The SEC Treasury Clearing Mandate and Its Extraterritorial Impact

Central Clearing Consortium

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Overview of Clearing Mandate

Scope of the Central Clearing Mandate

The SEC's mandate for central clearing of "eligible secondary market transactions" requires that an SEC-registered clearing agency for U.S. Government Securities ("USTs") require all its UST clearing members to centrally clear:

- all repurchase and reverse repurchase transactions ("repos") collateralized by USTs;
- cash market trades with other entities that are SEC-registered broker-dealers or U.S. government securities broker-dealers; and
- cash market trades where the clearing member "brings together multiple buyers and sellers using a trading facility (such as a limit order book)" and is counterparty to both sides of a repo in two separate transactions.

With respect to the FICC, "eligible repo transactions" is currently understood to mean fixed-rated, fixed-term transactions, where the term is not over two years. The FICC could determine to expand its scope by further rule changes.

The Clearing Mandates applies to banks and broker-dealers only indirectly through the operation of the rules governing the clearing agent.

FICC is no longer the only SEC-registered clearing agency for U.S. Treasury securities. In December 2025, the SEC approved CME Securities Clearing Inc.'s application to become a covered clearing agency, followed by approval of ICE Clear Credit's application in January 2026.

Scope of the Central Clearing Mandate (Exceptions)

Exceptions:

- neither UST repos nor UST cash trades are subject to the UST Clearing Mandate if the counterparty is a central bank, a sovereign entity, an international financial institution or a natural person;
- UST repos with state and local governmental entities are not subject to the clearing requirement; and
- UST repos with an "affiliated [regulated] counterparty" are not subject to the clearing requirement ***provided*** the affiliated counterparty otherwise centrally clears "all other repurchase or reverse repurchase agreements collateralized by U.S. Treasury securities to which the affiliate is a party."
- The Clearing Mandate does **not apply** to transactions that are economically equivalent to repos, such as securities lending transactions or to transactions that are "ineligible" because, for example, they have floating rates of interest or have open maturity dates.

Implementation Timeline

- **December 31, 2025:** FICC requirement to clear cash transactions was originally scheduled to go into effect; compliance date extended by one year to **Dec. 31, 2026,** pursuant to SEC Exemptive Order issued Feb. 25, 2025.

- **June 30, 2026:** FICC requirement to clear repos was originally scheduled to go into effect; compliance date extended by one year to **June 30, 2027**, pursuant to pursuant to SEC Exemptive Order issued Feb. 25, 2025.

Recent Developments

- **ACS Triparty Service Approval:** In December 2025, the SEC approved FICC's new service facilitating central clearing access for indirect participants (e.g., money market funds) through triparty repo platforms, addressing operational onboarding constraints.
- **Collateral-in-Lieu Implementation:** In December 2025, the SEC also approved FICC rule changes establishing a "Collateral-in-Lieu" service to mitigate "double margining" costs for registered funds. The service allows FICC to take a lien on securities rather than collecting cash margin.
- **Cross-Margining Expansion Proposal:** In December 2025, the FICC and the CME proposed extending cross-margining arrangements to customer positions to recognize offsetting risks between USTs and interest rate futures. The proposal is currently under SEC and CFTC review.
- **Eligible Collateral Clarification:** In September 2025, the SEC's Division of Trading and Markets issued guidance confirming that mixed-CUSIP triparty repos are not considered "eligible secondary market transactions" unless they are specifically structured to include Treasuries at trade execution.
- **Outstanding Regulatory Issues:** According to SEC Commissioner Uyeda's update on December 23, 2025, the SEC continues to evaluate several substantive issues, including the scope of inter-affiliate exemptions, the extraterritorial application of the mandate, and standardized procedures for failed trades and clearing outages.
- **Capital Framework Recalibration:** On March 12, 2026, in a speech at the Cato Institute Policy Forum, Federal Reserve Vice Chair for Supervision Michelle Bowman stated that U.S. regulators are preparing to propose revisions to bank capital requirements in the coming weeks, including Basel III-related changes and adjustments to the GSIB surcharge.

