



July 14, 2025

***Submitted Electronically***

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

**Re: FIA Comments on SEC “Notice of Filing of Proposed Rule Change to Modify the GSD Rulebook Relating to Default Management and Porting with Respect to Indirect Participant Activity” [Release No. 34-103282; File No. SR-FICC-2025-015]**

Dear Ms. Countryman:

The Futures Industry Association (“**FIA**”)<sup>1</sup> welcomes the opportunity to submit this letter in response to the U.S. Securities and Exchange Commission’s (“**SEC**” or the “**Commission**”) request for comment on proposed rule changes by the Fixed Income Clearing Corporation (“**FICC**”) to modify FICC’s Government Securities Division (“**GSD**”) Rulebook (“**FICC Rules**”)<sup>2</sup> in relation to default management and porting with respect to Indirect Participant activity (the “**Proposal**”).<sup>3</sup> FIA is providing comments on the Proposal to ensure the FICC Rules provide for an effective default management methodology for cleared “done-away” trades and to improve other aspects of the Proposal. We respectfully request the Commission and FICC to consider our comments and make the recommended improvements to the Proposal.

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<sup>1</sup> FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in London, Brussels, Singapore and Washington, DC. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms, and commodities specialists from more than 48 countries, as well as technology vendors, lawyers, and other professionals serving the industry. FIA’s core constituency consists of firms that operate as clearing members in global derivatives markets, including firms registered with the Commodity Futures Trading Commission (“**CFTC**”) as futures commission merchants, the majority of which are also registered with the SEC as broker-dealers.

<sup>2</sup> FICC, Government Securities Division Rulebook (June 5, 2025). Capitalized terms used herein but not defined have the meaning given to them in the FICC Rules.

<sup>3</sup> FICC, Notice of Filing of Proposed Rule Change to Modify the GSD Rulebook Relating to Default Management and Porting with Respect to Indirect Participant Activity, 90 Fed. Reg. 26656 (June 23, 2025).

## **I. Executive Summary**

FIA appreciates FICC's efforts to provide effective liquidation mechanisms for cleared done-with trades. However, FICC must also amend its Rules to provide clear mechanisms to liquidate cleared done-away trades. Without such mechanisms, Agent Clearing Members and Sponsoring Members (together, "**Clearing Members**") would have no clear authority to close out or otherwise manage a customer default with respect to their cleared done-away trades. Clearing Members would be unable to effectively plan for a customer default or predict what FICC may permit them to do in such a situation. This could make done-away clearing unacceptably risky for Clearing Members. In addition, the lack of liquidation mechanisms for cleared done-away trades raises serious questions as to whether Clearing Members could meet the requirements necessary to treat these cleared trades as subject to a "qualifying master netting agreement", which is a precondition to obtaining favorable netting and regulatory capital treatment.

FIA believes that the lack of liquidation mechanisms for cleared done-away trades is the most serious deficiency in the Proposal and should be addressed as soon as possible. Several other revisions to the Proposal are needed to improve its effectiveness and provide clearer guidance to market participants on FICC's liquidation and default mechanisms. Accordingly, FIA urges FICC to revise the Proposal as follows:

- 1. Provide Clearing Members with clear mechanisms to liquidate cleared done-away trades.**
  - These mechanisms should provide for appropriate liquidation steps including, without limitation, liquidating open positions of an Indirect Participant by settling trades of the Indirect Participant or causing FICC to debit or remove open positions of the Indirect Participant from the Indirect Participants Account or otherwise flattening or offsetting such positions;
  - These mechanisms will allow Clearing Members to arrive at a net amount owing to or from the defaulting Indirect Participant; and
  - These mechanisms also need to give Clearing Members the option to either close out immediately Indirect Participant positions and related offsetting positions entered into as part of the liquidation, or to let these positions offset and settle in the ordinary course.
- 2. Remove the reference to "market action" by an Indirect Participant in a Clearing Member default and clarify "market action" remedies.**
  - This will avoid confusion and uncertainty as to whether FICC may use the results of such market action in determining amounts owing when a Clearing Member defaults, which we believe would cause disruption and interfere with FICC's ability to conduct an orderly wind-down; and
  - FICC should also clarify what constitutes market action by FICC in the event of a Clearing Member default.
- 3. Revise proposed FICC Rule 26 regarding voluntary and involuntary porting of Indirect Participant activity and associated margin.**

- FICC should only be permitted under proposed FICC Rule 26 to port Indirect Participant activity of a Clearing Member that is a Defaulting Member (defined in the Rules as a Netting Member that is treated by FICC as insolvent pursuant to Rule 22 or with respect to which it has ceased to act pursuant to Rule 22A), only where FICC has the Receiving Member's consent to the porting and only where porting will not create a margin deficiency and is otherwise risk-mitigating for the defaulting Sending Member;
  - FICC should permit Indirect Participants to designate another Clearing Member as its preferred Receiving Member for porting under Section 2 of proposed Rule 26 (but such designation would not be binding on FICC or the preferred Receiving Member); and
  - FICC should refine provisions on when a transfer of Indirect Participant activity is effective in a porting scenario, as well as provisions on the treatment of Segregated Customer Margin in a porting scenario.
- 4. Make certain other important improvements to its Rules regarding liquidation of done-with Agent Clearing Transactions and Sponsored Member Trades.**
- FICC should amend Section 9 of Rule 8 to limit the instances where FICC can terminate done-with Agent Clearing Transactions to align with Section 18 of Rule 3A (regarding the termination of done-with Sponsored Member Trades);
  - FICC should amend Section 18 of Rule 3A to allow termination of some or all of the positions of a Sponsored Member to match what FICC has proposed for termination of positions of Executing Firm Customers;
  - FICC should allow a Clearing Member to offset an Executing Firm Liquidation Amount against a Sponsored Member Liquidation Amount with respect to the same Indirect Participant; and
  - FICC should clarify which cleared done-with trades are eligible to be liquidated and which are considered settled.

