6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Providing Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is issuing an order pursuant to the Commodity Exchange Act ("CEA") that provides exemptive relief from the CEA and Commission regulations related to segregation and protection of futures customer funds. The order permits joint clearing members of the Chicago Mercantile Exchange, Inc. ("CME") and the Fixed Income Clearing Corporation ("FICC") that are dually registered as broker-dealers with the Securities and Exchange Commission ("SEC") and futures commission merchants ("FCMs") with the Commission ("BD-FCMs") to hold futures customer funds in a commingled customer account at FICC.

DATES: Applicable as of April 15, 2026.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202-418-5096, *edonovan@cftc.gov*, Robert B. Wasserman, Chief Counsel, 202-418-5092, *rwasserman@cftc.gov*, Abigail S. Knauff, 202-418-5123, Associate Director, aknauff@cftc.gov, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; or

Elizabeth Arumilli, Special Counsel, 312-596-0632, *earumilli@cftc.gov*, Division of Clearing and Risk, Commodity Futures Trading Commission, 77 West Jackson Boulevard, Suite 800, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. The Petition
  B. Background
II. Section 4(c) of the CEA
III. Segregation of Customer Funds
  A. Commingling
  B. Protection for the Margin of Cross-Margining Participants in the Event of a BD-FCM Bankruptcy
  C. Protection for the Collateral Posted by Cross-Margining Customers in the Event of a FICC Bankruptcy or a Proceeding under Title II of the Dodd-Frank Act
  D. Protection for Customers Not Participating in Cross-Margining
IV. Customer Protection – Permitted Depository
V. Additional Comments
  A. Operational Resilience
  B. Public Information
  C. Termination of Cross-Margining Participation
  D. Cross-Margining and Bank Capital Rules
  E. Timing
VI. CEA Section 4(c) Determination to Grant Partial and Conditional Exemption from Section 4d of the CEA and Commission Regulations 1.20 and 1.49
VII. Findings and Conclusions
VIII. Related Matters
  A. Regulatory Flexibility Act
  B. Paperwork Reduction Act
  C. Cost and Benefit Considerations
  D. Section 15(a) Factors
IX. Order of Exemption

I. *Introduction*

A. The Petition

CME and FICC ("Petitioners") petitioned the Commission to grant an exemptive order pursuant to section 4(c) of the CEA to provide relief necessary for Petitioners to extend an existing proprietary cross-margining arrangement to certain customers, as described below.[1] On December 17, 2025, the Commission published in the **Federal Register** a notice and request for public comment regarding the proposed Commission order.[2] In response to its request for public comment, the Commission received five comment letters by the deadline of January 16, 2026.[3] Those comments are addressed below. After consideration of the comments and for the reasons set forth in this release, the Commission is issuing an order granting Petitioners the relief sought, subject to certain conditions discussed below ("Order").

B. Background

On January 16, 2024, the SEC promulgated a rule that, when effective, will mandate the central clearing of most U.S. Treasury cash and repurchase transactions ("Treasury Clearing Requirement").[4] The Treasury Clearing Requirement is designed to reduce risk and increase operational efficiency by requiring clearing of specified U.S. Treasury security transactions through a central counterparty. Centralized clearing

[1] The petition is available at *https://www.cftc.gov/sites/default/files/filings/documents/2025/CME_FICC_XM_4c_Request_(Final_5.14.2025).pdf*.

[2] Proposal To Provide Exemptive Relief To Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 90 Fed. Reg. 58525 (Dec. 17, 2025), https://www.govinfo.gov/content/pkg/FR-2025-12-17/pdf/2025-23150.pdf.

[3] Comment letters were submitted on January 16, 2026 by the Alternative Investment Management Association (AIMA), Better Markets, the Futures Industry Association (FIA), the International Swaps and Derivatives Association (ISDA), and the Securities Industry and Financial Markets Association (SIFMA) and the Asset Management Group of SIFMA (SIFMA/SIFMA AMG). All comments referred to herein are available on the Commission's website, at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7639.

[4] 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 FR 2714 (Jan. 16, 2024), https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-27860.pdf.

reduces the risk of default by imposing a central counterparty between buyers and sellers. A central counterparty can lower the potential for a single market participant's failure to destabilize other market participants or the financial system more broadly by substituting its own creditworthiness and liquidity for the creditworthiness and liquidity of the initial counterparties.[5]

Currently, only one central counterparty, FICC, is providing centralized clearing services for cash market transactions in U.S. Treasury securities, and for repurchase and reverse purchase transactions involving U.S. Treasury securities.[6] FICC is registered as a clearing agency with the SEC under the Securities Exchange Act of 1934 ("Exchange Act")[7] and is subject to regulation under section 17A of the Exchange Act, SEC Rule 17ad-22 (as a "covered clearing agency"),[8] and other SEC rules. FICC is designated by the Financial Stability Oversight Council ("FSOC") as a systemically important financial market utility ("SIFMU").[9]

