October 6, 2025

Submitted Electronically

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

Re: FIA Comments on SEC "ICE Clear Credit LLC; Notice of Filing of an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934" [Release No. 34-103727; File No. 600-45]

Dear Ms. Countryman:

The Futures Industry Association ("**FIA**")[1] 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 the above-referenced application (the "**Application**") from ICE Clear Credit LLC ("**ICC**"), and, in particular, on ICC's proposed rules thereunder ("**Proposed Rules**").[2] Terms used but not defined herein have the meaning set forth in the Proposed Rules. As a leading advocate for the cleared derivatives industry, FIA represents market participants who rely on robust, transparent, and efficient clearing systems.

FIA supports the expansion of clearing services for U.S. Treasury transactions and has reviewed the Proposed Rules through the lens of its members, who are interested in potentially providing clearing services or otherwise participating as registered Futures Commission Merchant ("**FCM**") members of ICC. We commend ICC for its efforts to expand its clearing services to the Treasury market, which will provide competition and diversity in clearing models. This comment

[1] 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.

[2] Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934, Annex E-2 (Aug. 1, 2025), available here.

letter sets forth FIA's suggestions to improve certain aspects of the Proposed Rules to ensure predictability, clarity, and stability in the market. We respectfully request the Commission and ICC consider our comments and make the recommended improvements to the Proposed Rules.

I. Executive Summary

As described in more detail below, FIA requests that ICC:

- **Ensure Access for FCMs and Coordinate with Regulators.**
  - Explicitly permit FCMs to act as Treasury Participants or Non-Participant Parties and self-clear Treasury repos using customer funds in accordance with CFTC Rule 1.25;
  - Amend Proposed Rule 303 to include an "Applicable Law Exception" where submission of transactions would otherwise cause an FCM to violate CFTC requirements (including counterparty restrictions and concentration limits);
  - Clarify that collateral posted by an FCM in support of Rule 1.25 Repos would be identified as not being customer funds and ensure the Proposed Rules support separate account structures required under CFTC regulations; and
  - Ensure that account structures and margin portfolios are consistent with Rule 1.25.
- **Adopt Clear and Specific Capital Requirements for Treasury Participants.**
- **Refine Trade Submission Requirements and Related Definitions.**
  - Clarify that transactions may continue bilaterally if rejected for clearing, particularly when such failure is due to factors outside the control of a Treasury Participant;
  - Ensure Proposed Rule 303(a) does not make Treasury Participants responsible for post-trade submission processes controlled by third-party middleware;
  - Automatically incorporate future SEC guidance or relief into the Proposed Rules; and
  - Revise proposed penalty provisions to account for good-faith remediation efforts by Treasury Participants with respect to the trade submission requirement.
- **Strengthen Treasury Participants' Rights in Managing Client Defaults.**
  - Amend Proposed Rule 316(g) to give Treasury Participants the authority to close out against a Defaulting Client in the ordinary course;
  - Appropriately limit Treasury Participants' indemnification of ICC when ICC conducts the close-out process;
  - Enhance the options available to a Treasury Participant in closing out against a Defaulting Client;
  - Confirm that Treasury Participants do not act as agents for Default Clients when exercising remedies;
  - Revise Proposed Rule 2205 to allow the Receiving Party, not ICC, to direct buy-ins following delivery failures; and

- Remove Proposed Rule 808 on Reduced Gains Distribution, which is inappropriate for repo clearing and could negatively impact market liquidity in stress scenarios.

- **Improve Porting, Margin, and Settlement Provisions.**
  - Permit voluntary transfer of Client-Related Positions outside of a default scenario;
  - Permit Non-Participant Parties to designate a preferred Treasury Participant for porting in a default scenario, and ensure that porting only occurs if it does not create margin deficiencies;
  - Clarify that Variation Margin settlement under Proposed Rule 401(l) resets the Variation Payment Category to zero rather than the total exposure under the Contract; and
  - Clarify that Treasury Participants may use Treasuries, not just cash, to satisfy a portion of the Initial Margin requirements.

- **Provide Key Legal Opinions and Clarifications.**
  - Obtain and make available reliance opinions on bankruptcy remoteness and the enforceability of the Proposed Rules in the event of ICC's or a Treasury Participant's insolvency; and
  - Provide transparency on accounting treatment and legal interpretations affecting Treasury Participant risk.