Together, these revisions will help ensure the Proposal achieves its intended purpose of providing certainty to market participants, and crucially, to facilitate done-away clearing at FICC.

## **II. FICC Must Provide Clearing Members With Clear Mechanisms to Liquidate Cleared Done-Away Trades**

### **A. The FICC Rules Do Not Provide Mechanisms for Liquidating Cleared Done-Away Trades, Which Will Create Considerable Uncertainty and Make Done-Away Clearing Infeasible**

FICC has proposed a new Section 9 to Rule 8 that provides Agent Clearing Members and FICC with the ability to liquidate Agent Clearing Transactions of a defaulting Executing Firm Customer entered into with that Executing Firm Customer (*i.e.*, “**done-with**” agent clearing transactions). The newly proposed section aligns almost word-for-word with the parallel provisions of existing Section 18 of Rule 3A that provide Sponsoring Members and FICC with the ability to liquidate done-with Sponsored Member Trades of a defaulting Sponsored Member.<sup>4</sup> In a comment letter filed with the SEC on April 18, 2024 (the “**April 2024 Comment Letter**”), FIA requested a liquidation rule for Agent Clearing Transactions, so these proposed changes are welcome.<sup>5</sup> These changes will ensure that Agent Clearing Members have the ability to liquidate done-with Agent Clearing Transactions and will help achieve favorable netting treatment under regulatory capital rules.

However, neither the current FICC Rules nor the Proposal provides such mechanisms for liquidating trades that an Executing Firm Customer or Sponsored Member (collectively, an “**Indirect Participant**” or “**customer**”) enters into with another party and then submits to its Clearing Member for submission to FICC (so-called “**done-away**” trades). This is a serious omission that must be addressed as soon as possible, and at the latest before the compliance date under the SEC’s clearing mandate in respect of U.S. Treasury cash transactions at the end of December 2026.

The lack of clear mechanisms in the FICC Rules to liquidate cleared done-away trades makes the done-away clearing model infeasible. Clearing Members would lack clear authority to take action to protect themselves against a customer default, as the FICC Rules would not provide them the power to take any such action; Clearing Members would be at the mercy of FICC, with no legal certainty as to what FICC may allow them to do. It is not even clear whether FICC would have the legal authority to authorize Clearing Members to take action with respect to defaulting customers in the absence of preexisting rules. The clearing businesses of firms, as a matter of

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<sup>4</sup> See FICC Rule 3A, Section 18 (stating that the liquidation provisions therein only apply “to the liquidation of positions resulting from Sponsored Member Trades within the meaning of subsections (a)(i) and (b) of the Sponsored Member Trade definition”). Subsection (a)(i) of the Sponsored Member Trade definition refers to a transaction “between a Sponsored Member and its Sponsoring Member” (a done-with trade); subsection (a)(ii) refers to a transaction “between a Sponsored Member and a Netting Member” (a done-away trade); subsection (b) refers to a “Sponsored GC Trade” (a done-with trade). Therefore, Rule 3A, Section 18 does not apply to done-away trades.

Similarly, proposed Rule 8, Section 9 would apply only to “positions resulting from Agent Clearing Transactions that are between an Agent Clearing Member and its Executing Firm Customers” (done-with trades).

<sup>5</sup> FIA, Comment Letter on Proposal to Modify the GSD Rules to Facilitate Access to Clearing and Settlement Services of all Eligible Secondary Market Transactions in U.S. Treasury Securities [Release No. 34-99817; File No. SR-FICC-2024-005] (Apr. 18, 2024), <https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-460511-1200614.pdf>.

basic risk management and safety and soundness, generally maintain detailed default management playbooks to manage and understand their risk in the event of a customer default. Without clear rules for liquidation of cleared done-away trades, firms may find offering done-away clearing unacceptably risky, as they would be exposed to loss on customer positions with no obvious mechanisms to protect themselves and no ability to establish standard protocols for default management.

Furthermore, in the absence of clear liquidation rules for cleared done-away trades, serious questions arise as to whether a firm could conclude it has a valid “qualifying master netting agreement” (“QMNA”) under U.S. and foreign regulatory capital rules.<sup>6</sup> Among other requirements, the QMNA definition requires an entity to have the right to “liquidate or set-off collateral *promptly*” upon an event of default.<sup>7</sup> If a Clearing Member has no clear rights in the FICC Rules to liquidate cleared done-away customer positions in the event of a customer default, it is doubtful whether it could confidently represent that it can “promptly” do so. Obtaining netting opinions so that firms can apply favorable netting treatment under regulatory capital rules may become difficult or even impossible. In addition, and though commercial considerations are not our focus here, it must be noted that a lack of clear liquidation rules would make it more challenging for Clearing Members to price done-away clearing services, as Clearing Members would not have clarity on what protections they may have against the default of the Indirect Participant. We respectfully submit that firms will not be able to offer done-away clearing at the scale contemplated by the Commission when it adopted the Clearing Rule if firms cannot confidently price the service.