Increasing clearing efficiency will decrease the cost to market participants of the Treasury Clearing Requirement. One way to increase clearing efficiency is through cross-margining arrangements that allow for cross-margining of U.S. Treasury security positions with positions in related products with correlated price risks held at another

---

[5] *Id.*
[6] ICE Clear Credit, LLC and CME Securities Clearing Inc. are also registered to clear U.S. Treasury securities. *See* 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 FR 5528 (Feb. 6, 2026), https://www.govinfo.gov/content/pkg/FR-2026-02-06/pdf/2026-02333.pdf; 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 FR 55926 (Dec. 4, 2025), https://www.govinfo.gov/content/pkg/FR-2025-12-04/pdf/2025-21908.pdf. However, neither are actively clearing U.S. Treasury securities as of the date of this order.
[7] 15 U.S.C. 78a *et seq*.
[8] 17 CFR 240.17ad-22.
[9] 12 U.S.C. 5463.

clearing organization. Cross-margining arrangements allow joint members or affiliated members of two clearing organizations to have their initial margin requirements reduced by accounting for risk offsets between positions held at each of the clearing organizations.[10]

Petitioners have a cross-margining arrangement for proprietary (non-customer) positions that was originally approved by the Commission in 2004 and last amended in 2024 (hereinafter "the proprietary cross-margining agreement").[11] CME clears a variety of U.S. Treasury futures contracts and other interest rate futures contracts that have price risks that are correlated with U.S. Treasury security products cleared at FICC. CME is registered as a DCO with the Commission and is subject to regulation under the CEA[12] and Commission regulations. As a DCO, CME clears transactions in futures contracts and options on futures contracts listed for trading on the CME Group exchanges (and transactions in other types of derivatives including interest rate swaps).[13] CME is also designated by the FSOC as a SIFMU.

The proprietary cross-margining arrangement between the Petitioners is offered to their joint clearing members and pairs of affiliated clearing members for proprietary (non-customer) positions. The proprietary cross-margining arrangement permits a

---

[10] Efficiencies gained through the ability to net off-setting risks within cross-margining arrangements may be affected by existing rules and regulations for other, related resource requirements. As one example, staff is aware that market participants have raised potential concerns related to cross product netting benefits under applicable capital rules.

[11] *See* The Amended and Restated Cross-Margining Agreement between FICC and CME dated January 22, 2024 (the "FICC-CME XM Agreement") available at: *https://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf*.

[12] 7 U.S.C. 1 *et seq*.

[13] The scope of products eligible for customer cross-margining agreement includes eligible futures and securities positions. Options on futures and swaps, as defined in 7 U.S.C. 1a(47) and 17 CFR 1.3, were not analyzed as part of the Commission's review of this request for exemptive relief to expand the proprietary cross-margining agreement to include customer clearing.

participating joint clearing member or pair of affiliated clearing members to have initial margin requirements at FICC and CME reduced in response to risk offsets across positions in futures on U.S. Treasury securities and other interest rate futures cleared at CME and eligible Treasury market transactions cleared at FICC. The Commission and the SEC have approved the original proprietary cross-margining arrangement and the amendments thereto.[14] Under the proprietary cross-margining arrangement, eligible positions of a participating clearing member are identified and treated as a combined portfolio for margin calculation purposes. Both FICC and CME use their own margin models to calculate initial margin requirements for the combined portfolio, then use the more conservative result to determine the margin savings percentage to be applied to the portfolio. Each of FICC and CME then requires the participating clearing member to post initial margin in an amount calculated using its independent margin model reduced by that margin savings percentage.[15]

This proprietary cross-margining arrangement is only available for the proprietary positions of clearing members, and not for the positions of customers who clear through

[14] *See*, most recently, CFTC, Request for Approval of Amended and Restated Cross-margining Agreement and Service Level Agreement between CME and FICC, (Sept. 1, 2023) available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizationRules/51167*; SEC, Self-Regulatory Organizations, Fixed Income Clearing Corporation, Order Approving Proposed Rule Change to Amend and Restate the Cross-Margining Agreement Between FICC and CME, 90 FR 31043 (Jul. 11, 2025). The Commission approved the rule pursuant to the Commission determination procedure set forth in Commission Regulation 40.5(d)(1).

[15] An example is available on CME's website. *See* CME-FICC Cross Margining for Customers, Clearing Member Firms: Customer Onboarding and Workflow Guide, https://www.cmegroup.com/markets/interest-rates/files/cme-ficc-cross-margining-for-indirect-users.pdf at 8 (2026). In this example, without cross-margining, the total initial margin requirement for a portfolio with positions at CME and FICC is $343.24 million, consisting of the sum of $174 million of initial margin required by CME for positions cleared at CME and $169.24 million of initial margin required by FICC for positions cleared at FICC. For cross-margining, CME and FICC both independently calculate the initial margin using their respective models, but include in their initial margin calculations the positions in the portfolio cleared at the other clearing organization. In the example, the FICC model is more conservative, resulting in an 80% margin reduction with cross-margining as compared to the CME model's margin reduction calculation of 81.1%. As a result, CME and FICC both apply an 80% margin reduction to their respective initial margin requirements for the portfolio. The total initial margin requirement with cross-margining is reduced to $68.648 million.

an intermediary. Excluding customer positions may increase the costs of central clearing for customers clearing both Treasury securities transactions and certain Treasury and interest rate futures, by setting margin requirements that do not account for the risk offsets of their combined portfolio and are thus higher than those of clearing members who have access to cross-margining.