Extraterritorial Impact Of SEC Clearing Requirements

SEC Solicits Feedback on IIB's Proposed Carve-Out for Foreign Transactions

- **Regulatory Action:** On March 6, 2026, the SEC published a notice pursuant to Section 36(a) of the Securities Exchange Act regarding a request for exemptive relief from the Trade Submission Requirement (Rule 17ad-22(e)(18)(iv)).
- **The Exemption Standard:** The SEC may grant relief if it is "necessary or appropriate in the public interest and consistent with the protection of investors."
- **Core Issue:** The Institute of International Bankers argued that applying the central clearing mandate to transactions between foreign participants and foreign clients creates "potential extraterritorial scope" issues that could harm U.S. market liquidity.
- **Current Status:** The SEC is seeking public comment on 16 specific questions to determine if the relief would impact competition, systemic risk, or the efficacy of central clearing.

IIB Core Concerns (Extraterritoriality & Legal Risk)

Navigating Jurisdictional Conflicts and Enforceability Uncertainties

- **Netting Uncertainty:** The IIB stated that there is "legal uncertainty regarding whether fundamental requirements to central clearing, such as netting (including close-out netting in a default scenario), are enforceable in all relevant jurisdictions."
- **Registration Triggers:** Requiring foreign participants to clear trades for non-U.S. clients "could raise questions under non-U.S. law, including whether doing so could require the direct participant acting as a clearing firm to register as a broker in those jurisdictions."
- **Indirect Access Barriers:** It remains unclear if CCAs "would or could accept non-U.S. counterparties from every relevant foreign jurisdiction as indirect participants" due to localized legal restrictions.

Operational and Logistical Hurdles

Incompatibility of Current Clearing Infrastructure with Global 24-Hour Trading

- **The 24-Hour Gap:** The IIB noted that "no U.S. Treasury securities CCA currently operates on a 24-hour basis."
- **Time Zone Friction:** A participant in Singapore may be operationally unable to submit its repo trades in a "prompt and accurate manner" because the CCA may not open until hours after the trade is executed.
- **Settlement Fragmentation:** The FICC does not facilitate Euroclear settlement. Consequently, clearing a non-U.S. transaction "requires additional steps to bring the repo into the Depository Trust Corporation via Fedwire," adding significant operational burden.

Foreign Retrenchment from U.S. Treasuries

Potential Negative Market Impacts Identified by IIB

- **Flight from U.S. Treasuries:** Foreign counterparties unfamiliar with U.S. domestic repo conventions may shift investments to European or Asian sovereign bonds to avoid clearing costs and novel documentation.
- **Increased Borrowing Costs:** A shift away from U.S. Treasuries by foreign investors could materially increase U.S. government borrowing costs and impair market liquidity.
- **Withdrawal from CCAs:** Foreign financial institutions may withdraw from direct participation in U.S. Treasury CCAs entirely to avoid the extraterritorial application of the rule, reducing clearing access for indirect participants.
- **SOFR Disruption:** Reduced participation in cleared repos could negatively impact the calculation and reliability of the Secured Overnight Financing Rate.

Proposed “Non-U.S. Transaction” Exemption

Narrowing the Scope to Transactions With Limited U.S. Nexus

- **U.S. Targeted Relief:** The IIB requested "that the Commission grant an exemption from the Trade Submission Requirement for an eligible secondary market transaction between a Non-U.S. Participant and a Non-U.S. Client"
- **Definition of Non-U.S. Participant:** "A direct participant of a U.S. Treasury securities CCA that is not:
  - a U.S. person (as defined by Exchange Act Rule 3a71-3),
  - a U.S. branch of a non-U.S. person, or
  - a non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person."
- **Definition of Non-U.S. Client:** "A counterparty to a Non-U.S. Participant that is not:
  - a direct participant of a U.S. Treasury securities CCA,
  - a U.S. person,
  - a U.S. branch of a non-U.S. person, or
  - a non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person."

SEC Request for Comment

Public Consultation on Market Impact and Competitive Fairness

- **Public Comment Period:** The SEC is accepting comments for 30 days following the notice's publication in the Federal Register.
- **Key Areas of SEC Inquiry:** The SEC has posed 16 questions to the public, including:
  - Whether the proposed definitions (e.g., relying on Rule 3a71-3 for "U.S. person") are appropriate.
  - How the relief would impact competition between U.S. and non-U.S. direct participants, and between banks and broker-dealers.
  - Whether the relief would impact contagion risk, systemic risk, or a CCA's ability to manage risk.
  - Whether conditions should be added to the relief, such as an activity limit threshold for Non-U.S. Transactions.