Together, the issues that arise due to a lack of clear mechanisms to liquidate cleared done-away trades make done-away clearing at FICC infeasible. FICC must amend its Rules to include effective liquidation mechanisms for cleared done-away trades to ensure that Clearing Members are able to offer done-away clearing. We emphasize that certainty as to the liquidation rights of a Clearing Member in an Indirect Participant default is essential not only to protect that particular Clearing Member, but also the other Clearing Members who share in loss mutualization, and ultimately FICC itself.

#### **B. FICC Must Set Out Liquidation Remedies That Clearing Members May Take Under the FICC Rules for Cleared Done-Away Trades of Defaulting Indirect Participants**

FICC must amend the FICC Rules to provide effective liquidation mechanisms for cleared done-away trades to ensure that Clearing Members are able to offer done-away clearing. At a minimum, this should include language expressly authorizing Clearing Members to exercise remedies with respect to Indirect Participants, including settling, transferring, or liquidating trades and entering into offsetting trades with respect to the done-away Agent Clearing Transactions and Sponsored Member Trades of a defaulting Indirect Participant. Optionality is vital for a Clearing Member’s ability to effectively mitigate risk when an Indirect Participant defaults, particularly given that the overall architecture of the done-away model is not fully developed. A menu of

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<sup>6</sup> See 12 C.F.R. § 217.2 (definition of “qualifying master netting agreement”).

<sup>7</sup> See *id.* (emphasis added).

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robust, established mechanisms will benefit the Clearing Member, other Clearing Members on whom FICC depends for loss mutualization, and FICC itself.

FIA noted the need for robust liquidation rules for Agent Clearing Transactions in its April 2024 Comment Letter, stating that:

FICC should incorporate a rule under the Agent Clearing Service that authorizes an Agent Clearing Member, in connection with liquidating an Executing Firm Customer's open positions upon its default, to cause the Executing Firm Customer's open positions to be transferred from the applicable Agent Clearing Member Omnibus Account and/or transfer to the Agent Clearing Member Omnibus Account transactions that offset or flatten the Executing Firm Customer's open positions.

To expand on this earlier request, the default procedures and close-out rules already established by derivatives clearing organizations (“DCOs”) provide a reliable and apt model, as done-away clearing is the norm in the cleared derivatives market. DCOs, in support of clearing resiliency, have provided optionality to their members in closing out defaulting customers.

Accordingly, we request that FICC amend its Rules to provide that a Clearing Member may, upon notice to FICC,<sup>8</sup> with respect to a cleared done-away trade of its Executing Firm Customer or Sponsored Member, take any appropriate liquidation action, including without limitation and without the consent of the defaulting Indirect Participant, liquidating open positions of that Indirect Participant by settling trades of the Indirect Participant or causing FICC to debit or remove open positions of the Indirect Participant from the Indirect Participants Account or otherwise flattening or offsetting such positions, including, without limitation, by means of the following:

- Transferring one or more positions of the Indirect Participant from the Indirect Participants Account to the Clearing Member's Dealer Account;
- Transferring one or more positions of the Indirect Participant from the Indirect Participants Account to the Dealer Account of another Clearing Member, or to the appropriate Indirect Participants Account of another Clearing Member; and
- Crediting one or more positions to the Indirect Participants Account (which may be a position transferred from the Clearing Member's Dealer Account) that offset or otherwise flatten open positions of the Indirect Participant.<sup>9</sup>

In addition, FICC must allow Clearing Members, after giving notice to FICC as described above, to immediately settle Indirect Participant positions by entering into offsetting trades in the

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<sup>8</sup> This mirrors the language in Rule 3A, Section 18, where the Sponsoring Member can trigger a liquidation of Sponsored Member Trades by giving notice to FICC.

<sup>9</sup> See LCH Limited, Procedures Section 2C, SwapClear Clearing Service, Section 1.13.1 (permitting a clearing member to transfer customer positions from the client account to its proprietary account or to the proprietary account of another clearing member, or to transfer a proprietary position from its own proprietary account or the proprietary account of another clearing member to the customer account), [https://www.lseg.com/content/dam/post-trade/en\\_us/documents/lch/rulebooks/lch-ltd/section-2c-swapclear-service.pdf](https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/section-2c-swapclear-service.pdf).

same account, thereby effectively liquidating such positions. FIA understands that FICC does not immediately offset opposite and identical positions in the same account, and instead carries them through until the settlement date, at which point a Net Settlement Position is arrived at. This creates exposure in an Indirect Participant default scenario, because even if the Clearing Member enters into a trade that offsets the Indirect Participant's position, it would still be responsible for Clearing Fund, Segregated Customer Margin, and Funds-Only Settlement obligations during the term of the trades. This creates an unnecessary burden that a Clearing Member should be permitted to obviate via liquidation. Therefore, we request that, when a Clearing Member enters into a Proprietary Transaction in its Dealer Account that constitutes an opposite position to a defaulting Indirect Participant's position that has been transferred into the Dealer Account, or has entered into a Proprietary Transaction in its Dealer Account that constitutes an opposite position to a defaulting Indirect Participant's position in the Indirect Participants Account and transferred such opposite position to the applicable Indirect Participants Account:

- The Clearing Member shall have the right to cause FICC to deem the transaction resulting in the opposite position and the transferred position to be settled to the extent the opposite position offsets the transferred position; and
- Thereupon the Clearing Member shall have no further rights or liability with respect to either such position to the extent of the offset and settlement described above.<sup>10</sup>

If FICC adopts the above requests, a Clearing Member could aggregate amounts paid (or received) by a Clearing Member in connection with any of the above remedies to calculate net closeout amounts payable by or to the Indirect Participant. In addition, Clearing Members will be able decide whether to settle the defaulting Indirect Participant's transaction as normal or to liquidate it. This optionality is crucial for risk management. For example, the Clearing Member may want the flexibility to settle the trade with FICC (*e.g.*, if the trade's settlement date is very soon) or to liquidate the trade with FICC (which may be desirable if the settlement date is several days away and the Clearing Member does not wish to have exposure during the trade term).

Together, these provisions provide essential clarity as to the mechanisms available to Clearing Members to close out the open positions of, and thereby manage their exposures to, defaulting Indirect Participants. Without these provisions, which are commensurate with standard remedies in other cleared done-away markets, development of done-away clearing could be delayed or hampered.

The FICC Rules should also make clear that when a Clearing Member closes out or otherwise takes action with respect to a defaulting Executing Firm Customer or Sponsored Member, such Clearing Member is not acting as agent for that Executing Firm Customer or Sponsored Member. This will ensure that the Clearing Member is understood to be acting as

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<sup>10</sup> See, *e.g.*, ICE Clear Credit, Clearing Rules, Rule 304(a) (providing for a similar mechanism), [https://www.ice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Rules.pdf](https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf).

principal rather than agent for the Executing Firm Customer in undertaking remedies, which is essential to ensure the enforceability of these remedies across an array of jurisdictions.<sup>11</sup>

### **III. Right of Executing Firm Customers and Sponsored Members to Take “Market Action” Upon a Clearing Member Default**

#### **A. FICC’s Proposed Rule Changes on Clearing Member Defaults Provide Needed Specificity**

The Proposal would amend Section 2(b) of Rule 22A to outline how FICC will close out a defaulting Clearing Member, including the actions that FICC would take to close out Indirect Participant activity of a defaulting member that FICC determines to close out pursuant to FICC Rules 3A and 8. FIA welcomes these rule changes, as they provide greater detail on default rule procedures.<sup>12</sup>

Among the Proposal’s helpful changes, FICC would amend the description of FICC’s right to take “market action” with respect to each Final Net Settlement Position of a Defaulting Member to include a right to decline to take market action to the extent that a Final Net Settlement Position has opposite directionality to a Final Net Settlement Position established in the same security in relation to the Defaulting Member or its Indirect Participants.

#### **B. FICC Should Revise Its Proposed Rule Changes around Market Action**

The Proposal provides that the Indirect Participants of a Defaulting Member may, but are not obligated to, take “market action” to close out any outstanding positions that FICC determines to close out pursuant to FICC Rules 3A and 8, respectively. “Market action” is undefined in the FICC Rules, which creates confusion.

Allowing Indirect Participants to take such “market action”—without any reasonable constraints or guiding principles—will create a chaotic wind-down process with respect to Defaulting Members. There is no need for FICC to state in the FICC Rules that Indirect Participants may take “market action”, since Indirect Participants are free to do so with securities or cash that they hold, as long as such action does not otherwise violate the FICC Rules (or

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<sup>11</sup> See, e.g., LCH Limited, FCM Regulations of LCH Limited, Regulation 46 (“Notwithstanding any other provision of these FCM Regulations, with respect to FCM Transactions involving an FCM Client or an FCM Affiliate cleared by an FCM Clearing Member as FCM Contracts, such FCM Clearing Member shall act solely as agent of such FCM Clients or FCM Affiliates in connection with the clearing of such FCM Contracts; provided, that each FCM Clearing Member shall remain fully liable for all obligations to the Clearing House arising in connection with such FCM Contracts. For the avoidance of doubt, following the occurrence of an FCM Client Default or an FCM Affiliate Default, the FCM Clearing Member is permitted, but not obligated, to act in a capacity other than as agent of the FCM Client or FCM Affiliate, which may include acting as principal. . .”), [https://www.lseg.com/content/dam/post-trade/en\\_us/documents/lch/rulebooks/lch-ltd/240923-fcm-regulations-fmx-go-live-clean.pdf](https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/240923-fcm-regulations-fmx-go-live-clean.pdf).

