

FIA Law and Compliance Conference 2026

The Final Treasury Clearing Countdown
April 16, 2026

Moderator: Michael Sorrell, Deputy General Counsel, FIA

Panelists: Steven Lofchie, Partner, Norton Rose Fulbright
Deborah North, Partner, Cleary Gottlieb Steen & Hamilton
Robert O'Connor, Managing Director, Legal and Compliance, Morgan Stanley
Jodi Singer, Executive Director, Nomura
Conor Weber, Senior Director & Associate General Counsel, CME Group

Authors: Deborah North, Lauren Semrad, Brian Morris, Wankun (Charles) Wang,
Katherine Kennedy, and Niko Gekakis*

**Not yet admitted to practice law.*

EXECUTIVE SUMMARY

As the largest and most liquid sovereign debt market, the U.S. Treasury (“UST”) market serves a fundamental role in the functioning of the global financial system.¹ Following significant disruptions in the UST market over the past decade, the Securities and Exchange Commission (the “SEC”) adopted new rules² that will, among other things, require the central clearing of the vast bulk of repurchase transactions (“repos”) on USTs as well as a variety of purchases and sales (“cash transactions”) of USTs (such requirement, the “UST Clearing Mandate”). In connection with the UST Clearing Mandate, the SEC also adopted amendments to the broker-dealer (“BD”) Customer Protection Rule under section 15(c)(3)(A) of the Securities Exchange Act of 1934 (the “Exchange Act”) to allow BDs to record a debit in the SEC Rule 15c3-3a reserve formulas for certain margin collected from customers and on-posted to a registered clearing agency that provides central counterparty services for Treasury transactions (a “Treasury CCP”, and such amendment, the “15c3-3 Amendment”).³ The purpose of this amendment is to facilitate the ability of Treasury CCP direct participants (also known as “clearing members”) that are BDs to collect from their customers and such customers to post initial margin to a Treasury CCP. The SEC also amended standards applicable to Treasury CCPs to require Treasury CCPs to facilitate access to central clearing services (the “Access Requirement”) and to calculate, collect, and hold margin for direct participants’ proprietary transactions separately and independently from the margin for transactions direct participants submit to clearing on behalf of indirect participants (the “Separate Margining Requirement”, and collectively with the UST Clearing Mandate, 15c3-3 Amendment, and the Access Requirement, the “UST Clearing Rules”).

The SEC also approved amendments to the rulebooks of the Government Securities Division (“GSD Rules”) of the Fixed Income Clearing Corporation (“FICC”), the only operational Treasury CCP⁴ as of today, in response to the UST Clearing Rules to (1) refashion FICC’s current prime brokerage and correspondent clearing models into a single model that closely resembles the futures commission merchant (“FCM”) clearing model (the “Access Amendment,” and such new model, the “Agent Clearing Service,” or “ACS”), (2) permit customers and their clearing members to elect for margin posted in respect of a customer’s positions to be segregated in a manner that would allow BD clearing members to record a debit in the reserve formulas pursuant to the 15c3-3 Amendment (the “Segregated Customer Margin Amendment”), and (3)

¹ SIFMA.org, US Treasury Market Statistics (May 1, 2025), available at <https://www.sifma.org/resources/research/statistics/us-treasury-securities-statistics/>.

² Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, 89 Fed. Reg. 2714 (Jan. 16, 2024).

³ 89 Fed. Reg. 2714, 2760 (Jan. 16, 2024).

⁴ Note that CME Securities Clearing, Inc. (“CMESC”) and ICE Clear Credit LLC (“ICE”) each has been approved to register as a Treasury CCP. CME Securities Clearing, Inc.; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934, 90 Fed. Reg. 55926 (Dec. 4, 2025) (“CMESC Registration Approval”). The filing materials, including CMESC’s proposed rulebook and procedures, are available at <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/cme-form-ca-1> (“CMESC Application for Registration”). ICE Clear Credit LLC; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934, 91 Fed. Reg. 5528 (Feb. 6, 2026) (“ICE Registration Approval”). The filing materials, including ICE’s proposed rulebook and procedures, are available at <https://www.sec.gov/rules-regulations/commission-orders-notices/icc-form-ca-1> (“ICE Application for Registration”).

require clearing members to record in separate FICC accounts transactions cleared for customers (including affiliates) and proprietary transactions (the “Position Segregation Amendment”).⁵ FICC also filed proposed rule changes to adopt a trade submission requirement that would implement the UST Clearing Mandate and to monitor direct participants’ compliance with the trade submission requirements, but has withdrawn this proposal following the SEC’s extension of the timeline for implementing some of the UST Clearing Rules.⁶ FICC has also proposed rules to facilitate access to FICC’s clearing of triparty repos (i.e., repos executed and settled through a triparty platform operated by a clearing bank, such as The Bank of New York Mellon (“BNYM”)), by (1) expanding FICC’s existing triparty repo clearing service (the “Sponsored GC Service”) to facilitate clearing of “done-away” transactions (as described below), (2) adopting a triparty clearing service under the ACS, and (3) adopting a new “Collateral-in-Lieu” service.⁷

In addition, CMESC, an entity newly created by the CME Group Inc., and the Intercontinental Exchange, utilizing its existing clearing house, ICE, have each been approved to register as a Treasury CCP. CMESC received its approval on December 1, 2025.⁸ ICE received its approval on January 30, 2026.⁹

Following an extension by the SEC of the implementation timeline in response to industry feedback, the key dates for the UST Clearing Rules and implementation requirements are:

- December 31, 2026: The effective compliance date of the UST Clearing Mandate with respect to UST cash transactions.¹⁰
- June 30, 2027: The effective compliance date of the UST Clearing Mandate with respect to UST repos.¹¹

Despite the extension of the implementation timeline, market participants should not delay efforts to prepare for the potentially significant impact of the UST Clearing Rules. In particular, market participants will need to determine which entities and transactions will be in scope not

⁵ Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules (1) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions and (2) to Address the Conditions of Note H to Rule 15c3-3a, 89 Fed. Reg. 93763 (Nov. 27, 2024); Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement of All Eligible Secondary Market Transactions in U.S. Treasury Securities, 89 Fed. Reg. 93784 (Nov. 27, 2024).

⁶ This trade submission proposal is marked as “WITHDRAWN on 2/26/25” on the SEC’s website listing FICC’s filings in relation to self-regulatory organization rulemaking, available at <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/ficc>.

⁷ Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a New Collateral-in-Lieu Offering Within the Sponsored GC Service, and Expand the Sponsored GC Service to Allow a Sponsoring Member To Submit for Clearing a “Done-Away” Sponsored GC Trade, 90 Fed. Reg. 44408 (Sept. 15, 2025); Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify the GSD Rulebook Relating to a New Service Offering Called the ACS Triparty Service, 90 Fed. Reg. 47045 (Sept. 30, 2025).

⁸ CMESC Registration Approval.

⁹ ICE Registration Approval.

¹⁰ Extension of Compliance Dates for Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, 90 Fed. Reg. 11134, 11135 (March 4, 2025).