Industry experts have called for expanded access to cross-margining. The CFTC's Global Markets Advisory Committee ("GMAC") recommended that the Commission allow CME and FICC to make the benefits of cross-margining available to a broad range of customers, including customers subject to the new Treasury Clearing Requirement. The GMAC's recommendation covered specific topics such as structure, customer protection, and implementation.[16] The Group of Thirty Working Group on Treasury Market Liquidity also highlighted the need for expansion of cross-margining to the customer level. In their report related to Treasury market resilience, they suggested a review be conducted to "examine impediments to the use of the cross-margining service that FICC and [CME] have had in place since 2004" and further opined that "[w]ider use of cross-margining would reduce the risk that increases in initial margin requirements on the futures leg of cash-futures basis trades result in forced sales of Treasury securities ...."[17]

Accordingly, CME and FICC seek to expand their proprietary cross-margining program to make it available to certain customers. Specifically, the cross-margining

---

[16] *See* CFTC Global Markets Advisory Committee Advances Key Recommendations, CFTC Release No. 8860-24 (Feb. 8, 2024). The "GMAC Recommendation" is available at *https://www.cftc.gov/media/9591/gmac_FICC_CME110623/download*.

[17] *See* Group of Thirty Working Group on Treasury Market Liquidity, U.S. Treasury Markets: Steps Toward Increased Resilience (July 2021), available at: *https://group30.org/publications/detail/4950 (citing* Younger, Joshua. 2021 "Cross-Margining and Financial Stability." Program on Financial Stability, Yale School of Management, Yale University, New Haven, June 22).

program would be available to customers of joint clearing members of FICC and CME that are BD-FCMs. The cross-margined positions and associated margin would be carried in a futures customer account on the books and records of an eligible BD-FCM and generally subject to the regulations and protections of the CEA and Commission regulations, including CEA section 4d and the Commission's regulations for segregation and protection of futures customer funds.

This cross-margining expansion to customers, however, would conflict with applicable legal requirements. Section 4d of the CEA requires that futures customer funds be segregated and prohibits the commingling of futures customer funds and futures customer positions with any other positions and funds. However, section 4d further provides that, "in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order," futures customer funds may be commingled with other customer funds.[18] The expansion of the proprietary cross-margining arrangement to include clearing for customers would require that BD-FCMs hold securities positions and associated funds in their futures customer accounts.

In addition, section 4d requires that futures customer funds be held with a bank or trust company, and section 5b(c)(2)(F) of the CEA requires, in part, that a DCO hold member and participant funds in a manner by which to minimize the risk of loss or of delay in the access by the DCO to the assets and funds. Commission Regulations 1.20 and 1.49(d) implement these statutory requirements in part by limiting the depositories that may hold futures customer funds to a bank or trust company, an FCM, or a DCO.

[18] 7 U.S.C. 6d.

While FICC is an SEC covered clearing agency, it is not a DCO and therefore not a permitted depository for futures customer funds without Commission exemptive relief.

Petitioners consequently petitioned the Commission to grant an exemptive order pursuant to section 4(c) of the CEA to provide relief necessary for them to make their cross-margining arrangement available to certain customers. Specifically, Petitioners sought exemptive relief to:

- Permit BD-FCMs[19] to deposit at FICC, and permit FICC to hold, customer funds and margin associated with futures positions, notwithstanding that FICC is not a permitted depository under section 4d of the CEA and Commission Regulations 1.20 and 1.49(d), and to permit CME to treat FICC as a permissible location to hold customer funds and margin even though FICC is not a permitted depository under section 4d of the CEA and Commission Regulations 1.20 and 1.49(d); and

- Permit BD-FCMs to hold in the futures account, as defined in Commission Regulation 1.3, of the BD-FCM, securities positions and associated funds together with the futures customer positions and funds held by the BD-FCM.