<sup>12</sup> FIA requested in its April 2024 Comment Letter that “The FICC Rules should also be more transparent as to the procedures for handling the open positions of Executing Firm Customers or Sponsored Members upon FICC’s ceasing to act for or suspending their Sponsoring Member or Agent Clearing Member. Section 14 of FICC’s Rule 3A provides that if FICC ceases to act or suspends a Sponsoring Member.”

applicable law).<sup>13</sup> This language only creates uncertainty and confusion by creating an expectation that FICC might use the results of such market action to determine Final Net Settlement Positions when closing out the Clearing Member,<sup>14</sup> which we do not believe is FICC's intent.

It would be highly problematic if FICC's intent were to use, or consider using, such results, as it could result in misaligned close-outs and pricing. This would create a chaotic wind-down process, with different Indirect Participants arriving at pricing using a variety of methods with little visibility, consistency, or clarity. This market action might lead Indirect Participants to arrive at different pricing for potentially offsetting trades. If FICC uses such pricing to determine net amounts owing, FICC may need to pay Indirect Participants out of the Clearing Fund, draining the Clearing Fund unnecessarily when it could have simply treated the trades as offsetting under its own pricing mechanisms.

If FICC retains any right of market action by an Indirect Participant in the FICC Rules, FICC should include a fail-safe mechanism with respect to market action that may be undertaken by Indirect Participants as it currently does in Rule 22A with regard to the default of a Clearing Member and a close-out by FICC:

This close-out procedure shall be completed as promptly as practicable after the Corporation has given notice pursuant to Section 1 of this Rule Corporation's determination to cease to act, unless the Board determines that the immediate closeout of Final Net Settlement Positions in a Security may be disadvantageous to the Corporation or may promote a disorderly market in that Security, in which case the Corporation may suspend the operation of this close-out provision until such later time as is determined by the Board, except that the Board may not suspend the operation of such close-out procedure for a period longer than 30 calendar days without the approval of such by the SEC.

In addition, with respect to market action by FICC, the term "market action" should be specifically defined in the FICC Rules so that market participants can understand what actions FICC itself may take under Rule 22A. At a minimum, FICC should specify (i) what actions constitute market action; (ii) a timeline for market action; (iii) who determines if market action is commercially reasonable; (iv) whether there will be any required reporting in relation to a market action; (v) whether and to what extent the results of FICC's market action may be used in the calculation of final net settlement positions or other damages; and (vi) how FICC will ensure that offsetting positions are closed out at the same pricing.

#### **IV. Proposed Rule 26 Governing the Transfer of Indirect Participant Activity and Segregated Customer Margin**

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<sup>13</sup> We note that other clearinghouses (*e.g.*, ICE, CME, LCH) do not discuss market action taken by customers in a clearing member default. They also do not contemplate using, or imply that they would use, the results of any such market action in their close-out processes.

<sup>14</sup> *See, e.g.*, FICC Rule 22B (requiring Members to take market action and report such action to the FICC Board in the event of a Corporation Default). This requirement is specific to FICC default scenarios and is incorporated into Rule 3A for activity cleared through the Sponsored Service.

FICC is proposing to adopt a new Rule 26 that would describe the process by which an Indirect Participant's activity and, when applicable, Segregated Customer Margin, could be ported between Sponsoring Members or Agent Clearing Members on a voluntary basis and, upon a Clearing Member default, an involuntary basis. As a general matter, FIA supports clearinghouses having clear, pre-established porting rules and arrangements.<sup>15</sup> They can help avoid the need to close out positions in times of market stress, potentially reducing market disruption and attendant risks to non-defaulting Clearing Members and the clearinghouse.<sup>16</sup>

**A. Some of the Porting Rule Changes Magnify Risk for Clearing Members and Need Revision**

While we support the Proposal's provision of a porting mechanism, a number of outstanding issues need to be resolved to provide the market with certainty and to avoid unintended market disruptions.

1. The Receiving Member Must Consent to the Transfer of Indirect Participant Positions

As drafted, Section 2 of Rule 26 does not require a Receiving Member's consent to a Sending Member's transfer of Indirect Participant activity. It is crucial that Rule 26 provide, as a condition to transfer under Section 2, that the Receiving Member has consented to the transfer of an Indirect Participant's activity. While FIA does not believe that a Clearing Member could be forced to accept the Indirect Participant activity of another Clearing Member, this condition would provide clarity to market participants and avoid unnecessary uncertainty, particularly in a Clearing Member default. We also note that if an Indirect Participant's activity is ported to another Clearing Member, that relationship will need to have documentation in place, as well as an account structure and process in place for margin delivery.

2. Indirect Participants Should be Able to Designate Another Clearing Member to Which its Positions May be Ported in the Event of a Clearing Member Default

Indirect Participants should be able to designate, as a preference, another Clearing Member to port its activity to in the event FICC chooses to port Indirect Participant activity when a Clearing Member becomes a Defaulting Member under Section 2 of Rule 26. This will make porting more

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<sup>15</sup> See, e.g., FIA, FIA Response to BCBS, CPMI, IOSCO Consultation on a Discussion Paper on Client Clearing: Access and Portability at 9 (February 6, 2022) (as one example of FIA's longstanding support of clear, pre-established clearinghouse porting capabilities), <https://www.fia.org/sites/default/files/2022-02/FIA%20Response%20to%20Access%20and%20Portability%20for%20Client%20Clearing.pdf>.

