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FICC Proposes GSD Rule Changes to Treasury Clearing Access Models and Margin Segregation Requirements

[35664]

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TO: ICI Members

Fixed-Income Advisory Committee

Money Market Funds Advisory Committee SUBJECTS: Fixed Income Securities

Money Market Funds

Trading and Markets RE: FICC Proposes GSD Rule Changes to Treasury Clearing Access Models and Margin Segregation Requirements

On March 21, the SEC issued two sets of proposed rule changes^[1] from the Fixed Income Clearing Corporation (FICC) to its Government Securities Division (GSD) rulebook that would (1) modify aspects of its clearing access models, including membership qualification requirements; and (2) amend various FICC margin rules to conform to the SEC's 2022 Treasury clearing final rule^[2] including the adoption of margin segregation requirements. FICC has submitted the proposals in compliance with the implementation schedule set forth in the SEC's final rule.^[3] Pursuant to that schedule, FICC expects to implement these rule changes by March 31, 2025, if approved by the SEC.

This memo describes the SEC's applicable requirements and FICC's proposed changes that may be of interest to members.

SEC Treasury Clearing Final Rule - Access Requirements

Under the SEC's Treasury clearing mandate, a Treasury covered clearing agency (Treasury CCA or in this case, FICC) must ensure that it has "appropriate means" to facilitate access to clearance and settlement services of all eligible secondary market transactions in US Treasury securities, including those of indirect participants.^[4] Accordingly, the SEC stated that FICC generally should conduct and document an initial review of its access models and related policies and procedures. In such a review, the SEC emphasized that FICC "generally should seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the [SEC's] Covered Clearing Agency Standards, and other applicable regulatory requirements."^[5]

Changes to FICC Access Models

Based on its review of its existing Treasury clearing access models, FICC has proposed certain changes to the GSD rulebook. These changes, according to FICC, are driven in part by its belief that the models—particularly for indirect clearing—are not well-understood among market participants, which has contributed to a lack of certainty about which clearing model should be used. Accordingly, FICC's changes consist of:

- **Agent Clearing Service:** FICC would make certain changes to its existing agency clearing models, the Correspondent Clearing Service and Prime Broker Service, to highlight their similarity to the FCM-based clearing model for derivatives. These models, which FICC proposes to consolidate into a single "Agent Clearing Service," enable an "Agent Clearing Member," i.e., an approved FICC Netting Member, to submit activity to FICC for clearing on behalf of customers, i.e., "Executing Firm Customers."[\[6\]](#) FICC notes that this consolidation would not alter in practice its current approach to agency-style clearing. Among other changes, however, FICC would require Agent Clearing Members to submit certain additional information about their customers beyond what is currently required under its existing models, including an LEI and an agreement between the parties that bind the customers to applicable FICC rules.[\[7\]](#)

Under the Agent Clearing Service, the Agent Clearing Member acts as a processing agent and clearing intermediary for their customers. In contrast to FICC's Sponsored Service, another indirect clearing access model, FICC would not have a relationship with the customers (i.e., executing firms) to the transaction.[\[8\]](#) Accordingly, Agent Clearing Members would be liable to FICC for all obligations arising from submitted transactions.[\[9\]](#)

Agent Clearing Members would be required to submit customer activity through a separate omnibus account (i.e., separate from their other Netting Member activity account) that allows FICC to separately identify and monitor such customer activity. For risk management purposes, however, Agent Clearing Members would have the option to net all of their customer activity in that omnibus account.[\[10\]](#)

- **Sponsoring Member Categories:** FICC would eliminate the existing separate categories of Sponsoring Members under its Sponsored Service (i.e., Category 1 and Category 2). Currently, FICC Netting Members that are "Bank Netting Members"[\[11\]](#) fall within Category 1 and are subject to certain capitalization requirements.[\[12\]](#) Category 2 Sponsoring Members are subject to financial requirements that are higher than those applicable to their status as FICC Netting Members.[\[13\]](#) To eliminate varied treatment of sponsors, FICC would require all Sponsoring Members to adhere to the financial activity limits[\[14\]](#) and financial condition factors that currently apply to Category 2 Sponsoring Members. FICC believes that these changes should expand the range of Sponsoring Members that an indirect participant can consider when accessing the Sponsored Service.
- **Elimination of QIB Requirement for Sponsored Members:** FICC would eliminate the eligibility requirement that Sponsored Members under the Sponsored Service must be "qualified institutional buyers," (QIBs) as defined under Rule 144A of the Securities Act of 1933, or otherwise meet the financial requirements of that definition.[\[15\]](#) FICC anticipates that this change would make the Sponsored Service available to more market participants, given that the only qualification to be a Sponsored Member would be to have the sponsorship of a Sponsoring Member.
- **Netting Member Eligibility Criteria for Non-US Applicants:** FICC would eliminate the "Foreign Netting Member" membership category and expand the qualifications for

each of the other categories of FICC Netting Members to include the foreign equivalent of the same legal entity types, as determined by FICC.[\[16\]](#)