II. *Section 4(c) of the CEA*

Section 4(c)(1) of the CEA empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the CEA, subject to exceptions not relevant

[19] Section 4(c) of the CEA provides that the Commission may provide an exemption "on its own initiative or on application of any person," so parties receiving exemptive relief are not limited to those who directly petition the Commission. 7 U.S.C. 6(c).

here.[20] In enacting section 4(c), Congress noted that its goal "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."[21] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the CEA provides that the Commission may grant exemptions to section 4(a) under section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.[22]

The Commission believes that issuing the Order, which grants the exemption sought by Petitioners, is in the public interest and would promote responsible economic and financial innovation and fair competition.[23] Comment letters from AIMA, FIA, ISDA, and SIFMA/SIFMA AMG agreed with this conclusion and expressly supported the issuance of an order permitting CME and FICC to expand their cross-margining

[20] 7 U.S.C. 6(c)(1).
[21] House Conf. Report No. 102-978, 1992 U.S.C.C.A.N. 3179, 3213.
[22] 7 U.S.C. 6(c)(2).
[23] While not concluding section 4(c)(2) applies to the Order, the Commission also believes that the Order would meet the standards in section 4(c)(2) of the CEA.

program to customers.[24] AIMA, ISDA, and SIFMA/SIFMA AMG stated that the customer cross-margining arrangement will support financial stability, resiliency and/or efficiency.[25] SIFMA/SIFMA AMG stated the arrangement will achieve "broader capital efficiency while maintaining the customer and market resiliency protections of centralized clearing."[26] ISDA stated the arrangement will "tailor margin requirements with actual portfolio risk."[27]

In addition, FIA, ISDA, and SIFMA/SIFMA AMG agree that the cross-margining arrangement will support the implementation of mandatory Treasury clearing by reducing margin costs and increasing liquidity in the Treasury market.[28] SIFMA/SIFMA AMG stated that cross-margining lowers clearing costs, counterbalancing "potential clearing cost increases Treasury market participants may experience with mandatory clearing of certain U.S. Treasury transactions taking effect later this year and in 2027."[29] SIFMA/SIFMA AMG also stated the arrangement "generally will enhance liquidity in the Treasury markets."[30] FIA noted the arrangement "helps to eliminate duplicative margin requirements without diminishing overall risk management standards."[31] ISDA argued that reducing duplicative margin will "make clearing more efficient and offset some of the additional financial resource requirements that the industry will face…."[32]

---

[24] AIMA Comment Letter at 3; FIA Comment Letter at 2; ISDA Comment Letter at 1; SIFMA/SIFMA AMG Comment Letter at 1.
[25] ISDA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2; AIMA Comment Letter at 2.
[26] SIFMA/SIFMA AMG Comment Letter at 2.
[27] ISDA Comment Letter at 1-2.
[28] FIA Comment Letter at 2; ISDA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2.
[29] SIFMA/SIFMA AMG Comment Letter at 2.
[30] *Id.*
[31] FIA Comment Letter at 2.
[32] ISDA Comment Letter at 2.

The Commission believes the Order meets the standards in section 4(c)(1) for an exemption. The discussion below describes why the Commission has reached this conclusion.

III. *Segregation of Customer Funds*

The protection of customers—and the safeguarding of money, securities, or other property deposited by customers—is a fundamental component of the regulatory and oversight framework of the futures and swaps markets. Section 4d(a)(2) of the CEA requires an FCM to segregate from its own assets all money, securities, and other property deposited by futures or cleared swaps customers to margin, secure, or guarantee their futures, options on futures, or cleared swaps positions. Section 4d(a)(2) further requires an FCM to treat customer funds as belonging to the customer and prohibits an FCM from using the funds deposited by a customer to margin or extend credit to any person other than the customer that deposited the funds. Similarly, section 4d(b) of the CEA prohibits a DCO and any depository that has received such funds from holding, disposing of, or using such funds as belonging to the depositing FCM or any person other than the customers of such FCM. Customer segregation is an essential protection to ensure funds are held exclusively as the property of customers, even during an FCM insolvency.

CEA section 4d(a)(2) prohibits commingling futures customer positions executed on a contract market, and futures customer funds supporting such positions, with any property not required to be so segregated. Commingling of futures customer funds with other funds may take place only in accordance with such terms as the Commission may

provide by rule, regulation, or order.[33] Further, Commission Regulation 1.20 requires FCMs and DCOs to separately account for all futures customer funds and segregate such funds as belonging to futures customers, and it requires FCMs and DCOs to deposit futures customer funds in a manner that identifies them as futures customer funds.

A. Commingling

The customer cross-margining arrangement permitted by the Order allows a BD-FCM to commingle cross-margined securities positions and associated margin with cross-margined futures positions and associated margin. Permitting this commingling allows for the provision of risk offsets for customer positions in eligible futures and eligible securities cleared at CME and FICC through BD-FCMs.

CME and FICC detailed in their petition the structure of the arrangement they plan to implement under the Order and the way it is designed to protect customer funds. As explained in more detail below, the Order sets forth conditions in reliance on this structure.