<sup>16</sup> See, e.g., Bank for International Settlements and International Organization of Securities Commissions, *Principles for Financial Market Infrastructures*, Principle 3.14.3 (April 2012), <https://www.bis.org/cpmi/publ/d101a.pdf>. See also Bank for International Settlements and International Organization of Securities Commissions, *Client Clearing: Access and Portability*, Section 3 (September 2022) (providing, among other things, that the forced liquidation of accounts "with speculative positions may, temporarily or permanently, remove a market participant who otherwise could have continued to carry market risk at a critical time ... [and, such] liquidation could exacerbate price volatility and stress market participants. Further, forced liquidation may lead some clients to question the value of the clearing model or even avoid clearing in cases where it is not mandatory"), <https://www.bis.org/cpmi/publ/d210.pdf>.

predictable for Indirect Participants, the Receiving Member, and FICC itself. Other clearinghouses allow this option.<sup>17</sup>

3. FICC Should Only be Able to Port Indirect Participant Activity of a Defaulting Member if it Would Not Result in a Margin Deficiency or Increased Exposure for the Defaulting Member

Section 2 of Rule 26 provides that FICC may transfer all or part of the Indirect Participant transactions of a Defaulting Member<sup>18</sup> to a Receiving Member, along with associated Segregated Customer Margin. As written, this could permit FICC to transfer Indirect Participant activity in such a way as to result in the Defaulting Member having a margin deficiency or otherwise exposing it to additional loss.<sup>19</sup> The Defaulting Member could therefore be exposed to even more loss than it had been before the transfer. We do not believe this was FICC's intent. FICC should revise Section 2 of Rule 26 to provide that FICC may only transfer Indirect Participant activity to the extent it would not result in a margin deficiency and would be risk-mitigating for the Defaulting Member.<sup>20</sup>

4. The FICC Rules Should Allow for the Voluntary Porting of Some or All of Segregated Customer Margin

As drafted, Rule 26 is unclear as to the treatment of Segregated Customer Margin in a voluntary porting scenario under Section 1. While Section 1(a) of Rule 26 (which covers voluntary porting) provides that “[a]ll or a portion” of an Indirect Participant’s activity may be ported to a new Receiving Member, Section 1(d) appears to only permit a transfer of Segregated Customer Margin if *all* of the Indirect Participant’s activity is ported to the Receiving Member. It is not clear why FICC believes all of the activity has to be ported to effect the transfer of Segregated Customer Margin. If a Sending Member is unable to transfer Segregated Customer Margin in connection with a partial transfer of Segregated Indirect Participant activity to a Receiving Member, the

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<sup>17</sup> See, e.g., LCH Limited, Procedures Section 2B, RepoClear Clearing Service, Section 1.12.3, [https://www.lseg.com/content/dam/post-trade/en\\_us/documents/lch/rulebooks/lch-ltd/lch-procedure-2b-registration-time.pdf](https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/lch-procedure-2b-registration-time.pdf); LCH Limited, Procedures Section 2C, SwapClear Clearing Service, Sections 1.28 and 1.28.4, [https://www.lseg.com/content/dam/post-trade/en\\_us/documents/lch/rulebooks/lch-ltd/250113-procedure-2c-esma-default-rules-findings.pdf](https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/250113-procedure-2c-esma-default-rules-findings.pdf); CME Securities Clearing, Inc., Proposed Rule 412, Exhibit E-3 to Form CA-1 (Dec. 13, 2024), <https://www.sec.gov/files/cmesc-ca-1-exhibit-e-3-rulebook-12-13-24.pdf>.

<sup>18</sup> As written, Section 2 of Rule 26 refers to a “default of a Sponsoring Member of Agent Clearing Member”. We have requested FICC revise this to refer to a Defaulting Member in Section IV.A.8 below.

<sup>19</sup> For example, if a Defaulting Member’s Sponsored Member has two perfectly offsetting Sponsored Member Trades in the Sponsoring Member Omnibus Account, then all else being equal, the Defaulting Member would have no Required Fund Deposit to make to the Clearing Fund with respect to these trades (due to netting). However, if FICC were to only transfer one of these Sponsored Member Trades to another Netting Member, the Defaulting Member would have a Required Fund Deposit with respect to the trade that is left behind.

<sup>20</sup> We note that in the event the Defaulting Member is subject to insolvency proceedings, FICC’s transfer of Indirect Participant positions and associated margin would generally be subject to the consent of the bankruptcy trustee, receiver, or similar entity. This revision is therefore primarily necessary to provide clarity in a non-insolvency default of a Netting Member.

Receiving Member would likely have to recalculate the associated Segregated Customer Margin Requirement and send it separately, resulting in unnecessary delays and uncertainty.

To avoid these issues, FICC should remove Section 1(d)(i) of proposed Rule 26, and instead amend current Section 1(d)(ii) to provide that:

The Sending Member has identified to the Corporation, in a form to be prescribed by the Corporation, the cash deposit and Eligible Clearing Fund Securities that will be transferred to the Receiving Member **that support the Sponsored Member Trade(s) and/or Agent Clearing Transaction(s) of such Segregated Indirect Participant.**

5. FICC Should Remove a Reference to “Excess” Segregated Customer Margin

Section 1(d) of Rule 26 provides for the movement of “excess Segregated Customer Margin” from the sending member to the receiving member. However, it is not clear what is meant by “excess” Segregated Customer Margin. FICC should remove the reference to “excess” Segregated Customer Margin, and simply provide that it will update its books and record to reflect the movement of the Segregated Customer Margin associated with the activity of the Segregated Indirect Participant that is transferred to the Receiving Member.