II. ICC Should Ensure Access for FCMs and Add More Specific Capital Requirements for Treasury Participants.

A. ICC Should Explicitly Permit FCMs to Access ICC's Treasury Clearing Service and Coordinate with the SEC and CFTC to Ensure Compliance with CFTC Rules.

FIA recommends that ICC explicitly permit FCMs to become Treasury Participants or Non-Participant Parties and consider changes to the Proposed Rules to ensure such FCMs may self-clear Treasury repos using customer funds in accordance with CFTC Rules. FCMs are permitted to invest customer funds in Treasury repos under CFTC Rule 1.25(d) ("**Rule 1.25 Repos**"), subject to certain requirements under CFTC Rules, including restricting Rule 1.25 Repos to certain permitted counterparties and segregation requirements with respect to customer funds.[3] Certain changes to the Proposed Rules appear to be required to avoid requiring FCMs to submit transactions to ICC that would violate applicable CFTC Rules, and to ensure that FCMs may self-clear Rule 1.25 repos in accordance with the CFTC Rules.

1. Applicable Law Exception

Because certain of the inconsistencies between the CFTC Rules and the Proposed Rules are wholly outside the control of ICC, as detailed below, we request that ICC amend Proposed

[3] While certain provisions of the CFTC Rules may prevent an FCM from clearing Rule 1.25 Repos, FIA is engaging with the CFTC to address these issues, in particular to make a clearing agency (such as ICC) a "permitted counterparty" for such repos. We encourage ICC to engage with the CFTC in support of such relief.

Rule 303 to exclude from the transaction submission requirement any transactions whose submission to ICC would cause an FCM to be in violation of applicable law (the "**Applicable Law Exception**"). The Applicable Law Exception would apply until such time as ICC, the SEC and the CFTC can coordinate to resolve the conflicts presented by the application of the transaction submission requirement in the context of Rule 1.25 Repos, and to the extent the SEC believes that SEC-level relief is also necessary, FIA also requests that the SEC provide such relief.

Conflicts requiring application of the Applicable Law Exception include:

a. *Permitted Counterparty Restriction*

Pursuant to CFTC Rule 1.25(d)(2), an FCM may only enter into Rule 1.25 Repos with permitted counterparties, and a clearing agency such as ICC currently does not qualify as a permitted counterparty to a Rule 1.25 Repo. As such, the Applicable Law Exception would be needed to ensure a Treasury Participant who is an FCM is not in violation of Proposed Rule 303 while relief from the CFTC permitting clearing agencies to be permitted counterparties is pending.

b. *Counterparty Concentration Limit*

Pursuant to CFTC Rule 1.25(b)(3)(v), Rule 1.25 Repos and cash transactions entered into pursuant to CFTC Rule 1.25 with any one counterparty may not exceed 25% of total assets held in segregation by the FCM. Because ICC would be the counterparty to all Rule 1.25 Repos cleared pursuant to the Proposed Rules, positions held at ICC would be aggregated for purposes of the 25% concentration limit. Accordingly, the Applicable Law Exception should apply, and this is another reason that we request ICC to adopt such an exception.

2. ICC Should Take Steps to Accommodate Compliance with Applicable CFTC Requirements.

There are other inconsistencies between the CFTC Rules and the Proposed Rules that ICC should address by amending the Proposed Rules, as further detailed below. To the extent ICC is unable to resolve these issues to the satisfaction of FIA members, then as with the inconsistencies that are wholly outside the control of ICC, we would expect that the industry and FIA members in particular would need to rely on the Applicable Law Exception until such time as ICC, the SEC and the CFTC can coordinate to resolve the identified conflicts.[4]

a. *Prohibition on Use of Customer Funds as Margin*

While an FCM may invest customer funds pursuant to a Rule 1.25 Repo, such Rule 1.25 Repo would not itself constitute customer property, and the proceeds of such Rule 1.25 Repo once received by the counterparty, in this case ICC, would constitute settlement proceeds and not customer funds. CFTC Rules would not permit the FCM to use customer funds to margin or otherwise collateralize the FCM's obligations under the Rule 1.25 Repo. This is because CFTC Rules prohibit an FCM from granting a lien on customer funds, or permitting the use thereof to secure or extend the credit of any person other than such customer.[5]

[4] As with the issues noted above that are outside the control of ICC, we would encourage ICC to engage with the CFTC and SEC, as applicable, in support of any necessary relief and to work with the SEC, CFTC, and FIA to develop a clearing model that will be consistent with FCM obligations.