- Netting Member Eligibility Criteria for Other Applicants: FICC would establish a framework for it to consider an applicant to be a FICC Netting Member that does not meet the established eligibility criteria for its various Netting Member categories.
- Public Road Map and Simplified Definitions for FICC Access Models: FICC would amend its rules to provide a "public road map" of its different types of membership and participation models, as well as amend several existing definitions in its rulebook with respect to Netting Member categories and other terms.

SEC Treasury Clearing Final Rule - Margin Segregation Requirements

The SEC's Treasury clearing rule requires a Treasury CCA to calculate, collect, and hold[\[17\]](#) margin from a direct participant for its proprietary positions in US Treasury securities separately from the margin calculated and collected from that direct participant in connection with US Treasury securities transactions by an indirect participant (i.e., customer) that relies on the services of that direct participant to access the Treasury CCA's payment, clearing or settlement facilities. The final rule also includes amendments to the broker-dealer customer protection rule (Rule 15c3-3) and reserve formulas (Rule 15c3-3a) to permit broker-dealers to include margin required and on deposit at a Treasury CCA as a debit item in the reserve formulas under certain conditions. These conditions include requirements that the broker-dealer must use customer assets exclusively to meet the required customer margin; and use a particular customer's assets exclusively to meet the margin required that arises from that customer's cleared Treasury security positions.[\[18\]](#)

FICC Proposed Rules for Margin Segregation

FICC has proposed rule changes to implement the SEC's margin segregation requirements and amendments to the broker-dealer customer protection rule and reserve formula. The aim of these changes is both to allow broker-dealer Netting Members to collect margin from customers and deposit it with FICC and to provide all customers, including those that access FICC through non-broker-dealers, to be able to segregate margin they deposit. FICC's changes consist of:

- Segregation of Proprietary and Customer Margin: To mandate the separate calculation, collection, and holding of proprietary margin from that of indirect participants pursuant to the Treasury clearing final rule, FICC would amend its rules in several respects. First, FICC would distinguish and establish a road map of the different types of Account structures for Netting Members to record transactions, which includes "Proprietary Accounts" for proprietary activity and "Indirect Participant Accounts" for transactions submitted on behalf of Sponsored Members or Executing Firm Customers. "Indirect Participant Accounts" would include (1) Sponsoring Member Omnibus Accounts for Sponsored Member Trades; and (2) for an Agent Clearing Member, Agent Clearing Member Omnibus Accounts for purposes of recording Agent Clearing Transactions of its Executing Firm Customers.

FICC would also adopt rules to avoid netting of proprietary and customer positions, including establishing separate Required Fund deposit requirements for each and requiring separate deposit IDs.[\[19\]](#)

- Debit in Customer or PAB Reserve Formula: FICC would adopt rules to implement the Note H conditions under Rule 15c3-3a, thereby allowing it to calculate, collect and hold required margin under its various account structures in a manner that allows such margin to be included as a debit in the reserve formulas.

A Sponsoring Member or Agent Clearing Member could designate any of its Indirect Participant Accounts as a segregated customer account, (i.e., a "Segregated Indirect Participants Account"). When calculating a Netting Member's "Segregated Customer Margin Requirement," FICC stipulates that it would not net the transactions of different Segregated Indirect Participants.^[20] Instead, these amounts would be calculated separately for each Segregated Indirect Participant and collected on a gross basis. FICC also proposes to set a \$1 million minimum cash margin requirement per indirect participant, based on its experience with setting minimum requirements for its Clearing Fund.^[21]

FICC would establish for each Netting Member a "Segregated Customer Margin Custody Account" that corresponds to each Segregated Indirect Participants Account, in which a Netting Member would deposit Segregated Customer Margin for each indirect participant.^[22] This margin would be held in a segregated account of FICC at an FDIC-insured bank or at the Federal Reserve Bank of New York^[23] and (1) would be used exclusively to settle and margin US Treasury transactions recorded in the corresponding Segregated Indirect Participants Account, with an obligation to return excess customer margin; and (2) would not be available to cover other claims arising from the broker-dealer or any other defaulting Netting Member.^[24] Further, Segregated Customer Margin for one Segregated Indirect Participant could not be used to secure or settle another Segregated Indirect Participant's transactions, which is further intended to "limit fellow customer risk."