6. Proprietary U.S. Treasuries Used to Meet a Segregated Customer Margin Requirement Should Not be Subject to Porting

We note that a Clearing Member is permitted to temporarily use proprietary U.S. Treasuries to meet its Segregated Customer Margin Requirement in accordance with Section (b)(1)(iii) of Note H to SEC Rule 15c3-3a and Section 3 of FICC Rule 2B. FICC should clarify that any transfer of Segregated Customer Margin pursuant to Rule 26 would not include such proprietary U.S. Treasuries (or any other assets that the SEC may permit Clearing Members to provide temporarily for purposes of Note H).

7. Sending Members Should Not be Liable for the Clearing Fund and Segregated Customer Margin Obligations of the Receiving Member

Section 1(c) of Rule 26 provides that the Sending Member’s Clearing Fund and Segregated Customer Margin will continue to secure obligations arising from transferred Indirect Participant activity until the Receiving Member satisfies those requirements. This effectively requires the Sending Member to fund the Receiving Member’s margin obligations with respect to the transferred activity, despite the fact that the Sending Member no longer actually has such activity. To avoid such an outcome, the transfer of Segregated Indirect Participant activity should be conditional on the Receiving Member providing such margin by the “Transfer Effective Time”. In no event should FICC transfer positions to a Receiving Member unless that Receiving Member has posted sufficient margin to support the transferred positions.

8. FICC Should Only Apply Section 2 of Rule 26 (Involuntary Porting) When a Sponsoring Member or Agent Clearing Member is a Defaulting Member

Section 2 of Rule 26 does not define what constitutes a “default” of a Sponsoring Member or Agent Clearing Member that may result in involuntary porting of Indirect Participant trades. FICC should clarify that Section 2 of Rule 26 only applies in the event a Sponsoring Member or Agent Clearing Member is a “Defaulting Member” as defined in the FICC Rules by replacing “[u]pon a default of a Sponsoring Member or Agent Clearing Member” with “If a Sponsoring Member or Agent Clearing Member is a Defaulting Member.”

**V. FICC Should Clarify Other Changes to the FICC Rules Regarding the Liquidation of Done-With Agent Clearing Transactions**

**A. FICC’s Ability to Close Out Done-With Agent Clearing Transactions Must be Appropriately Limited**

Proposed Section 9 of Rule 8 permits FICC to liquidate the done-with Agent Clearing Transactions of an Executing Firm Customer, subject to the requirements that the Agent Clearing Member for the Executing Firm Customer is not a Defaulting Member, FICC has not ceased to act for the Agent Clearing Member, and a Corporation Default has not occurred. FICC thus has an unfettered ability to liquidate done-with Agent Clearing Transactions, as there are very few circumstances in which these requirements would not be met. Such unlimited power is in stark contrast to the parallel provision for Sponsored Member Trades in Section 18 of Rule 3A, which only allows FICC to initiate a liquidation of done-with Sponsored Member Trades if it has ceased to act for the Sponsored Member at issue and the Sponsoring Member has not performed its obligations under its guaranty of the Sponsored Member. This latter limitation is important because FICC has no substantive interest in closing out an Indirect Participant if the Clearing Member is performing its obligations, and it should be the Clearing Member’s prerogative to manage its customer’s default in the first instance. The Clearing Member has the most direct financial interest at stake, as it is fully responsible for the obligations of its Indirect Participant (either under the Sponsoring Member Guaranty or its liability under Section 5(b) of Rule 8), and is also best positioned to conduct an efficient and effective close-out due to its direct relationship with the Indirect Participant and familiarity with the relevant trading activity.

In the Proposal, FICC explained that it did not include a similar limitation in proposed Section 9 of Rule 8 as exists for Sponsored Members “[b]ecause Executing Firm Customers are not limited members of FICC”. While this is true, it is still possible to limit FICC’s right to liquidate done-with Agent Clearing Transactions in a substantively similar manner. FICC has proposed a new Section 3(h) to Rule 8 which provides that FICC may, by notice to the Agent Clearing Member, terminate the ability of the Agent Clearing Member to submit Agent Clearing Transactions of one of its Executing Firm Customers, and that such Executing Firm Customer will cease to be one under the FICC Rules. FICC should amend Section 9 of Rule 8 to provide that FICC shall only have the right to terminate the positions of an Executing Firm Customer if FICC has provided the notice described in Section 3(h) of Rule 8 and the Agent Clearing Member has not performed its obligations relating to the Agent Clearing Transactions done on behalf of that Executing Firm Customer.

