo and reverse repo fluctuated from \$771.7 billion in June to \$265.8 billion in September. Final Rule at 247.

[3] Letter from Sarah A. Bessin, Deputy General Counsel and Nhan Nguyen, Assistant General Counsel, ICI to Vanessa Countryman, Secretary, SEC (Dec. 23, 2022) ("ICI Letter"), available at <https://www.sec.gov/comments/s7-23-22/s72322-20153417-320838.pdf>. For a detailed summary of the SEC's September 2022 proposal, see ICI Memorandum No. 34299 (Sept. 29, 2022), available at <https://www.ici.org/memo34299>.

[4] ICI had sought a minimum of three years for implementation, starting after the SEC's and FICC's adoption of final rules or amendments. ICI Letter at 31.

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

[6] SEC Rule 17ad-22(e)(18)(iv)(C).

[7] SEC Rule 15c3-3a.

[8] SEC Rule 17ad-22(e)(18)(iv)(A)-(B).

[9] FICC will submit its rules pursuant to Section 19(b) of the Exchange Act, which governs the SRO rule filing process. The SEC is generally required to approve or disapprove a proposed SRO rule filing within 45 days of a notice publication date, but it may extend its review of such filings for up to 240 days. See Section 19(b) of the Exchange Act. The SEC also notes that given FICC's status as a systemically important financial market utility, changes to programs that enable indirect participants to clear or changes to margin methodologies or practices may need to be filed as advance notices, to the extent that these changes materially impact the nature or level of risk presented by that CCA. SEC Rule 19b-4.

[10] ICI strongly opposed mandatory central clearing of funds' cash Treasury transactions. ICI Letter at 9-11. The SEC, however, noted that a transaction involving a registered fund may still be subject to the clearing mandate for other reasons (and not because the fund is a counterparty). For example, the SEC maintains that registered fund transactions occurring on an IDB would be subject to the clearing mandate because of the resulting risk associated with the IDB, i.e., the IDB's default risk and resulting effect on a CCA. Final Rule at 123.

[11] The SEC stated that it would continue to evaluate whether the cash Treasury clearing mandate should apply to such participant categories. *Id.* at 120. The SEC also adopted other exclusions as proposed, including cash Treasury transactions in which the counterparty to the FICC member is a central bank, sovereign entity, international financial institution, or a natural person. *Id.* at 124-25. The mandate also does not apply to (i) transactions in the primary market or (ii) "when-issued" transactions that occur before and on the day of a Treasury auction. *Id.* at 34 n.73.

[12] These exemptions apply to Treasury repo and reverse transactions in which the counterparty to the FICC member is a central bank, sovereign entity, international financial institution, or a natural person. *Id.* at 124-25.

[13] Id. at 44-45.

[14] The SEC considers the triparty segment of the Treasury repo market to be "large," given a \$3.1 trillion peak in transaction volume in March 2023. The SEC also cited data showing that overnight repos comprise the large portion of this segment, making up 92% of average daily transaction volume since 2020. Id. at 231-32.

[15] ICI Letter at 22-23. ICI stated that the agreement and infrastructure underlying tri-party repo are robust and provide participants with credit protections, operational safeguards, and strict internal controls akin to those available through central clearing.

[16] Final Rule at 41. The SEC cites an example where a tri-party repo default leaves a money market fund holding long-dated Treasury securities collateral, which may cause the fund to be non-compliant with certain requirements under SEC Rule 2a-7, such as those related to the weighted average life to maturity of the fund's portfolio and liquidity concerns. Id. at 41-42 n.101.

[17] ICI stated that an exemption for tri-party Treasury repo could also serve as a backstop facility if FICC is at capacity for facilitating Treasury repo clearing. ICI Letter at 23.

[18] Final Rule at 44.

[19] ICI Letter at 22.

[20] Final Rule at 66.

[21] ICI Letter at 29.

[22] The SEC notes that FICC direct members have the discretion as to whether to submit a transaction with a FICC non-direct member to be centrally cleared. It also acknowledges that an indirect participant could encounter a situation where it may not be able to transact with a different FICC direct member who is otherwise willing to submit the transaction, thereby precluding access to FICC. Final Rule at 324-325.

[23] Id. at 69-70.

[24] ICI Letter at 14. Other commenters also requested that the SEC require FICC to obligate its members to accept "done away" transactions to promote competition and avoid unfair discrimination in FICC's access models. Final Rule at 153.

[25] The SEC understands that FICC currently does have some models that facilitate "give up" style clearing. Final Rule at 56. See also id. at 156-57 (noting that FICC currently does allow for the submission of done-away transactions), 158 (agreeing with commenters that "a workable done-away model will be critical to [the Treasury repo market]").

[26] Similarly, in response to requests that it require that FICC mandate the use of done away clearing, the SEC disagreed that it should impose a particular access model. Among other reasons, the SEC believes that it should not eliminate the ability of a FICC member to determine how it would assume risk with respect to guaranteeing transactions to FICC, nor should it force FICC to control how its members transact with customers and dictate the ability to offer certain types of pricing services. Id. at 158-59. Nevertheless, the SEC states that FICC's board should consider whether FICC should establish policies and procedures to enable a FICC member to submit for clearing a transaction executed between two indirect

FICC participants. Id. at 167-168.