Beyond Extraterritoriality: Broader Landscape & Key Themes

Recent Developments (cont'd)

- **Strategic Positioning (Market Maker vs. Hedger):** A divergence in strategy has emerged. The largest dealers view central clearing as a meaningful commercial opportunity to leverage their balance sheet and infrastructure. In contrast, smaller dealers and regional banks are more skeptical of the rule's value, intending to access the market primarily to hedge treasury exposures.
- **Geographic Divergence in Readiness:** A distinct split exists where US firms are initiating implementation, while non-US firms remain in a "holding pattern" awaiting regulatory clarity on extraterritoriality and technical specifications.
- **Dealer Tier Disparity:** A widening preparedness gap persists between large dealers/GSIBs, who are advancing quickly, versus mid-sized banks & regional banks as well as brokers who face significant operational readiness challenges.
- **Irreversible Market Shift:** With FICC daily clearing volumes already exceeding $9 trillion, the market seems to have reached a "point of no return," driving accelerated preparation among the largest US dealers, select GSIB FBOs and committed investors of all types.
- **Buy-Side Implementation Lag:** Global buy-side preparedness is delayed, with 77% of firms in a recent survey, still in the research phase and nearly one-third at risk of missing deadlines by not projecting completion until late in the implementation window.
- **Economic Impact Expectations:** Approximately 50% of buy-side firms in the same study, anticipate facing significant margin hikes resulting from the mandatory clearing requirements.
- **Commercial Opportunity:** Despite operational and cost challenges, one-third of all market participants view the transition to central clearing as a strategic commercial opportunity to expand liquidity provision and client bases.

Current Outlook

- **SEC Firmness on Deadlines:** SEC Commissioner Uyeda indicated in both September 2025 and December 2025 that no further compliance delays should be expected, noting that the SEC does not intend to grant additional time absent specific, critical implementation deficiencies.
- **Mandate for Immediate Action:** Regulators have shifted from a consultative phase to an execution phase, strongly encouraging industry participants to proceed with transition plans under the assumption that current timelines are fixed.
- **FBO Structural Challenges:** FBOs face disproportionate operational burdens and many FBOs maintain a limited U.S. footprint. FBOs have expressed concern that complying with the mandate requires extensive technology and client platform buildouts that are economically challenging relative to their US peers. For many, continued operational buildout may be put on hold until extraterritoriality issues are clarified by the SEC.

Current Outlook (cont'd)

- **Negotiation Complexity & Timing:** Repapering is proving significantly more time-consuming than anticipated, as dealers often default to negotiating bespoke terms rather than relying solely on standardized SIFMA documentation.
- **Standardization Limitations:** The SIFMA "Done-With" templates have not resolved all legal ambiguities, leading to "hybrid" document approaches; meanwhile, industry consensus on "Done-Away" documentation remains under active discussion with SIFMA working groups.
- **Incumbent Advantage:** Large investors with existing sponsored-clearing relationships are leveraging prior extensive negotiations to move faster, creating a material readiness gap compared to smaller and mid-size buy-side participants attempting to start from scratch.

Documentation and Repapering

Collateral-in-Lieu (CIL) Service

- **Core Problem**: Traditional clearing arrangements require Sponsoring Members to post both: (1) a collateral haircut to the cash-lending client (typically 102%); and (2) separate margin to FICC, creating duplicative requirements that impede participation by registered investment companies (RICs), most importantly by money market funds.
- **CIL Solution**: Eliminates double margining by requiring the CIL Funds Lender (the cash-lending Sponsored Member; e.g., the money market fund) to grant FICC a perfected security interest (lien) on the U.S. Treasury securities purchased at the Start Leg.
- **"In Lieu" Mechanism**: The lien is applied "in lieu" of both the Sponsoring Member's guaranty of the CIL Funds Lender's obligations and margin posting to FICC.
- **CIL Custodial Agreement**: The lien documented through an agreement between the Sponsored GC Clearing Agent Bank that holds the collateral, the CIL Funds Lender, FICC, and the Funds Borrower, supplementing the existing custody agreement.
- **CIL Funds Lender Eligibility**: Must be Sponsored Members acting as cash providers (lenders) in Sponsored GC CIL Trades; cannot act as cash borrowers under the CIL Service; designed particularly for RICs, including money market funds, but available to any Sponsored Member willing to grant FICC the required lien.
- **Sponsored GC CIL Omnibus Account**: Sponsored GC CIL Trades recorded in a separate account from other Sponsored Member Trades, reflecting different margin calculation methodology.
- **Eligible Collateral**: Initially, only USTs are eligible for the CIL Service (narrower than the broader Sponsored GC Service which includes Agency securities and Agency MBS).