¹¹ *Id.*

only of the UST Clearing Mandate but also for the Separate Margining Requirement. Furthermore, market participants will likely need to enter into new clearing agreements or amend existing documentation. To that end, the Securities Industry and Financial Markets Association (“SIFMA”) and SIFMA’s Asset Management Group (“SIFMA AMG”) are currently working with industry participants to develop standard documentation for use in connection with the clearing of UST transactions. As discussed further below, SIFMA and SIFMA AMG have published industry standard agreements for clearing “done-with” transactions (i.e., transactions that are executed by a customer with, and cleared by, the same clearing member).¹² SIFMA and SIFMA AMG are also working on industry standard agreements for clearing “done-away” transactions (i.e., transactions that are executed between a customer and a third-party execution counterparty that are cleared by the clearing member).¹³

Moreover, unlike for U.S. cleared derivatives where access and segregation models are mandated by applicable law, no such mandate exists and hence there is not a singular model for clearing UST transactions. Rather, market participants are given a wide array of optionality with regard to model structure, margining, and other features. The SIFMA and SIFMA AMG documentation reflect this optionality, in that they provide a wide variety of optional terms for market participants to select. Accordingly, as market participants strategize methods for coming into compliance with the UST Clearing Mandate, they will need to consider what models and features are most appropriate for them from a regulatory, operational, and commercial standpoint, which may include multiple options for different types of market participants or scenarios.

This article provides an overview of the UST Clearing Rules and the existing and proposed clearing models for UST transactions and identifies several critical issues for market participants to consider in their implementation and compliance initiatives in the remaining time before the compliance dates.

I. THE UST CLEARING MANDATE

The UST Clearing Mandate requires Treasury CCPs to adopt written policies and procedures reasonably designed to require that every “direct participant” of a Treasury CCP (e.g., a “Netting Member” of FICC under the GSD Rules) submit for clearance and settlement all eligible secondary market transactions (“ESMTs”) in USTs to which it is a counterparty, including those in which a counterparty is not a direct participant.¹⁴ ESMTs subject to the clearing requirement are:

- Repos collateralized by USTs eligible for clearing by a Treasury CCP in which one of the counterparties is a direct participant of a Treasury CCP and
- UST cash transactions eligible for clearing by a Treasury CCP that are either: (1) executed on an inter-dealer broker that is a direct participant of a Treasury CCP (i.e., entered into by a direct participant that brings together multiple buyers and sellers using a trading facility and is a counterparty to both the buyer and seller in two separate

¹² The industry standard agreements are available at <https://www.sifma.org/resources/general/treasury-clearing-documentation/>.

¹³ For more information on SIFMA market standard documentation on “done-away” clearing SIFMA Publication “Treasury Clearing,” available at <https://www.sifma.org/explore-issues/treasury-clearing>.

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

transactions) or (2) between a direct participant and a counterparty that is a BD, government securities dealer (“GSD”), or government securities broker (“GSB”, and together with GSDs, “GSBDs”).¹⁵

The SEC adopted a limited number of exemptions from the central clearing requirement.¹⁶ These exemptions include:

- UST cash transactions and UST repos that are entered into with central banks, sovereign entities, international financial institutions (i.e., multilateral development banks),¹⁷ and natural persons;
- UST repos that are entered into with:
 - State or local governments (excluding pension plans);
 - Central counterparties (including U.S. clearing agencies, derivatives clearing organizations, and foreign central counterparties); and
 - Affiliates, provided that the affiliate (1) is a bank, BD, FCM, or foreign equivalent and (2) “submits for clearance and settlement all other repurchase or reverse repurchase agreements collateralized by [USTs] to which the affiliate is a party” (the “Inter-affiliate Exemption”).¹⁸

In connection with the UST Clearing Mandate, the SEC also adopted rules to require that Treasury CCPs establish rules and procedures to (1) calculate, collect, and hold margin for direct participants’ proprietary transactions separately and independently from the margin for transactions direct participants submit to clearing on behalf of indirect participants and (2) facilitate access to clearance and settlement services of all ESMTs, including those of indirect participants.¹⁹ Notably, the SEC declined to mandate that Treasury CCPs require their direct participants to collect margin for customers or offer particular clearing models (e.g., “done-away” clearing).²⁰

¹⁵ 17 C.F.R. § 240.17ad-22(a) (definition of “eligible secondary market transaction”).

¹⁶ In addition to the adopted exemptions, the SEC has also released for notice and comment a request for relief submitted by the Institute for International Bankers (“IIB”) that would exempt certain transactions between “Non-U.S. Participants” and “Non-U.S. Clients” from the UST Clearing Mandate. The proposed relief is addressed in greater detail below. See, Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, From Certain Aspects of Rule 17ad– 22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment, 91 Fed. Reg. 12030 (Mar. 11, 2026) (“IIB Request for Relief”).

¹⁷ 17 C.F.R. § 240.17ad-22(a) (defining an “international financial institution” to mean “the African Development Bank; African Development Fund; Asian Development Bank; Banco Centroamericano de Integración Económica; Bank for Economic Cooperation and Development in the Middle East and North Africa; Caribbean Development Bank; Corporación Andina de Fomento; Council of Europe Development Bank; European Bank for Reconstruction and Development; European Investment Bank; European Investment Fund; European Stability Mechanism; Inter-American Development Bank; Inter-American Investment Corporation; International Bank for Reconstruction and Development; International Development Association; International Finance Corporation; International Monetary Fund; Islamic Development Bank; Multilateral Investment Guarantee Agency; Nordic Investment Bank; North American Development Bank; and any other entity that provides financing for national or regional development in which the U.S. Government is a shareholder or contributing member”).

¹⁸ 17 C.F.R. § 240.17ad-22(a) (exempting certain UST transactions from the definition of “eligible secondary market transaction”). As discussed further below, there are open interpretive questions regarding the scope of the Inter-affiliate Exemption and ESMTs that are subject to the UST Clearing Mandate.

¹⁹ 17 C.F.R. §§ 240.17ad-22(e)(6)(i); 240.17ad-22(e)(18)(iv)(C).

²⁰ 89 Fed. Reg. 2714, 2754 (Jan. 16, 2024) (“Another commenter argued that the Commission should consider additional changes that would compel FICC to require that all margin requirements related to customer positions be

Further, to facilitate the implementation of the UST Clearing Mandate, the SEC adopted an amendment to the customer and PAB reserve formulas in SEC Rule 15c3-3a to permit BDs to record a debit in the formulas for cash or securities margin collected from a customer and on-posted to a Treasury CCP, subject to certain requirements, including that the margin must be calculated and collected on a gross (i.e., a customer-by-customer) basis, segregated from the assets of the BD, and unavailable for loss-mutualization.²¹ The amendment to SEC Rule 15c3-3a will allow clearing members that are registered BDs to offer optionality to customers to satisfy margin requirements of the Treasury CCP by either electing to post margin required by the Treasury CCP or by paying the clearing member to finance such margin. Several questions remained about how to apply the requirements of SEC Rule 15c3-3 to particular flows of cash and securities in the clearing structure, including for pre-funding customer segregated margin with cash.²² The SEC issued Frequently Asked Questions to address some of these questions in August 2025.²³ Additionally, as discussed further below, SEC Rule 15c3-3 has additional implications for GSBDs, which are subject to a modified version of SEC Rule 15c3-3.²⁴