[5] *See* CFTC Rules 1.22(a), 22.2(d)(2) and 30.7(f)(3).

Accordingly, in order for an FCM to engage in Rule 1.25 Repos pursuant to current CFTC Rule 1.25, the FCM could not use its customer's funds to post as collateral or margin. If the FCM cleared Rule 1.25 Repos as a Non-Participant Party, its Treasury Participant would need to either finance and post its own funds or use the FCM's own funds to post as collateral with respect to the FCM Non-Participant Party's transactions, and if the FCM cleared Rule 1.25 Repos as a Treasury Participant, the FCM would need to use its own funds to post as collateral. The Proposed Rules should clarify that any collateral posted in support of Rule 1.25 Repos by an FCM would be identified as not being customer funds.

b. *Support for Separate Account Structure*

Under CFTC Rules 1.20, 22.2, and 30.7, an FCM may not commingle customer funds, including cash and securities received pursuant to a Rule 1.25 Repo, with either the proprietary assets of the FCM or the assets that the FCM holds for a different account class (*i.e.*, futures, foreign futures, cleared swaps), including any such assets received in connection with a Rule 1.25 Repo investing such customer funds of a different account class.

Accordingly, ICC should clarify that the Proposed Rules permit separate margin portfolios and accounts for the same Treasury Participant or Non-Participant Party in respect of Rule 1.25 Repos that such Treasury Participant or Non-Participant Party clears using its proprietary assets or customer funds of a different account class, such that Variation Payment, cash and securities would be settled on a separate and gross basis for each such account. For the reasons discussed above, Initial Margin may also need to be settled separately. Furthermore, certain Treasury Participants or Non-Participant Parties may determine that they would not permit netting across these accounts even in the event of their default. ICC should therefore offer an option to treat each of these accounts on a gross basis, and further confirm that in the event of an insolvency of an FCM that is a Treasury Participant or Non-Participant Party, ICC would not net across those separate accounts.

B. ICC Should Add More Specific Capital Requirements for Treasury Participants.

FIA recommends that ICC amend Proposed Rule 201(b) to impose more specific capital requirements on applicants who wish to become Treasury Participants, depending on their entity type. The Fixed Income Clearing Corporation ("**FICC**") imposes particular capital requirements on its applicants depending on whether the applicant is (among others) a bank, broker-dealer, FCM, or registered investment company.[6] CME Securities Clearing Inc. ("**CMESC**") has set forth similar standards in its proposed rules for Treasury clearing with particular requirements for broker-dealers, banks, non–broker-dealer FCMs, and unregistered investment pools.[7]

While we understand that ICC does not wish to limit membership to just those entities that are directly regulated for capital adequacy, more specific and explicit capital requirements will reduce overall risk by ensuring all Treasury Participants are in a robust financial state. Such requirements would also promote consistency across existing Treasury clearing services (*i.e.*, at FICC) and other proposed Treasury clearing services (*i.e.*, at CMESC).

[6] *See* FICC Government Securities Division Rules ("**FICC Rules**"), Rule 2A, Section 4(b).

[7] *See* Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934, Exhibit E-3, at Rule 306(b) (Jan. 15, 2025), available here.

III. ICC Should Make Certain Clarifications to the Trade Submission Requirements and Related Definitions.

A. ICC Should Clarify That Pursuant to the Proposed Rules, a Transaction May Continue Bilaterally in the Event a Transaction Is Rejected.

As currently drafted, Proposed Rule 303(a) provides that "each Treasury Participant shall be required to submit to [ICC] or another covered clearing agency…for clearing all Trades…that are Eligible Secondary Market Transactions, promptly following the execution thereof." This rule could be read to imply that the requirement for a Treasury Participant to submit eligible secondary market transactions for clearing is actually an obligation to ensure that such transactions are accepted for clearing in all circumstances. Further, this implies that the Treasury Participant is responsible for the timing of submission of the transaction to ICC post-execution even though the trade will likely be submitted to ICE through a variety of post-trade connectivity and middleware platforms, including ICE Link, that will not involve the Treasury Participant.