Agency Clearing Service

- **FCM-Style Model**: Agent Clearing Service operates on an FCM-style model where a Netting Member approved as an "Agent Clearing Member" (ACM) submits transactions to FICC on behalf of "Executing Firm Customers."
- **No Contractual Privity**: Critical distinction from Sponsored Service—the Executing Firm Customer does not become a member of FICC and has no contractual privity with FICC; FICC treats the Agent Clearing Member as having all rights and obligations as for proprietary trades.
- **Full ACM Liability**: ACM remains fully liable for all obligations associated with Agent Clearing Transactions; FICC has no responsibility to the Executing Firm Customer in the event of ACM default.
- **ACM Eligibility**: All full-service Netting Members are eligible to apply to become Agent Clearing Members; must reapply providing data about customers, expected volumes, controls, and risk management framework.
- **Customer Requirements**: Executing Firm Customers must specifically authorize the ACM to submit transactions on their behalf; no jurisdictional requirements on Executing Firm Customers (unlike Sponsored Service where Sponsored Members must be from FICC-approved jurisdictions.)
- **Transaction Types**: Agent Clearing Transactions include outright purchases and sales of U.S. Treasury and Agency securities, and two-directional overnight and term DVP repo.
- **Counterparty Flexibility**: Transactions may be executed between an Executing Firm Customer and: another GSD Netting Member; the ACM itself; another Executing Firm Customer of the ACM; or another Netting Member's client.
- **Account Structure**: Agent Clearing Transactions recorded in an Agent Clearing Member Omnibus Account, which may be designated as segregated or non-segregated.
- **Non-Segregated Net Margining**: Margin posted is available for loss mutualization, and margin is calculated on a Net basis—positions of all Executing Firm Customers in the same account are netted against one another such that FICC only margins the net exposure across the account.
- **Segregated Option**: Margin must be collected from customers and on-posted to FICC; margin is not available for loss mutualization; margin requirements calculated on a gross (Executing Firm Customer by Executing Firm Customer) basis.

Done-Away Clearing

- **Definition**: Done-away clearing allows Sponsored Members to execute transactions with counterparties other than their Sponsoring Member—specifically with other Netting Members or Indirect Participants of any Netting Member.
- **Market Structure Rationale**: Addresses critical market structure concerns by enabling broader execution flexibility while maintaining central clearing benefits; industry participants emphasized the need for robust done-away capabilities to ensure indirect participants have meaningful access to central clearing.
- **Trade Submission**: Sponsoring Member submits the Sponsored Member's side with the Sponsored Member's unique identifier; counterparty side submitted by either the Done-away Netting Member or the intermediary of an Indirect Participant.
- **Risk Management**: Risk management and margin treatment of done-away Sponsored GC Trades (other than CIL Trades) is identical to done-with Sponsored GC Trades; Sponsoring Member remains responsible for posting margin and the Sponsoring Member Guaranty continues to apply.

Collateral Workflows & Margin Readiness

- **The Integration Divide:** A significant competitive gap exists between dealers capable of unifying and leveraging their futures and prime brokerage offerings with their repo desks compared to those firms lacking the infrastructure to support this structural transformation or facing internal "integration challenges."
- **Onboarding Scalability Challenge:** Dealers face an unprecedented operational hurdle as the volume of required client onboardings vastly exceeds historical capacity and current processing speeds.
- **Repapering Velocity & Complexity:** The requirement to negotiate and execute documentation at scale across diverse business models is creating a critical workflow bottleneck.
- **Collateral Infrastructure Buildout:** Firms should rapidly mature their operational capabilities to handle the mechanics of intraday margin posting and risk management across multiple clearing agencies.