II. KEY REGULATORY CONSIDERATIONS

1. Areas of Uncertainty and Advocacy

Market participants should be aware of important regulatory considerations and ongoing advocacy efforts by industry groups to address unresolved issues and open interpretative questions related to the UST Clearing Rules.²⁵ In particular, the following key issues remain active areas of uncertainty and advocacy:

- *Inter-affiliate Exemption.* Industry participants have expressed concern over the scope of the Inter-affiliate Exemption, including the ambiguity in the requirement for the affiliate to submit for clearing “all other Treasury repos to which it is a party” (i.e., outward-

satisfied by those customers The requirement to collect, calculate, and hold customer margin separate from proprietary margin should ensure that, at the [Treasury CCP] level, the risks arising from customer clearing are sufficiently margined to protect [Treasury CCP] from the exposure arising from customer clearing.”) and 2757 (“It is appropriate to allow the U.S. Treasury market to take [] new requirements [under the UST Clearing Rules] into account, before determining that additional access models are needed. Currently, FICC’s models do allow for done-away transactions, and the Commission therefore disagrees that an additional model is a prerequisite to the requirement to clear eligible secondary market transactions.”).

²¹ 17 C.F.R. § 240.15c3-3a.

²² *Id.*

²³ 17 C.F.R. § 403.4; see also SEC Division of Trading and Markets: Frequently Asked Questions — Treasury Clearing and Rule 15c3-3a “Responses to Frequently Asked Questions Regarding Financial Responsibility Requirements as Applied to Cleared U.S. Treasury Securities” (Aug. 6, 2025) available at: <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/treasury-clearing-rule-15c3-3a>.

²⁴ *Id.*

²⁵ See, e.g., SIFMA, Comment Letter on Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules to Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities (July 31, 2024) (relating to the adoption of new access models); SIFMA/SIFMA AMG, Comment Letter on Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement (Aug. 9, 2024) (relating to the transaction submission requirement).

facing repos).²⁶ Ongoing advocacy efforts have additionally sought the potential expansion of the exemption to allow for internal liquidity and collateral management arrangements.²⁷ Additionally, while the exemption only applies to transactions with certain regulated affiliates (i.e., banks, BDs, FCMs, or foreign equivalent), some market participants have advocated to expand the availability of the Inter-affiliate Exemption to cover transactions with other types of affiliates.²⁸ In a recent statement, SEC Commissioner Uyeda noted that the SEC staff is actively considering these issues.²⁹

- *Mixed CUSIP Triparty Repos.* The SEC stated in the preamble to the UST Clearing Rules that a mixed CUSIP triparty repo could be in scope of the UST Clearing Mandate if it “contains U.S. Treasury CUSIPs from the outset of the transaction.”³⁰ A recent FAQ by the SEC staff appears to indicate that mixed CUSIP triparty repos would not be subject to the Clearing Mandate so long as non-UST securities are included in the collateral eligibility schedule and the parties have selected a matching CUSIP (or similar collateral matching mechanism) at trade execution corresponding to non-UST securities.³¹
- *Custody Considerations for ‘40 Act Funds.* There is ongoing advocacy relating to the challenges a registered investment company (“RIC”) under the Investment Company Act of 1940 (“’40 Act”) faces when participating in the cleared repo market under the existing clearing models. In particular, under 17(f) of the ’40 Act, RICs are only permitted to hold their assets at certain qualifying custodians. Such requirements could restrict RICs’ ability to have assets custodied at FICC or certain clearing members when such custody may exist, at least on a temporary basis, under certain clearing or margining models.³²

²⁶ 89 Fed. Reg. 2714, 2737 (Jan. 16, 2024). While the text of the UST Clearing Mandate in SEC Rule 17ad-22 seems to condition the Inter-affiliate Exemption on “the affiliated counterparty submit[ting] for clearance and settlement all other repurchase or reverse repurchase agreements collateralized by U.S. Treasury securities to which the affiliate is a party”, the SEC stated in the preamble to the UST Clearing Rules that “[b]y referring to all other repos or reverse repos, the exemption clarifies that the requirement does not encompass transactions between the direct participant and the affiliate, i.e., the transactions that are excluded, and also does not encompass the affiliate’s transactions that would otherwise be excluded under sections (iii), (iv), or (v) of the definition of an eligible secondary market transaction.” 89 Fed. Reg. 2714, 2737 (Jan. 16, 2024).

²⁷ SIFMA, Comment Letter on “Notice of Filing of Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement” (Oct. 2, 2024) available at <https://www.sec.gov/comments/sr-ficc-2024-009/srficc2024009-526595-1510722.pdf>.

²⁸ See, e.g., Citadel Publication, Enhancing Competition and Innovation in U.S. Financial Markets (April 2025) at 21 available at <https://www.citadelsecurities.com/wp-content/uploads/sites/2/2025/04/Citadel-Securities-White-Paper-Enhancing-Competition-and-Innovation-in-US-Financial-Markets-April-2025.pdf>.

²⁹ SEC Commissioner Mark T. Uyeda, Update on Working Toward Treasury Clearing Implementation (Sept. 30, 2025) available at https://www.sec.gov/newsroom/speeches-statements/uyeda-093025-update-treasury-clearing-implementation?utm_medium=email&utm_source=govdelivery.

³⁰ 89 Fed. Reg. 2714, 2726 (Jan. 16, 2024).

³¹ SEC Division of Trading and Markets: Frequently Asked Questions — Treasury Clearing, “Responses to Frequently Asked Questions Regarding the Treasury Clearing Rule” (Sept. 30, 2025) available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-treasury-clearing-093025> (stating that the staff “does not believe that a mixed CUSIP triparty repo, in which U.S. Treasury securities are allocated as collateral based on a ‘collateral eligibility schedule’ is an ‘eligible secondary market transaction’ when the parties have selected a matching CUSIP (or similar collateral matching mechanism) at trade execution corresponding to securities other than U.S. Treasury securities.”).

³² Under Section 17(f) of the ’40 Act and regulations promulgated thereunder, RICs may only hold their assets at certain custodians, such as banks. Neither FICC nor BDs are permissible custodians. 17 C.F.R. § 270.17f-4. In the preamble to the UST Clearing Rules, the SEC provided time-limited no-action relief under the ’40 Act that will permit a RIC to post margin to FICC, including through a BD, to secure the RIC’s obligation under transactions