- Adjustments to Margin Methodology: FICC would amend certain rules to clarify and refine its margin calculation methodology, which would remain largely the same. These changes include establishing a new Margin Component Schedule that describes FICC's approach to calculating margin requirements (i.e., a Netting Member's Required Fund Deposit and Segregated Customer Margin Requirement).

However, FICC would establish a new methodology to allocate "Current Net Settlement Positions" of the Sponsoring Member Omnibus Accounts and Agent Clearing Member Omnibus Accounts to the underlying participants of those accounts. Where a Current Net Settlement Position cannot be clearly allocated to an individual Sponsored Member or another Segregated Indirect Participant, then that position would be allocated, for purposes of calculating margin requirements, pro rata to the Segregated Indirect Participants that had, as of the end of the preceding business day, positions in the same direction and CUSIP as the un-allocable (and unsettled) position.^[25] FICC characterizes this approach as a "reasonable and fair allocation."

Additionally, FICC would make certain revisions to how certain margin-related charges are assessed. First, FICC would make clarifying changes to its "Excess Capital Premium" charge, which is a margin add-on designed to mitigate risk presented by a Netting Member whose capital levels are low relative to its VaR Charge. These changes include a procedure through which FICC could waive this charge in certain circumstances. Second, FICC would revise certain definitions to exclude the VaR Charge that is calculated with respect to Segregated Indirect Participants in assessing Excess Capital Premium, given that the premium charge is directed towards addressing a Netting Member's low capital levels and Segregated Customer Margin could not be applied to address this issue.

Notes

[1] Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities, Exchange Act Release No. 34-99817 (Mar. 21, 2024), 89 Fed. Reg. 21362 (Mar. 27, 2024) ("FICC Access Proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2024-03-27/pdf/2024-06446.pdf>; 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 (Mar. 22, 2024), 89 Fed. Reg. 21603 (Mar. 28, 2024) ("FICC Margin Segregation Proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2024-03-28/pdf/2024-06577.pdf>. FICC has release summary presentations of these rule filings. See DTCC, GSD Access Models (Mar. 4, 2024), available at <https://www.dtcc.com/ustclearing/-/media/Files/Downloads/Microsites/Treasury-Clearing/GSD-Access-Model-Deck2>; DTCC, GSD Segregated Accounts and Margin (Mar. 4, 2024), available at <https://www.dtcc.com/ustclearing/-/media/Files/Downloads/Microsites/Treasury-Clearing/GSD-Account-Segregation-Deck2>.

[2] 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), 89 Fed. Reg. 2714 (Jan. 16, 2024) ("Treasury Clearing Final Rule").

[3] With respect to rules related to the separation of house and customer margin, clearing agency access, and the broker-dealer customer protection rule, the SEC specified that 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. Treasury Clearing Final Rule at 2770.

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

[5] According to the SEC, a Treasury CCA generally should consider a wide variety of 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. To ensure that it considers a sufficiently broad set of perspectives, the Treasury CCA generally should consult with a wide-range of stakeholders, including indirect participants, as it seeks to comply with proposed rule 17ad-22(e)(18)(iv)(C). Treasury Clearing Final Rule at 2760.

[6] A FICC Netting Member (i.e., a direct participant of FICC) can seek to become an "Agent Clearing Member" (previously called a "Submitting Member") through a formal application process with FICC.

[7] This information includes: (1) the name and executing firm symbol of the Executing Firm Customer; (2) written authorization from the Executing Firm Customer to act on its behalf; (3) a LEI for the Executing Firm Customer; (4) confirmation that the Executing Firm Customer and the Agent Clearing Member have entered into an agreement binding the Executing Firm Customer to FICC's applicable rules; and (5) confirmation that the Executing

Firm customer understands, acknowledges, and agrees to each of the required acknowledgements set forth by FICC. With respect to the agreement between the Agent Clearing Member and its Executing Firm Customers, FICC's rules specify that the parties are allowed to establish their own reimbursement or other payment sharing arrangements away from FICC.

[8] The required acknowledgements from an Executing Customer to FICC, see *supra*, would specify the understanding that FICC may deal exclusively with Agent Clearing Members and is not obligated to deal with customers, and that FICC does not have any obligations or liability to customers. FICC GSD Proposed Rule 8, Section 6; FICC Access Proposal at 21368.

[9] For example, if a loss is allocated to FICC members, then the Agent Clearing Member, as principal, would be responsible for satisfying the loss allocation obligations calculated for its customers. FICC GSD Proposed Rule 8, Section 7.