At a high level, a customer wishing to cross-margin its futures positions cleared at CME with its securities positions cleared at FICC will elect to have its FICC-cleared U.S. Treasury securities positions and associated funds held in a commingled futures account at the BD-FCM, to facilitate margining all of the positions as a portfolio. The BD-FCM will post funds to support cross-margined futures positions with CME and funds to support cross-margined securities positions with FICC. FICC will record cross-margined securities positions and associated funds ("XM Securities Customer Property") in accounts on FICC's books and records, the margin being recorded on FICC's books and

[33] 7 U.S.C. 6d(a)(2).

records in margin accounts in the name of the BD-FCM for the benefit of its cross-margining customers ("FICC XM Customer Margin Accounts"). FICC will hold the margin in either a Federal Reserve Bank of New York ("FRBNY") account (the "FICC FRBNY Segregated Account") or at a commercial bank that is insured by the Federal Deposit Insurance Corporation (a "FICC Segregated Bank Account").

More specifically, the Order permits, subject to relevant terms and conditions, the following structure:

1. The BD-FCM will be required to carry all of a cross-margining customer's positions and associated margin, including XM Securities Customer Property held at FICC, in a futures account as defined in Commission Regulation 1.3, subject to CEA section 4d(a) and related Commission regulations as modified by the Order. This will apply to both required collateral and any excess collateral.

2. The cross-margining customer will be required to: (a) agree to have its XM Securities Customer Property carried in a futures account; and (b) enter into a subordination agreement pursuant to which it will agree that its claim for the return of XM Securities Customer Property will not receive customer treatment under the Exchange Act or the Securities Investor Protection Act of 1970 ("SIPA")[34] and that such property will not be treated as "customer property" as defined in section 741, subchapter III (stock broker liquidation) of chapter 7 of the U.S. Bankruptcy Code in a liquidation of the BD-FCM.

[34] 15 U.S.C. 78aaa – 78lll.

3. FICC will record a cross-margining customer's cross-margined securities positions in an account on its books and records for recording a BD-FCM's cross-margining customers' transactions ("FICC XM Customer Position Account").

4. FICC will credit margin it collects from a BD-FCM for the BD-FCM's cross-margining customers to an account on its books and records in the name of the BD-FCM for the benefit of its customers ("FICC XM Customer Margin Account"). FICC will hold all funds credited to the FICC XM Customer Margin Accounts either in: (a) the FICC FRBNY Segregated Account; [35] or (b) a FICC Segregated Bank Account, each of which will be opened in the name of FICC and clearly labeled, and for accounts at a commercial bank, acknowledged as held for the benefit of cross-margining customers.

5. FICC's accounts referred to in A.4 above will be separate accounts from the accounts holding (a) FICC's own assets, (b) margin for the BD-FCM's proprietary positions, and (c) except as discussed in footnote 35 above, margin for positions of the

[35] The CFTC has recognized important benefits to a clearing organization of using Federal Reserve bank accounts. *See* 81 FR 53467, 53468 (noting the lower credit and liquidity risks with a deposit at a Federal Reserve Bank than a deposit at a commercial bank). As a SIFMU, FICC is permitted to have an account at a Federal Reserve Bank, subject to requirements of the Federal Reserve, particularly 12 CFR 234.5. FICC has an existing FRBNY bank account currently used to maintain securities customer collateral that is not associated with cross-margining ("Segregated Customer Margin").

FICC represents it is unable to obtain another separate Federal Reserve account to hold cross-margining customer collateral. In order to hold cross-margining customer collateral in an account at a Federal Reserve Bank, FICC will need to, if permitted to do so, co-locate Segregated Customer Margin and cross-margining customer collateral in the same FRBNY bank account to deposit both types of collateral in a Federal Reserve Bank. As discussed further below in section III.C, because FICC is not a registered DCO, and thus a FICC bankruptcy would not be governed by subchapter IV of chapter 7 of the Bankruptcy Code, 11 U.S.C. 761 *et. seq.*, the implications of such co-location of customer collateral are different than if FICC were a registered DCO.

In connection with the customer cross-margining framework under the Order, FICC will amend its rules to provide that the FICC FRBNY Segregated Account may hold cash cross-margining customer margin in addition to (SEC regulated) segregated customer margin (but no other assets) and (if FICC is permitted by the Federal Reserve to hold cash cross-margining customer collateral in the FRBNY Segregated Account) the FRBNY account notice will be amended to specify that the cash in the FICC FRBNY Segregated Account is also held pursuant to the Order and the corresponding related SEC order. Otherwise, FICC will hold such cash cross-margining customer collateral in a Segregated Bank Account that will only hold cross-margining customer collateral and will be at a commercial bank.

BD-FCM's customers that do not participate in cross-margining. Although FICC itself is not a registered DCO and is not a permitted depository under Commission Regulation 1.49(d), as discussed in more detail below, FICC will hold cross-margining customer margin ("XM Customer Margin") consistently with all requirements under Commission Regulations 1.20 and 1.49 as applicable to DCOs[36] as well as with the requirements of Commission Regulations 39.15(b)(1) and (c) and 39.36(g).