- *Double Margining for '40 Act Funds.* Currently, RICs are required to collect a “haircut” (i.e., an amount of securities posted to a RIC in excess of the cash funding provided under a repurchase transaction) from their clearing members on done-with transactions in order for the RIC to be viewed as “collateralized fully” within the meaning of Rule 5b–3 under the '40 Act.³³ At the same time, clearing members generally post Clearing Fund to FICC in connection with the same “done-with” transactions (unless the customer would post margin subject to the segregation arrangement contemplated under the Segregated Customer Margin Amendment), meaning that clearing members must satisfy two margin requirements (the haircut posted to the RICs and initial margin posted to FICC). Such “double margining” increases the costs for clearing members to provide, and in turn the costs for RICs to access, UST clearing services. FICC’s proposed Collateral-in-Lieu service is designed to address this problem by largely removing the requirement for clearing members to post Clearing Fund for triparty repos cleared under that model.
- *Porting.* FICC received approval to amend the GSD Rules to facilitate the porting of customer positions, which will allow a clearing member to instruct FICC to transfer a customer’s positions to another clearing member.³⁴ ICE and CMESC have likewise included porting rules with respect to their clearing models.³⁵ Market participants would need to consider the operational setup they need to build out to effect porting, as well as the potential costs, liquidity, and regulatory implications for clearing members that agree to porting. For example, when a clearing member clears a transaction at FICC for a customer on a “done-with” basis and subsequently agrees to port such transaction to another clearing member, the first clearing member would be left with a proprietary position at FICC without an offsetting customer position, which would give rise to higher liquidity requirements.
- *FCM Considerations.* There is ongoing advocacy relating to a number of different considerations for FCMs with respect to the UST Clearing Mandate, including the implications of the Commodity Futures Trading Commission (“CFTC”) Rule 1.25, which imposes limitations on how FCMs may invest in customer money.³⁶ While repos are a

cleared through FICC’s Sponsored Member Program, subject to certain conditions. 89 Fed. Reg. 2714, 2727 (Jan. 16, 2024). However, RICs may not be able to, in practice, rely on this relief due to the conditions. Letter from the Investment Company Institute (“ICI”) on “Notice of Filing of Proposed Rule Change to Adopt an Intraday Mark-to-Market Charge at GSD (File No. SR-FICC-2025-005)” (April 17, 2025) available at <https://www.ici.org/system/files/2025-04/25-cl-ficc-proposal-imm-charge.pdf> (describing industry concerns that “the conditions of the time-limited no-action relief relating to Sponsoring Members holding fund-posted margin could be read not to contemplate the possibility of pre-funding and reimbursement by a [RIC] to its Sponsoring Member, notably that the margin provided by the registered fund is not commingled with, and kept separate from, the Sponsoring Member’s assets and that the Sponsoring Member segregates on its books and records the margin provided by the [RIC]”).

³³ 17 C.F.R. § 270.5b-3(c)(1).

³⁴ Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Establish a New Collateral-in-Lieu Offering Within the Sponsored GC Service, and Expand the Sponsored GC Service To Allow a Sponsoring Member To Submit for Clearing a “Done-Away” Sponsored GC Trade, 90 Fed. Reg. 59225 (Dec. 18, 2025).

³⁵ See CMESC Application for Registration; ICE Application for Registration.

³⁶ In addition, FCMs are subject to a number of other CFTC requirements in connection with Treasury transactions, including, e.g., (i) that FCMs must enter into reverse repurchase agreements on a DVP basis and repurchase agreements on a PVD basis; (ii) that an FCM’s repo agreement must make clear that, in the event of the FCM’s bankruptcy, (1) any securities purchased with customer funds under such agreement may be immediately transferred and (2) the counterparty has no right to compel liquidation of securities subject to such agreement or to make a

permitted form of investing in UST, CFTC Rule 1.25(d) sets out the types of “permitted counterparties” to such repos, which do not include a Treasury CCP. There are ongoing industry efforts to add Treasury CCPs to the list of permitted counterparties, though the CFTC has yet to act on it.³⁷

- *Accounting Treatment of Certain Clearing Models.* The accounting and balance sheet treatment of UST repos cleared under FICC’s Agent Clearing Service (“ACS”) has become largely settled following the publication of a white paper by SIFMA (as well as a non-objection from Staff of the SEC’s Office of the Chief Accountant) that facilitates the ability of FICC Netting Members approved under the GSD Rules as “Agent Clearing Members” that are subject to U.S. GAAP to reflect done-with and done-away ACS transactions as off-balance sheet.³⁸ However, the accounting treatment of any other clearing models that become available in the future, including at any other Treasury CCPs, will also need to be analyzed.
- *End-User Level Cross-Margining.* FICC and the Chicago Mercantile Exchange Inc. (“CME”) currently have in place a cross-margining arrangement that is available to reduce margin requirements for certain proprietary positions of clearing members by taking into account the risk offset across positions held at both FICC and CME.³⁹ FICC and CME have indicated an intention to make this cross-margining benefit available for customer positions under a structure recommended by the CFTC’s Global Markets Advisory Committee (“Proposed Customer Cross-Margining Arrangement”).⁴⁰ To that end, CME and FICC have proposed an Amended Cross-Margining Agreement that

priority claim for the difference between current market value of the securities and the price agreed upon for the resale of the securities to the counterparty if the former exceeds the latter; and (iii) the prohibition for FCMs to enter into repos with affiliates. Letter from Futures Industry Association (“FIA”) on FICC’s proposal for the Access Amendment (April 18, 2024) available at <https://www.fia.org/sites/default/files/2024-04/FIA%20Comment%20Letter%20on%20FICC%20Proposals.pdf>; see also FIA letter on the CMESC Application for Registration, available at https://www.fia.org/sites/default/files/2025-03/FIA%20Letter%20to%20SEC%20in%20Response%20to%20CMESC%20Rule%20Proposal_0.pdf.

³⁷ For instance, the CFTC recently declined to address this request in connection with another rulemaking relating to investment of customer funds by FCM. See Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations, 90 Fed. Reg. 7810, 7829 (Jan. 22, 2025) (“The Commission is not addressing BlackRock’s request for amendments to Commission regulation 1.25(d)(2) to allow FCMs and DCOs to invest Customer Funds pursuant to Repurchase Transactions cleared by a covered clearing agency registered with the SEC . . . Any potential amendment to effectuate such change would be addressed separately from this Final Rule.”).

³⁸ See SIFMA Accounting Committee UST Clearing Working Group, Accounting Treatment for UST Repo Transactions Cleared Through FICC, available at https://www.sifma.org/wp-content/uploads/2025/09/Public-SIFMA-Accounting-UST-Clearing-Whitepaper_final.pdf; Confirmation Letter Related to the UST Clearing Working Group’s Accounting Treatment for UST Repo Transactions Cleared Through FICC White Paper (Sept. 8, 2025) available at <https://www.sifma.org/resources/submissions/letters/confirmation-letter-related-to-the-ust-clearing-working-groups-accounting-treatment-for-ust-repo-transactions-cleared-through-ficc-white-paper/>.

³⁹ Amended and Restated Cross-Margining Agreement between FICC and CME, available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf.