Consistent with the plain reading of the SEC's transaction submission requirement,[8] FIA understands that SEC rules may allow a transaction to continue bilaterally, including where the failure to clear is the result of a cause outside the control of the Treasury Participant and its Non-Participant Party, such as technical or communication disruptions, malfunctions, or errors including cyber and other technological outages, that prevents the transaction from being submitted to, accepted by, or novated to a clearing agency for clearing. Proposed Rule 303(a) should be revised to be consistent with this understanding, and accordingly, market participants should be able to continue such transactions bilaterally in their discretion in accordance with applicable law, particularly where market disruptions require bilateral execution to meet the liquidity needs of the Treasury markets. Further, ICC should adjust the wording of Proposed Rule 303(a) so that a Treasury Participant is not responsible for the timing of the post-trade execution process, or indeed the post-trade execution process at all, since the Treasury Participant will not control middleware processes.

B. ICC Should Amend Its Rules to Future-Proof the Implementation of the Transaction Submission Requirement by Automatically Incorporating Any SEC Interpretations, Guidance, or Definitional Changes.

Treasury clearing is evolving and there is active engagement by the industry, including FIA, with the SEC to clarify or request interpretations with respect to particular aspects of the transaction submission requirement (*e.g.*, with respect to the inter-affiliate exemption, mixed CUSIP repos, and the cross-border application of the transaction submission requirement) where we expect further SEC guidance to be forthcoming. As a general matter, ICC should draft the Proposed Rules in such a way that they automatically incorporate any SEC relief, interpretation, or updated definitions. Specifically, FIA recommends that the Proposed Rules' definition of "Eligible Secondary Market Transaction" be revised to simply cross-reference the definitions adopted by the SEC and subject to any SEC interpretation or relief. Doing so will ensure that ICC's rulebook remains aligned with SEC standards as they evolve through rule amendments or interpretive relief without needing to amend the rulebook.

[8] 17 C.F.R. § 240.17ad-22(e)(18)(iv)(A).

C. ICC Should Revise Its Proposed Penalties to Account for Treasury Participants' Good-Faith Efforts Regarding the Trade Submission Requirement.

The proposed Disciplinary Rules at Proposed Rules 700 *et seq.* provide that ICC may impose fines ranging between $10,000 and $100,000 on a Treasury Participant for each Violation of the Proposed Rules. This could result in high fines for inadvertent violations of the trade submission requirement in Rule 303(a). While FIA appreciates that penalties could theoretically help prevent rule violations, the potential for a fine for each and every failure to submit a transaction for clearing without accounting for the Treasury Participant's good-faith efforts to remedy the problem seems excessive. FIA suggests that FICC allow Treasury Participants to (i) initially notify ICC of non-compliance with the trade submission requirement, then (ii) work to remediate the issue that may have caused the non-compliance, without the imposition of penalties.

IV. ICC Should Make Other Changes to the Proposed Rules Regarding the Close-Out of Client-Related Positions to Strengthen Treasury Participants' Risk Management Controls and Protect Themselves from Loss.

A. The Treasury Participant Should Have the Authority to Close Out Against a Defaulting Client in the Ordinary Course.

Rule 316(g) provides that, in the event of a Client Default,[9] ICC will manage the close-out of the Defaulting Client's positions, unless the Treasury Participant carrying such positions elects otherwise by notice to ICC through a Participant Management Election. This gives ICC the power to manage the Non-Participant Party's default in the ordinary course, which FIA does not believe is appropriate. ICC has no substantive interest in closing out Client-Related Positions if the Treasury Participant is performing its obligations, and it should be the Treasury Participant's prerogative to manage its Non-Participant Party's default in the first instance. The Treasury Participant has the most direct financial interest at stake, as it is responsible for the obligations of its Defaulting Client, and is also best positioned to conduct an efficient and effective close-out due to its direct relationship with the Defaulting Client and familiarity with the relevant Client-Related Positions. Therefore, ICC should amend Proposed Rule 316(g) to permit a Treasury Participant to manage a Client Default unless it elects to have ICC manage the Client Default. Furthermore, ICC should only otherwise be able to manage a Client Default if the Treasury Participant is also in Default (*i.e.*, in a double-default scenario).