6. FICC will have amended its rules[37] so that: (a) all assets credited to the FICC XM Customer Margin Accounts will be treated as "financial assets"[38] credited to a "securities account;" (b) FICC will be a "securities intermediary" for that margin account and each BD-FCM, acting on behalf of its customers, will be an "entitlement holder" and have a "security entitlement" with respect to assets it deposits in such margin account; (c) the FICC XM Customer Margin Accounts and the account(s) holding Treasury Securities Segregated Margin discussed in footnote 35 above will be the only types of securities accounts, as that term is defined in section 8-501(a) of the NYUCC, that FICC maintains,

[36] Funds held in the FICC FRBNY Segregated Account will be held subject to the exception for Segregated Customer Margin discussed in footnote 35 above.

[37] Pursuant to section 19(b) of the Securities Exchange Act, 15 U.S.C. 78s(b), a self-regulatory organization such as FICC must submit any proposed change in its rules to the SEC for approval. The Order requires FICC to, consistent with section 19(b), amend its rulebook as necessary to implement the undertakings set forth in the petition. Thus, the relief set forth in the Order can only become effective when FICC proposes, and the SEC approves, such amendments to the FICC rulebook. FICC proposed such rule changes in December 2025. The SEC has approved these rules. *See* Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 34-105249 (April 15, 2026) [File No. SR-FICC-2025-025] ("FICC Approval Order"). *See also* Notice of Filing of Partial Amendment No. 2 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 105197 (Apr. 10, 2026); 91 FR 19221 (Apr. 14, 2026) [File No. SR-FICC-2025-801]..

[38] All quoted terms in this paragraph refer to such terms as defined in Article 8 of the New York Uniform Commercial Code ("NYUCC").

and FICC will not establish any additional such securities accounts without obtaining the permission of both the CFTC and the SEC.

7. CME will continue to hold margin posted to CME as required by CEA section 4d and Commission Regulations 1.20, 1.49, 39.15(b)(1) and (c), and 39.36(g) in the same manner as it treats all other futures customer margin.

B. Protection for the Margin of Cross-Margining Participants in the Event of a BD-FCM Bankruptcy[39]

The cross-margining framework under the Order will protect cross-margined customer funds in the event of the bankruptcy of a participating BD-FCM. Participating customers' funds will be protected by ensuring that claims for cross-margined positions and related collateral are treated as customer claims under subchapter IV of chapter 7 of the Bankruptcy Code and Part 190 of the Commission's regulations ("Part 190") regarding bankruptcy. For the reasons discussed below, the Commission concludes that the cross-margining customers would thus have the same priority right to receive distribution on their allowed claims against the customer property as other customers of the insolvent BD-FCM in the futures account class.

Futures customers of each participating BD-FCM are protected as a group by ensuring, consistent with the Order, that commingled customer funds, including those

[39] As a technical matter, an insolvency of a broker-dealer (including a BD-FCM) that has customers that are neither insiders nor a broker-dealer or bank that is not trading on behalf of customers that are themselves neither a broker-dealer or a bank, would proceed under the Securities Investors Protection Act, 15 U.S.C. 78aaa *et. seq.* ("SIPA"). *See id.* sections 5(a)(3), 9(a), 15 U.S.C. 78eee(a)(3), 78fff-3(a). However, a trustee under SIPA is subject to the same duties as a trustee under chapter 7 of the Bankruptcy Code, including (in the case of a BD-FCM), subchapter IV of chapter 7, the commodity broker liquidation provisions. SIPA section 7(b), 15 U.S.C. 78fff-1(b). Accordingly, such a proceeding is referred to herein as a "BD-FCM bankruptcy."

held by FICC, are treated as "customer property" held by the BD-FCM in its capacity as an FCM, thus supporting the goal that all claims for customer property are paid in full.

1. FICC-Held Customer Property as Futures Customer Property Under Part 190

Three points support the treatment of FICC-held customer property as futures customer property under Part 190. First, Part 190 includes within the scope of customer property any property held by or for the account of the debtor, from or for the account of a customer, including property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract.[40] As discussed above, and required by the Order, FICC will credit margin it collects in connection with a cross-margining customer's positions to a FICC XM Customer Margin Account in the name of the BD-FCM for the benefit of its cross-margining customers, which are futures customers. Similarly, FICC will record a cross-margining customer's positions in a FICC XM Customer Position Account, which will be an account of the BD-FCM that is established for the purpose of recording the transactions of cross-margining customers. The BD-FCM will also record on its books and records the XM Securities Customer Property as being held in the BD-FCM's futures customer account, and such property will be intended to serve as collateral for futures positions.

Moreover, pursuant to section 7 of the FICC-CME XM Agreement ("Agreement"), if the BD-FCM defaults, and its cross-margined customer positions at both CME and FICC are liquidated, under circumstances where CME is "worse-off" (as such term is defined in the Agreement) than FICC, some or all of the margin at FICC will be payable to CME. Thus, the collateral in a FICC XM Customer Margin Account in fact

[40] 17 CFR 190.09(a)(1)(i)(A).

is held by or for the account of the BD-FCM, from or for the account of the BD-FCM's cross-margining customers as property received, acquired, or held to margin, guarantee, secure, purchase or sell the commodity contracts in the BD-FCM's cross-margining customer accounts at CME.[41]

For these reasons, the Commission concludes that, because of this structure, the XM Securities Customer Property would be appropriately viewed as customer property pursuant to Commission Regulation 190.09(a)(1)(i)(A).