⁴⁰ FICC-CME Customer Position Cross-Margining Structure Recommendation, available at https://www.cftc.gov/media/9591/gmac_Ficc_CME110623/download; CFTC Notification to the Commission Regarding the Third Amended and Restated Cross-Margining Agreement and Service Level Agreement between Chicago Mercantile Exchange Inc. and Fixed Income Clearing Corporation (Sept. 26, 2025) available at [https://www.cftc.gov/Industry Oversight/IndustryFilings/ClearingOrganizationRules/58281](https://www.cftc.gov/Industry%20Oversight/IndustryFilings/ClearingOrganizationRules/58281).

contains the terms applicable to end-user level cross-margining arrangements.⁴¹ Under the Proposed Customer Cross-Margining Arrangement, a clearing member may only offer cross-margining to its customers if the clearing member is jointly registered as a BD and FCM. The clearing member would also be required to satisfy a number of requirements under such an arrangement, including that it must hold the relevant FICC-cleared positions and associated margin in a futures account and obtain certain consents from its customers, which could require significant operational adjustment. In addition, clearing members should also consider the Proposed Customer Cross-Margining Arrangement in light of ongoing advocacy on the capital rules, in particular with respect to market participants' recommendations that the U.S. regulatory capital framework appropriately reflect the risk sensitivity and associated benefits of cross-product netting arrangements for U.S. Treasury markets.⁴²

2. Considerations for Non-U.S. Institutions

The UST Clearing Rules pose additional considerations for non-U.S. institutions participating in the UST market. While former Acting SEC Chair, Mark T. Uyeda, has publicly indicated that the SEC is considering the extraterritorial aspects of the UST Clearing Rules, the scope of certain requirements applicable to non-U.S. institutions currently remains unclear.⁴³ In particular, uncertainty remains as to whether the UST Clearing Mandate applies to transactions involving foreign branches of a bank, if the bank is a direct participant at a Treasury CCP through its U.S. branch, even if such transactions otherwise do not have a U.S. nexus.⁴⁴ Non-U.S. institutions, including non-U.S. banks acting through a U.S. branch, should consider whether providing UST clearing services will require registration as a GSB or GSD on account of acting as a processing agent or guarantor or by holding customers' margin and settlement amounts.⁴⁵ In this regard,

⁴¹ Notification to the CFTC Regarding the Third Amended and Restated Cross-Margining Agreement and Service Level Agreement between CME and FICC, Exhibit A (Sept. 26, 2025) available at: <https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizationRules/58281>.

⁴² International Swaps and Derivatives Association, Inc. ("ISDA"), FIA, and SIFMA, "Cross-product Netting Under the US Regulatory Capital Framework" (April 2025) available at <https://www.isda.org/a/B4YgE/Cross-product-Netting-Under-the-US-Regulatory-Capital-Framework.pdf>.

⁴³ See SEC Commissioner Mark T. Uyeda, Update on Working Toward Treasury Clearing Implementation (Sept. 30, 2025) available at https://www.sec.gov/newsroom/speeches-statements/uyeda-093025-update-treasury-clearing-implementation?utm_medium=email&utm_source=govdelivery; SEC Commissioner Mark T. Uyeda, Remarks to the 2025 Annual Washington Conference of the Institute of International Bankers (March 10, 2025) (stating that "a lack of clarity regarding the extraterritorial scope of the rule could discourage foreign investors from participating in the Treasury markets. This would not serve the United States' interests."). FICC's now withdrawn proposal to implement the UST Clearing Mandate included requirements for foreign banks to apply to FICC to become a netting member as one entity with their U.S. branches, even though GSD Rules currently allow a U.S. branch of a foreign bank to be an FICC netting member in its individual capacity. Self-Regulatory Organizations; Fixed Income Clearing Corporation, Notice of Filing of Proposed Rule Change To Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement, 89 FR 54602, 54605 (July 1, 2024).

⁴⁴ Letter from IIB (July 22, 2024), available at <https://www.sec.gov/comments/sr-ficc-2024-009/srficc2024009-493303-1427726.pdf>.

⁴⁵ 15 U.S.C. § 78o-5 (requiring any GSB or GSD (other than a registered broker or dealer or a financial institution) to register with the appropriate regulatory agency); Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers, 89 Fed. Register 14938, 15009 (Feb. 29, 2024). It is currently unclear whether market participants may rely on certain exemptions from registration, including those under 17 C.F.R. § 401.7 (exempting certain foreign government

there remains uncertainty in the availability and application of certain exclusions or exemptions from registration as a GSB or GSD in the context of a non-U.S. firm's provision of clearing services to non-U.S. customers. On the other hand, non-U.S. banks that already have a branch registered as a GSB or GSD may consider utilizing such branches to mitigate these issues (although such GSBDs would need to accordingly consider the implications of SEC Rule 15c3-3, as modified and made applicable to them under 17 C.F.R. Part 403, from the clearing activities).

Non-U.S. institutions should also consider the implications of compliance with the UST Clearing Rules in relation to applicable non-U.S. laws and regulations, including privacy and data protections, and non-U.S. customer asset requirements.⁴⁶ Lastly, given Treasury CCPs do not currently offer 24-hour access to clearing services, market participants operating outside of the U.S. should consider potential challenges that may arise from time-zone differences, including the inability to clear trades on a 24-hour basis.⁴⁷

A. IIB's Request for Extraterritorial Relief

To address some of the issues identified above, IIB submitted to the SEC a request for extraterritorial relief that would exempt transactions between "Non-U.S. Participants" and "Non-U.S. Client" from the UST Clearing Mandate.

For purposes of the requested relief, a "Non-U.S. Participant" would mean a direct participant of a U.S. Treasury securities central clearing agency that is not:

- (i) a U.S. person (as defined by Exchange Act Rule 3a71-3);
- (ii) a U.S. branch of a non-U.S. person; or
- (iii) a non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person.⁴⁸

A "Non-U.S. Client" would mean a counterparty to a Non-U.S. Participant that is not:

- (i) a direct participant of a U.S. Treasury securities central clearing agency;
- (ii) a U.S. person;
- (iii) a U.S. branch of a non-U.S. person; or
- (iv) a non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person.⁴⁹

Some of the notable attributes of the proposed relief are:

securities brokers or dealers) or the "repo-only" exemption under 17 C.F.R. § 401.4(a) (exempting certain financial institutions that are engaged in limited government securities dealer activities) with regard to ESMTs.

⁴⁶ For example, if a fund is regulated as Undertaking for Collective Investment in Transferable Securities ("UCITS"), it may be subject to certain restrictions on the reuse of customer assets by depositories. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009.

⁴⁷ FICC does not currently offer 24-hour access to central clearing services. It is unclear whether CMESC or any other Treasury CCP will provide central clearing services outside U.S.-based operating hours.

⁴⁸ IIB Request for Relief at 12031.