In addition, Proposed Rule 316(g) provides that "[t]he Treasury Participant must provide to [ICC] a written certification that the Client Default has occurred" which, read in isolation, seems to require notice regardless of whether the Treasury Participant wishes to exercise its close-out rights under the Proposed Rules and even when the Treasury Participant has waived the applicable Non-Participant Party default or termination event. We understand that this was not ICC's intent. ICC should amend Proposed Rule 316(g) to clarify that the Treasury Participant need only provide ICC with a written certification of a Client Default if it seeks to exercise its close-out rights.

[9] Proposed Rule 316(g) states that a Client Default exists when "a default or termination event with respect to a Non-Participant Party has occurred and is continuing under the applicable agreement between the Treasury Participant and Non-Participant Party with respect to the Client-Related Positions of the Non-Participant Party..

B. Proposed Rule 316(g) Should Be Amended to Limit Treasury Participant Indemnification of ICC for ICC's Close-Out of Defaulting Client Positions.

As currently drafted, Proposed Rule 316(g) requires the Treasury Participant to indemnify ICC "against any loss, claim, liability, damage or expense arising out of any actions by ICE Clear Credit under Rule 316(g) (including without limitation any claims by the Defaulting Client as to whether the Client Default occurred and any claims by the Defaulting Client or any other third party as to the manner in which the Closing-Out Process was conducted)." A Treasury Participant should not be required to so broadly indemnify ICC for ICC's own actions in the event ICC manages the close-out of the Defaulting Client. Any indemnity obligations of Treasury Participants should be strictly limited to claims arising from the Treasury Participant's own gross negligence or willful misconduct, consistent with the limitation of liability extended to ICC itself elsewhere in the Proposed Rules.[10] [11]

C. ICC Should Make Certain Other Changes to the Proposed Rules Regarding Remedies and Close-Out to Enable More Effective Management of Close-Out of Defaulting Client Positions.

In addition to the above requests, ICC should make the following changes to the Proposed Rules, which will enhance the close-out process and clarify rights of the Treasury Participant in the event of a Client Default:

- ICC should permit the Treasury Participant itself to transfer Client-Related Positions to another Treasury Participant in the event of a Client Default.[12] Such optionality is vital for a Treasury Participant's ability to effectively mitigate risk with respect to a Defaulting Client. For example, a transfer may enable another Treasury Participant to assume a Defaulting Client's positions. In all instances, the receiving Treasury Participant should have to consent to the transfer of such Client-Related Positions, and margin should be transferred in such a manner as to ensure that no Treasury Participant is left in a margin deficiency.[13]
- ICC should amend Proposed Rule 316(e) to permit the Treasury Participant to transfer a House Position into a Client-Related Position.
- ICC should amend Proposed Rule 316(e) to explicitly provide that when a Client-Related Position is converted into a House Position (or vice versa) after a Client Default, the positions may offset and compress (*i.e.*, liquidate) against any opposite Position that may be in the relevant Account. We believe that is ICC's intent, but the Proposed Rules should clarify this explicitly.

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[10] *See, e.g.*, Proposed Rules 802(c)(ii), 811(*l*)(ii), and 811(u).

[11] It seems that CMESC's Treasury clearing rules and procedures do not contain an express indemnity. FICC's rulebook only narrowly requires indemnity as to incorrect LEIs for indirect participants (see Section 1 of Rule 3A and Section 2 of Rule 8) and in connection with a sponsoring member's calculation of a liquidation amount under the procedures set out in FICC's Section 18 of Rule 3A 18 for done-with sponsored trades.

[12] Treasury Participants should be able to port Client-Related Positions to a Client Origin Account or House Account of another Treasury Participant.

[13] *See* Section V.C below.