International Complexity

- **Bifurcated FBO Readiness:** A distinct capability gap exists where FBOs with significant U.S. footprints mirror domestic G-SIB progress, while those with lighter footprints face disproportionate operational costs relative to their U.S. Treasury revenue.
- **Regulatory Clarification Void:** Immediate guidance is required from the SEC regarding the specific boundaries of extraterritorial application of the UST Clearing Mandate and the treatment of inter-affiliate transactions.
- **Operational & Legal Conflicts:** The UST Clearing Mandate and FICC rules create potential conflicts with foreign data privacy laws and time-zone mismatches must be reconciled where FICC operating hours make settlement impossible.
- **Liquidity Fragmentation Risk:** An overly broad extraterritorial reach risks driving foreign investors toward alternative sovereign debt markets to avoid clearing complexity, potentially impairing U.S. Treasury liquidity and benchmark (e.g., SOFR) stability.

Done With

- **"Done-With" Market Bifurcation:** The market is split between incumbents aggressively expanding existing sponsored offerings and new entrants reluctantly allocating minimum resources, with little appetite to compete for market share.
- **Operational Barriers to Entry:** Among the impediments in building a viable clearing business is the heavy operational lift required for new system development, collateral management re-engineering, and third-party vendor integration.
- **Capital & Balance Sheet Constraints:** Many firms lack the appetite to extend meaningful client balance sheet & liquidity, citing high capital requirements and low marginal revenue potential compared to the necessary infrastructure investment.
- **Credit Risk Calibration:** Competitiveness requires a revised risk appetite—specifically offering attractive haircuts and robust cross-margining—which demands sophisticated collateral infrastructure and increased margin and credit risk capabilities.
- **Incumbent Structural Advantage:** The implementation leaders are firms successfully leveraging existing Prime Brokerage and FCM infrastructure, established FICC connectivity, and pre-negotiated sponsored repo documentation.

Margin & Liquidity

- **Navigating Complex Clearing Models:** Market participants should adapt to and manage distinct operational frameworks for diverse models, including Collateral-in-Lieu, Agent Clearing, and Done-Away structures.
- **Multi-Clearer Exposure Management:** A critical challenge involves managing margin posted across multiple clearing houses and effectively netting those exposures to optimize capital and managing intra-clearing house liquidity gaps.
- **Liquidity Availability & Pricing:** Market participants are scrutinizing whether competitive pricing can be maintained across “Done-With” versus “Done-Away” models given potential pricing differentiations between models and liquidity availability.
- **Margin Compression & Profitability:** As spreads compress, firms have noted that it is difficult without accompanying execution and/or other fee generating businesses to turn central clearing of USTs and UST repo into a profitable business, which is reliant on high-volume execution.
- **Supply-Demand Squeeze:** The market faces a potential liquidity squeeze resulting from the imbalance between rising demand for clearing and a limited number of providers with capped business capacity.

Business Demand for Multiple Providers

- **FICC Incumbency & Dominance:** FICC retains a material first-mover advantage, leading liquidity provision through its sponsored repo and agent clearing offerings, with most firms planning to continue utilizing the FICC "done-with" model.
- **Participant Strategy & Caution:** Institutions are proceeding cautiously regarding alternative clearing models, often preferring a single-provider approach driven by client demand and existing liquidity pools.
- **Competitor Differentiation:** Competitors are targeting specific niches, with ICE focusing on cleared cash U.S. Treasuries by late 2026 and CME advancing cross-margining programs to integrate futures, cash, and repo with FICC.

Multi-CCP Landscape – "Fit for Purpose" and Operational Challenges

- **"Fit for Purpose"**
  - **Market Efficiency & Margin Optimization:** Competition among clearers drives sharper pricing and enhanced risk management, allowing for specific margin efficiencies (e.g., maximizing the eventual CME derivatives/options offsets).
  - **Strategic Diversification:** Moving to a multi-provider model reduces the concentration risk of relying on a single venue.
  - **Client-Driven Commercial Pressure:** Buy-side investors are increasingly mandating specific clearing venues, requiring counterparties to transact if the dealer supports their preferred clearing house (e.g., CME or ICE in addition to the FICC), making connectivity a prerequisite for client retention.
- **Operational Challenges**
  - **Operational & Liquidity Friction:** Firms face significant hurdles regarding separate order books, fragmented documentation negotiations, and potential liquidity gaps caused by collateral transfers between venues.
  - **Risk & Margin Alignment:** Critical uncertainties persist regarding the standardization of margin methodologies (timing, back-testing), the treatment of agency defaults, and the overnight risk exposure for interdealer brokers managing disparate clearing entities.

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