⁴⁹ *Id.*

- *Principal Place of Business Prong of the U.S. Person Definition.* The “U.S. person” definition contains a “principal place of business” prong.⁵⁰ As a result, an ESMT with an entity (e.g., a hedge fund) incorporated in a foreign jurisdiction would not be eligible to benefit from the requested relief if its principal place of business is in the U.S. (which is a fact-intensive inquiry that depends on whether the U.S. is “the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person.”)⁵¹
- *No “Arranged, Negotiated, or Executed” Prong.* As currently published, the relief contains no “arranged, negotiated, or executed” prong, which, in the security-based swaps (“SBS”) context, triggers SEC jurisdiction over what would otherwise be a foreign SBS trade.⁵² Therefore, a reasonable reading of the relief would suggest that trades on the books of a Non-U.S. Participant with a Non-US Client but that were booked through a U.S. trading desk would be eligible to benefit from the relief.
- *U.S. Banks.* Under the requested relief, foreign branches of foreign banks would qualify as Non-U.S. Participants and therefore their trades with Non-U.S. Clients would qualify for the relief and be out of scope for the UST Clearing Mandate. Foreign branches of U.S. banks, on the other hand, would not qualify as Non-US Participants and their trades would remain in scope for the clearing mandate.
- *Certain Agent Lending Trades may be Excluded from the Relief.* The relief does not extend to trades that would otherwise be between a Non-U.S. Participant and Non-U.S. Client, but where one or both of the parties are guaranteed by a U.S. person. This would mean that certain agent lending trades where the agent provides a guarantee would be ineligible for the relief if the agent is a U.S. person.
- *Potential Interactions with the Inter-affiliate Exemption.* As discussed above, the Inter-affiliate Exemption would require that an affiliate submit all outward-facing repos to which it is a party for clearing as a condition to benefitting from the Inter-Affiliate Exemption. However, the proposed extraterritorial relief does not address whether a transaction that would benefit from it would be deemed to satisfy the “outward” clearing requirement for purposes of satisfying the conditions to taking advantage of the Inter-Affiliate Exemption.

The SEC released the request for relief for notice and comment on March 6, 2026 and the comment period is scheduled to close on April 10, 2026.⁵³

III. FICC’S ACCESS MODELS

Indirect participants may access FICC’s central clearing services under the SMP and ACS, the latter of which is designed to resemble the FCM clearing model required in the cleared swaps

⁵⁰ 17 C.F.R. § 240.3a71-3(a)(4) (“U.S. person means any person that is...[a] partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States”).

⁵¹ 17 C.F.R. § 240.3a71-3(a)(4)(ii).

⁵² See 17 C.F.R. § 240.3a71-3(a)(8) (“U.S. business means [w]ith respect to a foreign security-based swap dealer...[a]ny security-based swap transaction arranged, negotiated, or executed by personnel of the foreign security-based swap dealer located in a U.S. branch or office, or by personnel of an agent of the foreign security-based swap dealer located in a U.S. branch or office.”).

⁵³ IIB Request for Relief at 12032.

and futures market.⁵⁴ Additionally, Netting Members and their customers may elect whether to segregate margin posted by a customer under either SMP or ACS. Further, both SMP and ACS accommodate “done-with” and “done-away” clearing.

1. Sponsored Member Program

Under SMP, FICC Netting Members approved under the GSD Rules as “Sponsoring Members” act on behalf of a customer (referred to as the “Sponsored Member”) as the customer’s processing agent and guarantor of the customer’s cleared positions. As a “Sponsored Member,” the customer becomes a limited-purpose member of FICC. SMP offers a Sponsored GC service that allows firms to leverage BNYM’s triparty structure to settle certain “general collateral” done-with UST repos directly between the Sponsoring Member and the customer. FICC’s initial margin requirements for transactions cleared under SMP are generally calculated on a gross (i.e., customer-by-customer) basis, whether or not a Sponsored Member has agreed with its Sponsoring Member to elect margin segregation.⁵⁵ Transactions cleared under SMP are recorded on FICC’s books in an omnibus client positions-only account established for the Sponsoring Member (a “Sponsoring Member Omnibus Account”).

FICC calculates and settles payment and delivery obligations (including “funds-only settlement amount,” or “FOS,” which is generally equivalent to variation margin) for Sponsored Member trades (other than Sponsored GC Trades) on a net basis across all positions in such account.⁵⁶ Settlement for FOS payments in connection with Sponsored GC Trades, similar to other Sponsored Member cleared transactions, occurs on a net basis for all positions in the Sponsoring Member Omnibus Account.⁵⁷ However, in respect of Sponsored GC Trades, FOS payments do not include mark-to-market amounts, but are limited to certain interest-related payments.⁵⁸ Instead, final settlement as well as mark-to-market payments for Sponsored GC Trades occur on a gross basis on BNYM’s triparty platform.

FICC has received approval to expand the Sponsored GC Service to accommodate clearing of done-away UST repos, as well as to adopt a new “Collateral-in-Lieu” service, which is designed to facilitate the ability of RICs and other cash providers to access FICC’s clearance and settlement services through potential reductions in margin and Sponsoring Member capital costs

⁵⁴ In addition to clearing services under SMP and ACS models, direct access to GSD central counterparty services is available to entities approved under the GSD Rules as “Netting Members.” GSD Rule 2.

⁵⁵ FICC imposes initial margin requirements for transactions cleared under both SMP and ACS in the form of “Clearing Fund” or “Segregated Customer Margin.” Whether initial margin takes the form of Clearing Fund or Segregated Customer Margin will depend on which the margining arrangement agreed upon by a customer and its Clearing Member.

⁵⁶ However, if the Sponsored Member and the Sponsoring Member do not elect for segregation, certain components of the initial margin requirements are calculated on a net basis (i.e., across Sponsored Members).

⁵⁷ The Sponsoring Member and customer can agree that the Sponsoring Member may retain FOS payments owed by FICC to customer in connection with Sponsored GC Trades in exchange for the Sponsoring Member agreeing to pay FOS payments owed by customer to FICC, such that effectively (if the “FOS Satisfaction” provision is made applicable) no FOS is exchanged by FICC with customer for which the Sponsoring Member acts as processing agent.

⁵⁸ GSD Rules, Rule 3A, Section 9(b).

and the ability to clear transactions entered into using joint trading accounts.⁵⁹ In particular, the Sponsoring Member will not be required to guarantee its Sponsored Member's obligations, or (with limited exceptions) to post Clearing Fund to FICC, in respect of Sponsored GC Trades cleared under this new service (the "Sponsored GC CIL Trades"). Instead, each Sponsored GC CIL Trade will need to have a haircut of no less than two percent, and a Sponsored Member acting as repo buyer in such a Sponsored GC CIL Trade will be required to pledge the purchased securities received in the on-leg of such transaction and held at BNYM to FICC. FICC will only be able to access such securities if such Sponsored Member defaults or as part of facilitating settlement with the Sponsored Member.

2. Agent Clearing Service

Under ACS, Agent Clearing Members act as agent for a customer (referred to as the "Executing Firm Customer") to clear the customer's UST transactions, but remain fully liable to FICC for the customer's cleared positions. While the Agent Clearing Member will be required to execute an agreement with the customer that binds the customer to the GSD Rules, the customer will not be onboarded with FICC or enter into any contract directly with FICC. FICC's initial margin requirements for transactions cleared under ACS are calculated on a net basis across all customers whose cleared transactions are recorded in the same account at FICC (an "Agent Clearing Member Omnibus Account"), unless the customer has agreed with its Agent Clearing Member to elect margin segregation, in which case initial margin is calculated on a gross (i.e., customer-by-customer) basis.

FICC calculates and settles payment and delivery obligations (including FOS) for Agent Clearing Member trades on a net basis for all positions in the same Agent Clearing Member Omnibus Account. FICC will collect or pay the net FOS amount from or to the Agent Clearing Member on behalf of its Executing Firm Customers. Final settlement occurs on a net basis per CUSIP for all transactions cleared under ACS that are recorded in the same Agent Clearing Member Omnibus Account.