- ICC should also explicitly permit a Treasury Participant to allow Client-Related Positions to settle in the ordinary course after a Client Default.
- ICC should amend Proposed Rule 316 to specifically provide that when the Treasury Participant offsets or converts Client-Related Positions in the event of a Client Default, the Treasury Participant is not acting as agent for the Non-Participant Party. This will ensure that the Treasury Participant is understood to not be acting as agent for the Defaulting Client in undertaking remedies, which is helpful in supporting the enforceability of these remedies across an array of jurisdictions.[14]
- ICC should explicitly provide in Proposed Rule 316(g) that where a Non-Participant Party has established a direct-settlement relationship with ICC under Proposed Rule 2204 and opened an Individual Client Direct Settlement Account, ICC will, in the event of a Client Default of that Non-Participant Party, direct payment and securities to settle in the House Account of the applicable Treasury Participant, or otherwise deliver such payment and securities at the direction of the Treasury Participant. Since the Treasury Participant guarantees the Non-Participant Party's obligations but is no longer involved in the settlement, the Treasury Participant needs assurance that cash and securities needed to cover the Non-Participant Party's reimbursement obligations to the Treasury Participant do not dissipate. We understand that ICC is amenable to this change.
- ICC should amend the Proposed Rules to provide certain guardrails around ICC's management of a Client Default under Proposed Rule 316(g). The Proposed Rule should clarify that ICC may permit some Client-Related Positions to continue in the ordinary course (*e.g.*, positions associated with overnight repos), and that it shall act within a short time horizon to close out or port all, but no fewer than all, of a Defaulting Client's other positions (so as not to expose the Treasury Participant to loss and margin requirements). We do not believe it is appropriate for ICC to have the ability to terminate only a portion of the Defaulting Client's term positions because this could result in the Treasury Participant facing a margin deficiency or other form of loss.
- ICC should include a provision that allows a Treasury Participant to liquidate the Client-Related Positions of a Defaulting Client by any other reasonable means that may be permitted by ICC.

D. Proposed Rule 2205 Should Be Amended to Strengthen a Treasury Participant's Rights in the Event of a Delivery Failure.

Under Proposed Rule 2205(c) and (d), ICC may buy-in securities in the event of a Delivery Failure. ICC should instead permit the Receiving Party to conduct a buy-in at its discretion and

[14] *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/posttrade/en_us/documents/lch/rulebooks/lch-ltd/240923-fcm-regulations-fmx-go-live-clean.pdf.

submit pricing information to ICC to determine loss amounts (including financing costs) that may be charged to the Delivering Party. This is important because the Receiving Party is most at risk in a Delivery Failure and should be able to direct any buy-in if it deems it appropriate to do so.[15] We note that nothing would prevent ICC from continuing to assess a Fail Charge to the Delivering Party.

E. ICC Should Remove Rule 808 Regarding Reduced Gains Distribution.

Proposed Rule 808, which has been carried over from CDS Rule 808, allows ICC to impose Reduced Gains Distribution (*i.e.,* variation margin gains haircuts ("**VMGH**")) in the event of a severe Treasury Participant default scenario. Such a tool, while commonplace in derivatives clearing, is not appropriate for repo clearing. Were ICC to impose VMGH in the event of a Treasury Participant default, buy-side participants (*i.e.*, cash lenders/repo buyers) may cease lending for fear of being subject to haircuts and therefore loss. Because repos are used as liquidity and funding instruments, this could have serious liquidity implications and exacerbate the stressed market conditions likely to exist in a Treasury Participant default scenario. Indeed, we are not aware of any other repo clearinghouse whose rules provide for VMGH.[16] Therefore, we request that ICC remove Proposed Rule 808.

V. ICC Should Make Other Changes to the Proposed Rules Regarding the Transfer and Porting of Client-Related Positions.

As a general matter, FIA supports clearinghouses having clear, pre-established porting rules and arrangements. These can help avoid the need to close out positions in times of market stress, potentially reducing market disruption and attendant risks to non-defaulting members and the clearing agency itself. We support the Proposed Rules' provision of a porting mechanism, and suggest the following changes to increase certainty and avoid unintended market disruptions.

A. ICC Should Allow Voluntary Transfers of Client-Related Positions.

ICC should amend the Proposed Rules to allow a Treasury Participant to transfer Client-Related Positions on a voluntary basis to another Treasury Participant, subject to the consent of the Non-Participant Party and the receiving Treasury Participant. The ability to transfer Client-Related Positions on a voluntary basis would give Treasury Participants crucial flexibility to manage their portfolios and provide options to their customers.[17] We note that FICC is planning to permit this option.[18]

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[15] *See, e.g.*, FICC Rule 11, Section 13 (permitting a member to buy-in securities and transmit pricing information to FICC).