Second, pursuant to paragraph (2)(ii) of Commission Regulation 190.01's definition of "account class," the securities positions and associated collateral held in a BD-FCM's futures account pursuant to this Commission-approved customer cross-margining program will be treated as being held in the futures account class.[42] Moreover, the XM Securities Customer Property would also constitute "customer property" under Part 190 to the extent it consists of securities held in a portfolio margining account carried as a futures account.[43]

Third, XM Securities Customer Property held at FICC will also qualify as "customer property" under Part 190 by virtue of being cash, securities, or other property that would be segregated for customers on the filing date.[44] As described above, FICC

---

[41] Also, as required by the Order, a BD-FCM will be required to pledge its interest in the XM Securities Customer Property to CME to secure the obligations of the BD-FCM with respect to the customer's futures positions cleared by CME. The BD-FCM will likewise require each cross-margining customer to pledge XM Securities Customer Property to the BD-FCM to collateralize the cross-margining customer's obligations arising under its CME-cleared customer positions. Accordingly, this provides further basis for the XM Securities Customer Property to constitute customer property on account of being "property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract."

[42] 17 CFR 190.01 ("The principle in paragraph (2)(i) of this definition will be applied to securities positions and associated collateral held in a commodity account class pursuant to a cross margining program approved by the Commission (and thus treated as part of that commodity account class)").

[43] 17 CFR 190.09(a)(1)(i)(G) ("Customer property includes … All cash, securities, or other property … received, acquired, or held by or for the account of the debtor, from or for the account of a customer … which is:… (G) Securities held in a portfolio margining account carried as a futures account … .")

[44] 17 CFR 190.09(a)(1)(ii)(A).

will credit margin posted for cross-margining customers' positions to a FICC XM Customer Margin Account on its books and records. This account will exclusively hold margin for cross-margining customers, and (as noted above) will also serve as collateral for associated futures positions at CME. All XM Customer Margin will also be segregated in terms of its custody. Lastly, the BD-FCM will be required, consistent with Commission Regulation 1.20, to separately account for all cross-margining customers' margin and positions. As a result of this consistent segregation, the Commission concludes that XM Securities Customer Property will be appropriately segregated for customers on the filing date and therefore "customer property" under Part 190.

2. Customer Claims for the FICC-Held Customer Positions and Margin at FICC as Allowable Claims Under Part 190

In the event of an FCM bankruptcy, property is allocated to the FCM's customers based on account and customer class as well as on net equity claims.[45] For the reasons discussed below, the Commission concludes that a cross-margining customer's claims for XM Securities Customer Property would be allowable claims under Part 190 against customer property in the futures account class because they would be within the scope of the "net equity" definition of the Bankruptcy Code, and also because they would be incorporated into "Step 1" of the "net equity" calculation set out in Commission Regulation 190.08(b).

A customer's "net equity" is defined in the Bankruptcy Code to include the balance remaining in the customer's accounts immediately after (i) the transfer, liquidation, or identification for delivery of the customer's positions and (ii) offset of the

[45] 17 CFR 190.09.

customer's obligations.[46] Under the cross-margining framework permitted by the Order, the BD-FCM will be required to credit XM Securities Customer Property to a futures customer account within the meaning of Commission Regulation 1.3. Accordingly, the Commission concludes that, independent of Part 190 of the Commission's regulations, such amounts would give rise to cross-margining customer net equity claims under section 761(17) of the Bankruptcy Code, since such amounts would constitute part of the balance remaining in the customers' accounts.

In addition, the definition of "net equity" in section 761(17) of the Bankruptcy Code states that it is subject to such rules and regulations as the Commission promulgates under the CEA. Moreover, section 20(a)(5) of the CEA[47] provides that, notwithstanding the Bankruptcy Code, the Commission may provide by rule or regulation, with respect to a commodity broker that is a debtor under chapter 7 of the Bankruptcy Code, how the net equity of a customer is to be determined.

Commission Regulation 190.08 prescribes a five-step process for calculating a customer's net equity based on the customer property, including any commodity contracts, held by the debtor for or on behalf of the customer less any indebtedness of the customer to the debtor. Step 1 of that process, set out in Commission Regulation 190.08(b)(1), requires consideration of the sum of: (A) the ledger balance; (B) the open trade balance; and (C) the realizable market value, determined as of the close of the market on the last preceding market day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

[46] 11 U.S.C. 761(17).
[47] 7 U.S.C. 24(a)(5).