FICC has also received approval to adopt a triparty clearing service under the ACS, which will largely resemble the Sponsored GC Service (though FICC has not yet proposed to adopt what would be similar to the Collateral-in-Lieu service under the ACS).⁶⁰

ACS resembles the FCM clearing models used in the cleared derivatives markets, in which market participants can execute futures and cleared swaps with third parties and then give up their trades to an FCM for central clearing. Accordingly, market participants that currently engage in cleared derivatives transactions may be able to leverage existing operational procedures and systems, as well as legal and accounting analyses developed for the FCM clearing model in connection with their development of ACM clearing processes.

⁵⁹ Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, to Establish a New Collateral-in-Lieu Offering Within the Sponsored GC Service, and Expand the Sponsored GC Service to Allow a Sponsoring Member to Submit for Clearing a "Done-Away" Sponsored GC Trade, 90 Fed. Reg. 59225 (Dec. 18, 2025).

⁶⁰ Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Modify the GSD Rulebook Relating to a New Service Offering Called the ACS Triparty Service, 90 Fed. Reg. 61200 (Dec. 30, 2025).

3. Choice Between SMP and ACS

In evaluating whether to offer, or access FICC through, SMP or ACS clearing services, market participants may wish to consider the different legal, regulatory, risk, operational, and commercial implications associated with different clearing models.

Some key differences between SMP and ACS include:

- Many firms take the view that perfection of a Netting Member's security interest in the customer's cleared transactions under SMP requires the filing of a financing statement, whereas under ACS, a Netting Member's security interests in the customer's cleared transactions may be perfected through a "financial asset" election (i.e., an agreement that the Netting Member, as "securities intermediary," will credit the customer's cleared transactions to a "securities account" maintained by the Netting Member and that such cleared transactions will be treated as "financial assets" in each case, as defined under the Uniform Commercial Code (the "UCC")).⁶¹
- Under both ACS and SMP, parties can elect to segregate customer margin, in which case the margin requirement would be calculated on a gross (i.e., customer-by-customer) basis. If parties do not opt into the segregated customer margin arrangement, then the Sponsoring Member (for transactions cleared under SMP) or Agent Clearing Member (for transactions cleared under ACS) is obligated to satisfy FICC's initial margin requirements, though the Sponsoring Member or Agent Clearing Member may (but does not have to) pass that on to the customer. In the absence of margin segregation, initial margin for transactions cleared under SMP is calculated on a gross (i.e., customer-by-customer) basis, while initial margin for transactions cleared under ACS is calculated on a net basis, which may lead to a lower initial margin requirement if the Agent Clearing Member runs a relatively matched book.

IV. CMESC'S ACCESS MODELS

Under the current version of the rulebook and procedures of CMESC in connection with its approved application to become a Treasury CCP, market participants will be able to access clearing at CMESC as "Members" (i.e., direct participants who will be able to clear proprietary transactions and customer transactions) and "Users" (i.e., indirect participants that are customers of one or more authorizing Member(s)). There are two models for indirect access: the "Independent User" model and the "Supported User" model. Both models will accommodate "done-with" and "done-away" clearing.⁶²

⁶¹ A "financial asset" is defined in UCC Section 8-102(a)(9) to include "any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset[.]" When credited to a "securities account", "financial assets" constitute "security entitlements." UCC § 8-102(a)(17). A secured party has control — and therefore a perfected security interest in — a security entitlement if the secured party becomes the entitlement holder (i.e., the securities are "delivered out" to the secured party) or if the secured party is the securities intermediary to whom an interest in a security entitlement is granted by the entitlement holder. UCC §§ 9-106(a), 8-106(d) and (e).

⁶² CMESC Application for Registration, proposed rulebook, available at <https://www.govinfo.gov/content/pkg/FR-2025-01-22/pdf/2025-01410.pdf>.

Under both models, a Member must stand behind its Users' settlement obligations to CMESC, while a User will settle its cleared transactions directly with CMESC without intermediation through its authorizing Member(s). Users will also have to onboard with CMESC by executing a User Agreement. Initial margin requirements for Users' cleared transactions will be calculated on a gross basis. An Independent User will be obligated to post initial margin and make variation payments to CMESC directly, whereas those obligations will fall to a Supported User's authorizing Member in relation to the Supported User.⁶³

V. ICE'S ACCESS MODELS

Under the current version of the rulebook and procedures of ICE in connection with its approved application to become a Treasury CCP,⁶⁴ direct participants of ICE will be known as "Treasury Participants" and indirect participants will be known as "Non-Participant Parties." Under ICE's models, both done-away and done-with transactions will be eligible for clearing. For a Non-Participant Party, there will be four margining options: (1) net margining across multiple Non-Participant Parties, (2) gross margining funded exclusively by the Treasury Participant, (3) gross margining funded exclusively by the Non-Participant Party (subject to limited pre-funding by Treasury Participant pursuant to Note H to Rule 15c3-3a), and (4) gross margining funded by a hybrid of the Non-Participant Party's assets and the Treasury Participant's proprietary assets. A Non-Participant Party's relationship with ICE will generally be fully intermediated by the Treasury Participant acting for it, except that certain gross-margined Non-Participant Parties will be able to settle cleared transactions directly with ICE. Additionally, ICE can deal directly with a gross-margined Non-Participant Party in respect of certain variation payments following the default of its Treasury Participant.⁶⁵

VI. IMPLEMENTATION OF THE UST CLEARING MANDATE

In light of the UST Clearing Mandate and related developments discussed above, market participants will need to be proactive in ensuring their compliance before the relevant deadlines. In particular:

- *Scoping.* Both direct participants and customers need to consider their existing UST transactions to identify ESMTs that would be subject to the UST Clearing Mandate.
- *Entity Selection.* Market participants may wish to consider the costs and benefits associated with using different entities (e.g., a bank branch or BD) to provide or access clearing services, including cost of capital (which may be passed on to customers), regulatory requirements, and applicable customer protection regime.
- *Regulatory Requirements on Clearing Members.* Market participants may also consider the scope of additional regulatory requirements that may be applicable to entities providing clearing services, such as potential GSBD registration requirements, SEC customer protection rules applicable to U.S. BDs, restrictions on foreign banks' relying on SEC Rule 15a-6 with respect to the custody of customer assets, and UK client money rules vis-à-vis a clearing member's handling of customer assets.

⁶³ See CMESC Application for Registration.

⁶⁴ See ICE Application for Registration.