[10] FICC has also proposed separate additional rule changes that allow Agent Clearing Members to elect to maintain separate accounts for clearing activity to satisfy Note H to Rule 15c3-3a, as adopted under the Treasury clearing final rule, which allows for a broker-dealer to permit margin required and on deposit at a Treasury CCA to be included as a debit item in the reserve formulas, subject to certain conditions. See *infra*.

[11] FICC defines a "Bank Netting Member" as a bank or trust company chartered as such under the laws of the United States, or a State thereof, or is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and participates in FICC through its U.S. branch or agency. FICC GSD Rule 2A, Section 3(a).

[12] For example, a Category 1 Sponsoring Member must have equity capital of at least \$5 billion, have a bank holding company registered under the Bank Holding Company Act of 1956, and be "well-capitalized" pursuant to FDIC rules and regulations. FICC GSD Rule 3A, Section 2(a).

[13] Per FICC, these financial requirements relate to the Sponsoring Member's anticipated use of the sponsored service in relation to its financial condition, and not its capitalization. FICC Access Proposal at 21370.

[14] FICC's financial activity limits for Category 2 Sponsoring Members restricts a Sponsoring Member from submitting additional activity for clearing if its capital levels exceed the sum of its VaR Charge component of the Clearing Fund. FICC GSD Rule 3A, Section 2(h).

[15] Rule 144A defines a QIB as, among others, insurance companies, investment companies, state employee-benefit funds (e.g., pension funds), trust funds that own and invest at least \$100,000,000 in non-affiliated securities. SEC Rule 144A(a)(1).

[16] According to FICC, its determination of whether a foreign entity is the equivalent of a domestic legal entity within a Netting Member category would be based on the applicant's business model and its regulatory framework and designated examining authority. FICC GSD Proposed Rule 2A, Section 3(b)(ii).

[17] FICC holds proprietary margin (cash and eligible securities) on deposit at a large commercial custodial bank or its account at the Federal Reserve Bank of New York. With respect to customer margin, FICC's proposed rules specify that all Segregated Customer Margin will be held in an account of FICC at an FDIC-insured bank or at the Federal Reserve

Bank of New York. See *infra*.

[18] These conditions are generally as follows: (1) 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; (2) the broker-dealer must use customer assets exclusively to meet the required customer margin, 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, and have delivered the customer's assets to the Treasury CCA; (3) the customer margin must be handled in accordance with FICC rules designed to protect and segregate customer margin; and (4) 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.

[19] Each "Margin Portfolio" (one or more Accounts of the same type), which FICC uses to determine a Netting Member's margin requirement, would be limited to the same type of proprietary or indirect participant transactions, thereby avoiding the netting of proprietary and customer positions.

[20] The calculation of the Segregated Customer Margin Requirement would be the sum of the margin requirements that apply to each "Segregated Indirect Participant" whose transactions are recorded in the same account.

[21] FICC states that this minimum threshold strikes an appropriate balance between the anticipated financial impact on Netting Members and FICC's ability to comply with a backtesting performance coverage ratio above its 99 percent coverage target. FICC Margin Segregation Proposal at 21611.

[22] FICC would only be allowed to invest cash margin in US Treasury securities with a maturity of one year or less. FICC GSD Proposed Rule 4, Section 1a.

[23] FICC clarifies that an "Account" at FICC for margin-related purposes is not a custodial account through which it holds assets for a Netting Member. Rather, it is a transaction recordkeeping mechanism by which its records certain transactions submitted for clearance and settlement. As an exception, however, FICC states that these custodial accounts would be a "securities account," as defined under the New York Uniform Commercial Code (NYUCC), that would serve as a traditional custodial account to which FICC would credit cash and securities; the margin held by FICC therein would be reserved for the Netting Member on behalf of its Segregated Indirect Participants, including in a FICC insolvency. Based on the NYUCC framework, FICC would be deemed to be the "securities intermediary" and the submitting Netting Member would be, on behalf of its Segregated Indirect Participants, the "entitlement holder." FICC Margin Segregation Proposal at 21609.

[24] Segregated Customer Margin would be subject to a separate security interest, such that it would secure only obligations arising out of Segregated Indirect Participants' transactions. In the event of insolvency, resolution or liquidation of a Netting Member, FICC states that a Segregated Indirect Participant's ability to recover funds or securities that it has posted to its Netting Member will depend on the "relevant insolvency, resolution, or liquidation regime." *Id.* at 21611 n.43.

[25] FICC explains that such a situation could arise if, for example, a transaction recorded in a Segregated Indirect Participants Account fails to settle. *Id.* at 21613.

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