We also do not believe it is appropriate for FICC to have the ability to terminate “some or all” of the positions of an Executing Firm Customer, even with the above limitations. This is

because the termination of some, but not all, positions could result in the Agent Clearing Member facing a margin deficiency or other form of loss, which is not appropriate. Therefore, FICC should amend Section 9 of Rule 8 to provide that if FICC is only permitted to terminate “all, but no fewer than all”, of the positions of an Executing Firm Customer.<sup>21</sup>

**B. Section 18 of Rule 3A Should be Amended to Provide for the Termination of Some or All of the Positions of a Sponsored Member**

As currently drafted, Section 9 of Rule 8 provides for the termination of “some or all” of the positions of the Executing Firm Customer in the Agent Clearing Member Omnibus Account and corresponding positions in the Agent Clearing Member’s Dealer Account. However, Section 18 of Rule 3A provides for the termination of “all, but no fewer than all”, positions of the Sponsored Member and corresponding positions of the Sponsoring Member. The Proposal does not explain this difference, and we see no reason for the discrepancy.

FIA believes that the flexibility of a Clearing Member to close out some or all of an Indirect Participant’s positions (and corresponding positions of the Clearing Member) would be beneficial to the Treasury market as a whole, regardless of whether the Indirect Participant is a Sponsored Member or Executing Firm Customer. Therefore, we request that FICC amend Section 18 of Rule 3A to provide that the Clearing Member may cause the termination of “some or all” positions of the Sponsored Member and corresponding positions of the Sponsoring Member, in alignment with proposed Section 9 of Rule 8.<sup>22 23</sup>

**C. FICC Should Make Certain Other Changes to the FICC Rules Regarding the Liquidation of Done-With Agent Clearing Transactions and Sponsored Member Trades to Enable More Effective Netting of Indirect Participant Activity in Default Scenarios**

In addition to the above requests, FICC should consider making the following changes, which will enable the netting of a defaulting Indirect Participant’s activity:

- FICC should amend the Proposal to allow a Clearing Member to offset an Executing Firm Customer Liquidation Amount against a Sponsored Member Liquidation Amount with respect to the same Indirect Participant (as the same Indirect Participant could be a customer under both services), if such amounts are opposite in whether they are owed to or by FICC. This would be consistent with the overall goal of the FICC Rules’ default

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<sup>21</sup> As explained in Section V.B below, Agent Clearing Members should continue to have the flexibility to terminate some, but not all, of the positions of its Executing Firm Customers.

<sup>22</sup> Consistent with our request in Section V.A above, FICC should continue to be limited to terminate all, but no fewer than all, of the positions associated with the Sponsored Member’s activity.

<sup>23</sup> We note the following technical amendment to Section 9(c) of Rule 8 of the Proposal:

To liquidate the Final Net Settlement Positions of any Executing Firm Customer and the corresponding, offsetting Final Net Settlement Positions of the ~~Executing Firm Customer~~ **Agent Clearing Member** established pursuant to subsection (b) of this Section 9, an Agent Clearing Member shall calculate a liquidation amount, which may be equal to zero and shall be deemed a Funds-Only Settlement Amount.

provisions to net down amounts owed by or to FICC in connection with Indirect Participant activity.

- FICC should also clarify which done-with Sponsored Member Trades and Agent Clearing Transactions are eligible to be liquidated and which are considered settled. For instance, FICC should clarify whether trades of the Indirect Participant that are in opposite directions on the same CUSIP offset or are considered settled (by virtue of their offset), and whether a trade is considered settled if the Clearing Member's proprietary position with FICC originally linked with the customer has settled. Providing this level of technical clarity would bring the Proposal and the Rules for Sponsored Member activity in line with existing, similar FICC Rules.<sup>24</sup>
- The last sentence of proposed Section 14(d)(ii) of Rule 3A, regarding the close-out of Sponsored Member Trades of a Defaulting Member that is a Sponsoring Member, provides that "[i]f any amount is due to a Segregated Indirect Participant that is a Sponsored Member, the Corporation shall make such payment to or as directed by the Sponsoring Member or its trustee or receiver." It is unclear what FICC's intent is with this sentence, as a payment to a Segregated Indirect Participant that is a Sponsored Member would always be directed by the Sponsoring Member, its trustee, or receiver, and so such a sentence is not necessary. We request FICC provide clarification on what it intended to achieve with this sentence.

\* \* \*

FIA appreciates the opportunity to comment on the Proposal. If the Commission has any questions about FIA's comments, please do not hesitate to contact Allison Lurton, General Counsel and Chief Legal Officer, at 202.466.5460 or [alurton@fia.org](mailto:alurton@fia.org).

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<sup>24</sup> See, e.g., FICC Rule 12, Section 11 (for novated same-day settling trades that become uncomparated, but for which payment obligations have already been satisfied, "[FICC] shall establish reverse Securities Settlement Obligations in the form of a Receive Obligation or Deliver Obligation for the amount of the Contract Value of the uncomparated or cancelled Same-Day Settling Trade between the Corporation and the applicable Netting Members.").

Ms. Vanessa A. Countryman  
July 14, 2025

Sincerely,

A handwritten signature in cursive script, appearing to read "Allison Lurton".

Allison Lurton  
General Counsel and Chief Legal Officer

cc:     The Hon. Paul S. Atkins, SEC Chairman  
          The Hon. Heister M. Peirce, SEC Commissioner  
          The Hon. Caroline A. Crenshaw, SEC Commissioner  
          The Hon. Mark T. Uyeda, SEC Commissioner  
          Jamie Selway, Director, Division of Trading and Markets