[16] *See, e.g.*, International Swaps and Derivatives Association, Clearing Model Comparison (2024) (row on "Default Management Obligations" shows that no repo clearing service imposes variation margin gains haircuts), https://www.isda.org/a/YE8gE/Clearing-Model-Comparison-061124.pdf.

[17] Treasury Participants should be able to transfer Client-Related Positions to a Client Origin Account or House Account of another Treasury Participant.

[18] *See* FICC, Notice of Filing of Amendment No. 1, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the GSD Rulebook

B. Non-Participant Parties Should Be Able to Designate Another Treasury Participant to Which Its Positions May Be Ported in the Event of a Treasury Participant Default.

Non-Participant Parties should be able to designate, as a non-binding preference, another Treasury Participant to port its activity to in the event ICC chooses to port Client-Related Positions when a Treasury Participant becomes a Defaulting Member under Proposed Rule 20-605(a)(ii). This will make porting more predictable for Non-Participant Parties, the applicable insolvency manager, and ICC itself. Other clearinghouses allow this option.[19]

C. ICC Should Only Be Able to Port Client-Related Positions, Whether in the Ordinary Course or After a Treasury Participant Default, if It Would Not Result in a Margin Deficiency or Increased Exposure for the Defaulting Participant.

Proposed Rule 20A-02 provides that ICC may transfer all or part of the portfolio of Client-Related Positions of a Defaulting Participant (the "**Eligible Transfer Positions**") to another Treasury Participant, along with any related margin. As written, these provisions could permit ICC to transfer Eligible Transfer Positions in such a way as to result in the transferee Treasury Participant or the Defaulting Participant having a margin deficiency or otherwise exposing it to additional loss.[20] We do not believe this was ICC's intent. ICC should revise Proposed Rule 20A-02 to provide that ICC may only transfer Eligible Transfer Positions to the extent it would not result in a margin deficiency and would be risk-mitigating for the transferee Treasury Participant or Defaulting Participant, as applicable.

VI. ICC Should Clarify the Variation Margin Settlement Language in Proposed Rule 401(l).

Proposed Rule 401(l) provides that upon final settlement of Transfer of Variation Payment, the fair value of "outstanding exposures for the relevant Contracts" will be reset to zero. It appears such language is a holdover from ICC's CDS Rules,[21] and does not seem appropriate for the repo

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Relating to Default Management and Porting With Respect to Indirect Participant Activity, 90 Fed. Reg. 45850 (Sept. 23, 2025) (new proposed FICC Rule 26, Section 1).

[19] *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; 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; 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; *see also* FICC Proposed Rule 26 (Sept. 18, 2025), available here.

[20] For example, if a Defaulting Participant's Non-Participant Party has two perfectly offsetting Client-Related Positions, then all else being equal, the Defaulting Participant would have no Initial Margin requirement with respect to such positions due to netting. However, if ICC were to only transfer one of these Client-Related Positions to another Treasury Participant, both the Defaulting Participant and the transferee Treasury Participant would have Initial Margin requirements.

[21] *See* ICC CDS Rule 401(l) (providing that "[o]nce settlement of a Transfer of Mark-to-Market Margin in respect of the Margin Requirement for a Mark-to-Market Margin Category is final, the fair value of the outstanding exposures for the relevant Contracts in that Mark-to-Market Margin Category (taking into account the Mark-to-Market Margin provided in respect of such Margin Requirement) will be reset to zero.").

market. Outstanding exposures under Treasury repos would not generally reset to zero upon the transfer of variation margin, as each party to the Treasury repo would still have an obligation to deliver cash or securities to the other on the off-leg. Such resetting of the exposure to zero might also raise a question about the repo characterization of the transaction. To avoid uncertainty as to the obligations of the parties, to clarify ICC's intent in this provision and to ensure proper characterization of the transaction, we recommend ICC revise Proposed Rule 401(l) to simply provide that "[o]nce settlement of a Transfer of Variation Payment in respect of the Margin Requirement for a Variation Payment Category is final, the Margin Requirement for such Variation Payment Category shall reset to zero."