[27] ICI Letter at 26-27.

[28] Final Rule at 164. The SEC cites three examples where FICC has stated that it does clear the start leg: (1) repos between two direct participants, (2) the start leg of any sponsored DVP repo that is "done away" with a third-party FICC member; and (3) any sponsored DVP repo that is forward-settling. Id. at 299.

[29] Final Rule at 165.

[30] ICI Letter at 27. The SEC understands that this recommendation refers to a "give up" style of clearing. Final Rule at 56

[31] Final Rule at 57-58.

[32] ICI Letter at 15-16.

[33] These conditions include: (1) FICC withdraws the margin provided by a sponsored member registered fund only upon that registered fund's default; (2) the margin provided by a registered fund is not commingled with, and is kept separate from, FICC's assets; (3) FICC segregates on its books and records the margin provided by a registered fund (or series thereof, as applicable), and identifies a value of margin in its books and records as being attributable to the registered fund; (4) the entity that FICC uses to custody such margin is an eligible fund custodian under the 1940 Act and the applicable rules thereunder; (5) the margin provided by a registered fund is not subject to loss mutualization; (6) the margin provided by a registered fund is not used by FICC for any purpose other than in connection with that registered fund's default as a sponsored member; (7) registered funds receive quarterly statements of accounts concerning the margin provided in connection with eligible secondary market transactions showing, at a minimum, the name of the account, asset movements during the quarter, and quarter-end positions; and (8) the account into which a registered fund's margin is deposited is governed by a contract by and among the registered fund, its sponsoring member, and FICC providing for an arrangement consistent with the SEC's position. Final Rule at 52-53.

[34] These provisions include: (1) the margin provided by a registered fund is not commingled with, and is kept separate from, the sponsoring member's assets; (2) the sponsoring member segregates its books and records and records the margin provided by a registered fund (or series thereof, as applicable), and identifies a value of margin in its books and records as being attributable to the registered fund; (3) the registered fund's provision of margin is consistent with the eight conditions to the no-action relief for funds described above, with respect to posting to FICC, see *supra* note 33; and (4) the sponsoring member does not hold registered fund assets exceeding the amount required to be deposited as margin to FICC with respect to the registered fund's outstanding eligible secondary market transactions.

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

[36] ICI had urged FICC to maintain gross margining to ensure that customer assets are always adequate to satisfy obligations. ICI Letter at 19. However, as ICI previously noted, FICC currently requires the daily calculation and collection of margin for sponsored members' transaction activity to be on a gross basis under the Sponsored Service. Further, in allowing a broker dealer to include customer margin as a debit in the Customer Reserve

Formula under amended Rule 15c3-3a, the SEC also maintained the condition as proposed that FICC calculate margin on a gross basis and require a broker-dealer to deliver that margin on a gross basis. Note H(b)(2)(i) of Rule 15c3-3a.

[37] The SEC modified these conditions in the final rule. First, the customer margin must be in the form of cash, Treasury securities, and "qualified customer securities" that are used to margin customer positions that are cleared, settled, and novated at FICC. The SEC added "qualified customer securities," which may include US agency or GSE debt and eligible mortgage-backed securities. Second, the broker-dealer must (i) use customer assets (cash, US Treasury securities, or qualified customer securities) to meet the required customer margin arising from that customer's cleared Treasury security positions. The SEC revised this condition to enable a broker-dealer to post its own proprietary US Treasury securities as a pre-funding mechanism on behalf of its customer, subject to certain conditions. Third, the customer margin must be handled in accordance with FICC rules designed to protect and segregate customer margin. The SEC amended this condition to eliminate a proposed requirement for FICC to return excess collateral within one business day. Fourth, the SEC must have approved FICC's rules that meet the conditions above for adding customer margin as a debit. See Note H to Item 15 of Rule 15c3-3a.

[38] ICI Letter at 18.

[39] Id. at 19.

[40] Final Rule at 146-47.

[41] Id. at 76.

[42] ICI Letter at 27.

[43] Id. at 20-21.

[44] Final Rule at 63-65.

[45] Id. at 65.

[46] ICI Letter at 27-28.

[47] Final Rule at 166.

[48] ICI Letter at 16-17.

[49] Final Rule at 62.

[50] ICI Letter at 23-24.

[51] Id. The SEC states that this effect would likely be limited because a relatively small number of funds report Treasury reverse repo transactions on Form N-PORT. Further, the SEC notes that funds have other means to generate cash to meet shareholder redemption requests. Final Rule at 68.

[52] Final Rule at 70.

[53] Id. at 343.

[54] ICI cited costs that include, for example, negotiating documentation with multiple sponsoring members; and establishing protocols and procedures and obtaining technology to book multiple transactions and handle margin transfers. ICI Letter at 28-29.

[55] Final Rule at 218-220, 283.

[56] Id. at 283.

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