⁶⁵ *Id.*

- *Regulatory Requirements on Customers.* Market participants would also need to consider regulatory requirements and restrictions applicable to customers that access clearing indirectly (e.g., customers that are RICs or UCITs) that may be implicated due to the clearing of such customers' UST transactions. Clearing members facing customers in certain key foreign jurisdictions should consider engaging with local counsel to address such issues in advance.
- *Clearing Models.* Market participants may wish to consider the comparative advantages of different clearing models, including the existing clearing models offered by FICC, CMESC, and ICE as well as additional clearing models that may be offered by the existing Treasury CCPs and any new Treasury CCPs that may enter into the market. Key issues to consider include the assessment of the applicable margin arrangements, the degree of intermediation, and the accounting treatment of cleared transactions. Different clearing models may also implicate different default risk management procedures, liquidity obligations, and available remedies upon a default.
- *Margin Options.* Market participants may wish to compare the different margin requirements for customer trades under different clearing models (*i.e.*, gross vs. net) and related considerations, such as the ability for clearing members to finance customer margin, the treatment of customer margin by the Treasury CCP (*e.g.*, whether there will be LSOC-style segregation), potential mismatch of margin collected from a customer and posted to a Treasury CCP, and how a clearing member could use customers' securities collateral to meet cash margin (*i.e.*, FOS) requirements.
- *Done-With vs. Done-Away.* While there is currently no developed market for "done-away" UST clearing (*i.e.*, transactions that are cleared by a clearing member but executed with third-party executing counterparties), there is significant interest in such a market given the impact it would have on liquidity and competition. Several execution models (largely based on existing "done-away" execution models in the cleared derivatives market) are being considered by the industry following forums organized by SIFMA.⁶⁶ Market participants contemplating "done-away" clearing arrangements should be aware of additional considerations in their documentation and negotiation efforts, including:
 - Capital and accounting treatment of "done-away" UST transactions;⁶⁷
 - Scope of clearing member commitments and conditions required to clear UST transactions on a "done-away" basis;
 - How to address "done-away" transactions rejected by a Treasury CCP (*e.g.*, the option for parties to walk away from the rejected trade or for parties to seek to resolve the issue and resubmit);
 - How to address a voluntary termination of a "done-away" clearing agreement, including the need to unwind customer positions and related terms;⁶⁸ and
 - Liquidation standard of UST transactions cleared on a "done-away" basis.⁶⁹

⁶⁶ See, e.g., Letter from SIFMA and SIFMA AMG on "Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities" (Jan. 24, 2025), available at <https://www.sifma.org/wp-content/uploads/2025/01/SIFMA-Extension-Request-US-Treasury-Clearing-Mandate-FINAL-Clean.pdf>.

⁶⁷ The legal and accounting treatment for UST transactions cleared on a "done-away" basis have not yet been finalized as of the date of this article.

⁶⁸ US Treasury, Developments in Central Clearing in the U.S. Treasury Market (Feb. 2025), available at <https://home.treasury.gov/system/files/221/TBACCharge2Q12025.pdf>.

⁶⁹ *Id.*

- *Documentation and Negotiations.* Market participants will likely need to engage in a large number of negotiations to establish clearing relationships as a result of the UST Clearing Mandate. Firms may wish to consider how best to leverage existing documents, industry-developed documentation, as well as legal technologies to reduce the time and costs of negotiations. In this regard, as we noted above, SIFMA and SIFMA AMG have recently published industry standard agreements for “done-with” clearing arrangements. Such standard agreements come in three forms: a standalone agreement, an annex to the Master Repurchase Agreement or Global Master Repurchase Agreement, and an amendment for firms’ existing clearing agreements.⁷⁰
 - The form standalone agreement and annex each consist of (1) a main agreement containing terms that are agnostic about the Treasury CCP or clearing models, (2) modules that allow parties to select, and turn on relevant terms for, the particular clearing and margining models, and (3) a schedule for parties to customize the template documents.
 - The form amendment allows firms to update existing clearing agreements to (1) ensure compliance with the clearing mandate and (2) as an option, (A) add or modify margin terms (including to accommodate for segregation), (B) accommodate clearing under the Sponsored GC program, or (C) accommodate clearing under the ACS.
 - While preparing for negotiations, market participants may wish to consider certain key issues in their template UST clearing documentation, including credit-related terms, such as the scope of cross-collateralization, cross-setoff, and cross-default. Other important documentation considerations include how to address transactions rejected by a Treasury CCP, the conditions required to facilitate porting, default management procedures, standards for exercising remedies, the implications of a clearing member’s failure, and the standard for indemnification and limitations on liability. Advanced planning may help firms better identify the appropriate templates for different counterparties, address changes to existing clearing models, and identify potential implications for non-U.S. operations.
- *Opinions.*⁷¹ SIFMA and SIFMA AMG have also commissioned and released industry opinions related to the enforceability of the form standalone agreement under New York law as well as certain other U.S. law issues with respect to cleared UST transactions.⁷² FICC has additionally commissioned certain U.S. law opinions related to ordinary course and close-out netting provisions in the FICC rules, as well as certain non-U.S. law opinions.⁷³ In preparation for the UST Clearing Rules and related negotiations, market participants may wish to consider the necessary opinion coverage for both U.S. and non-U.S. laws.

⁷⁰ SIFMA Market Practices & Documentation Library available at <https://www.sifma.org/market-practices-model-documentation/>.

⁷¹ We note that some of the industry opinions discussed herein are subject to various assumptions and qualifications.

⁷² SIFMA and SIFMA AMG have also commissioned insolvency opinions relating to a clearing member’s and close-out netting and collateral rights as well as to the protections afforded to customers in the event of insolvency pursuant to the SIFMA industry standard agreements for “done-with” clearing.

⁷³ FICC has also commissioned U.S. law opinions relevant for the accounting treatment of transactions cleared under ACS and the protections afforded to customers in the event of a clearing member insolvency.

APPENDIX

Table of Acronyms

“**ACS**” refers to FICC’s Agent Clearing Service.

“**BD**” refers to a broker-dealer.

“**BNYM**” refers to The Bank of New York Mellon.

“**CFTC**” refers to the Commodity Futures Trading Commission.

“**CME**” refers to the Chicago Mercantile Exchange Inc.

“**CMESC**” refers to CME Securities Clearing, Inc.

“**ESMTs**” refers to eligible secondary market transactions as defined in the UST Clearing Rules.

“**FCM**” refers to a futures commission merchant.

“**FIA**” refers to the Futures Industry Association.

“**FICC**” refers to the Fixed Income Clearing Corporation.

“**FOS**” refers to “Funds-Only-Settlement” under the FICC Rulebook.

“**GSB**” refers to a government securities broker.

“**GSBDs**” refers to a GSB or GSD.

“**GSD**” refers to a government securities dealer.

“**GSD Rules**” refers to FICC’s Government Securities Division Rulebook.

“**ICE**” refers to ICE Clear Credit LLC.

“**PAB**” refers to proprietary accounts of a BD.

“**RIC**” refers to a registered investment company under the Investment Company Act of 1940.

“**SEC**” refers to the Securities and Exchange Commission.

“**SIFMA**” refers to the Securities Industry and Financial Markets Association.

“**SIFMA AMG**” refers to SIFMA’s Asset Management Group.

“**SMP**” refers to FICC’s Sponsored Member Program.

“**Sponsored GC CIL Trades**” refers to Sponsored Member Trades cleared under the proposed Collateral-in-Lieu service.

“**Treasury CCP**” refers to a registered clearing agency that provides central counterparty services for UST transactions.

“**UCC**” refers to the Uniform Commercial Code.

“**UCITS**” refers to a fund that is regulated as Undertaking for Collective Investment in Transferable Securities.

“**UST**” refers to U.S. Treasury securities.