VII. ICC Should Permit Treasury Participants to Post Treasuries as Initial Margin.

Proposed Rule 401(d) provides that, with respect to satisfaction of an Initial Margin requirement, a Treasury Participant must post "dollars or other currencies" and may only post assets (*i.e.*, Treasuries) for substitution purposes in accordance with Proposed Schedule 401. We understand that ICC intended that Initial Margin be funded with 50% cash and 50% Treasuries, but the wording of Rule 401(d) appears to require 100% cash funding except for substitutions. FIA requests that ICC clarify that Treasury Participants may use Treasuries to satisfy at least part of the Initial Margin requirement, as Treasuries are an important liquidity management tool and a useful way to substitute for cash. Given the safety of Treasuries and the deep liquidity of the market in general, allowing Treasury Participants to do so should pose no appreciable risk to ICC.

VIII. Provision of Key Legal Opinions and Information and Miscellaneous Items.

A. ICC Should Provide Certain Key Legal Opinions.

Providing the opinions detailed below is consistent with ICC's obligations under SEC Rule 17ad-22(e)(1) and (e)(23)(ii) to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions, as well as to provide Treasury Participants with sufficient information to enable them to identify and evaluate the risks, fees and other material costs they incur by participating in ICC's clearing services.

- Bankruptcy Remoteness: It is not immediately clear from the Proposed Rules whether the assets of Treasury Participants and Non-Participant Parties held at ICC would be held in a "bankruptcy remote" manner (*i.e.*, that such assets would not form part of ICC's estate in the event of ICC's insolvency and not be available to cover ICC's CDS clearing operations). Accordingly, we urge ICC to obtain, and make available to all Treasury Participants on a reliance basis, a reasoned legal opinion from outside counsel, in which counsel opines that the assets of Treasury Participants and Non-Participant Parties at with ICC would be considered bankruptcy remote and available just for U.S. Treasury clearing operations, consistent with the views expressed by FIA in the advisory paper entitled "Arrangements Necessary to Support a Positive Bankruptcy Remoteness Conclusion Under the Cleared Transaction Rules of US Basel III With Respect to Collateral Posted by a Clearing Member to a Central Counterparty."[22] This is especially important because we understand that the same ICC legal entity will be responsible for both CDS and Treasury clearing.

[22] Available here (Oct. 31, 2013).

- Enforceability: ICC should obtain legal advice regarding the enforceability of the Proposed Rules under the governing law of the Proposed Rules, applicable insolvency law, and the Federal Deposit Insurance Corporation Improvement Act of 1991 in the event of an insolvency of ICC or a Treasury Participant. ICC should make these opinions available to all Treasury Participants on a reliance basis.
- Accounting: ICC should make available to Treasury Participants any accounting analysis and related legal opinions it has obtained in respect of the Proposed Rules supporting the determination that a Treasury Participant's role in clearing for Non-Participant Parties is that of an agent.

B. Miscellaneous.

- Partial Debits Under Note H. FIA understands that ICC is confirming with the SEC that a Treasury Participant may take an Item 15 debit under Note H to SEC Rule 15c3-3a for the portion of margin funded by its Non-Participant Party with respect to a Hybrid Gross Initial Margin Account. We would welcome such a confirmation.
- Treasury Clearing Procedures. FIA understands that ICC will make the Procedures governing Treasury clearing services, including Procedures applicable to default auctions, available to prospective Treasury Participants for review and comment later this year. We thank ICC in advance for making these available, and look forward to giving our feedback.
- Obtaining Agreement of Non-Participant Parties to Particular Proposed Rules. ICC should clarify that a Treasury Participant may satisfy the various requirements to obtain the agreement of a Non-Participant Party to particular provisions (*e.g.*, Proposed Rules 312, 316, and 406), by requiring the Non-Participant Party to be bound by all the Proposed Rules so that Treasury Participants need not mention each and every section in the relevant bilateral agreement with its Non-Participant Party.[23]

* * *

FIA appreciates the opportunity to comment on the Proposed Rules. If the Commission or any member of the staff have 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.

[23] Under Proposed Rule 406(e), ICC provides that each Treasury Participant is required to obtain the agreement of each Non-Participant Party "to the provisions of the Rules applicable to or otherwise referring to Non-Participant Parties (including Rule 312, Rule 316 and this Rule 406)". This language seems to indicate that a broad agreement of the Proposed Rules can be obtained.

Sincerely,

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