The "ledger balance" is calculated by: (A) adding, among other things, (1) cash deposited to purchase, margin, guarantee, secure, or settle a commodity contract, (2) cash proceeds of liquidations of any securities or other property held by or for the debtor from or for the futures account plus accrued interest, and (3) gains realized on trades; and (B) subtracting, among other things, losses realized on trades.[48] The "open trade balance" is calculated by subtracting the unrealized loss in value of the open commodity contracts held by or for the customer's futures account from the unrealized gain in value of the open commodity contracts held by or for such account.[49]

For purposes of these calculations, securities positions and associated collateral held in a futures account pursuant to a Commission-approved cross-margining program are treated as customer property held in a futures account class.[50] Accordingly, under Part 190, cross-margining customers' claims with respect to cash margin held at FICC would form part of the ledger balance because they are for cash deposited to margin and secure commodity contracts,[51] while the securities margin and in-the-money securities positions would be property held by the insolvent BD-FCM for the cross-margining customers' futures account. "Securities positions" (*i.e.*, open repo positions) and associated payment amounts constitute "securities or other property" under Regulation 190.08(b)(1)(i)(C). To the extent open securities transactions had been liquidated or otherwise resulted in realized gains, those amounts would form part of the ledger balance. Therefore, under both section 761 of the Bankruptcy Code and Part 190, cross-margining

[48] 17 CFR 190.08(b)(1)(ii).
[49] 17 CFR 190.08(b)(1)(iii).
[50] 17 CFR 190.01 (paragraph (2)(ii) of the definition of "account class").
[51] 17 CFR 190.08(b)(1)(ii)(A)(*1*).

customers will have allowable net equity claims for XM Securities Customer Property, and the Commission concludes that they will receive adequate protection in bankruptcy.

FIA commented that the Commission needs to clarify how the net equity calculation under Part 190 applies to customer collateral. In particular, FIA requested further clarification or examples of the net equity calculation with respect to a customer's claim for repurchase agreement positions. FIA questioned how unrealized gains/losses in the value of open securities transactions like repurchase agreements would be calculated. Specifically, FIA asked whether unrealized gains in the value of securities positions would be included in open trade balances under Commission Regulation 190.08(b)(1)(i)(B) or as "realizable market value . . . of any securities or other property" under Regulation 190.08(b)(1)(C) and whether unrealized losses in value of securities positions would be included in open trade balances under Commission Regulation 190.08(b)(1)(i)(B) or, even though a loss would constitute a negative value, as "realizable market value . . . of any securities or other property" under Commission Regulation 190.08(b)(1)(C).[52]

As discussed in the footnote, these unrealized gains or losses in the value of securities positions are not part of the ledger balance.[53]

Commission Regulation 190.08(b)(1)(iii) provides that "[f]or purposes of this paragraph (b)(1), the open trade balance of a customer's account shall be computed by

[52] FIA Comment Letter at 5 (Jan. 16, 2026).

[53] This is because unrealized gains or losses are not included within the calculation formula in Regulation 190.08(b)(1)(ii) which defines the ledger balance. They are neither cash deposited to purchase, margin, guarantee, secure or settle a commodity contract; cash proceeds of liquidations of any securities or other property (such proceeds would be part of *realized* gains or losses); gains or losses realized on trades (same); the face amount of a letter of credit; disbursements to or on behalf of customers; or costs attributable to the payment of commissions, etc.

subtracting the unrealized loss in value of the open *commodity contracts* for such account from the unrealized gain in value of the open *commodity contracts* held by or for such account" (emphasis supplied). Thus, gains or losses in the value of *securities* positions would not be part of the calculation of the "open trade balance."

Rather, as noted above, unrealized gains (or losses) in the value of securities positions (*i.e.*, open repo positions) would appear to fit more comfortably under Commission Regulation 190.08(b)(1)(i)(C): realizable market value of any securities or other property. The "realizable market value" of these securities positions can be established upon liquidation. Such value may also be based in part on associated payment amounts that can be determined but have not yet been settled. If not liquidated, those securities positions "may be valued by the trustee using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances" pursuant to Commission Regulation 190.08(d)(5).

3. FICC Will Make Customer Positions Portable

Commission Regulation 190.07(a) provides, *inter alia*, that a DCO may not have rules that interfere with the acceptance by its clearing members of transfers of commodity contracts, and the property margining or securing such contracts, from an FCM that is a debtor, if such transfers have been approved by the Commission, subject to certain provisos. FICC will amend its current rules to expressly allow the porting of cleared positions and associated margin at FICC in the event a clearing member becomes insolvent.[54] Pursuant to section (e)(viii) of the Order, FICC will be required to amend its rules to provide that, as required under Commission Regulation 190.07(a), FICC will not

[54] *See* footnote 37.

interfere with transfers of XM Securities Customer Property that are approved by the Commission pursuant to Part 190 (subject to FICC's right to liquidate positions and manage risk).

4. Default Management Complexity

Better Markets commented that cross-margining could make clearing member default management more complex by increasing systemic interconnections and reducing the room for error due to collateral reduction.[55] SIFMA/SIFMA AMG suggested that the Commission act to ensure that FICC and CME's default management and customer protection procedures are adequate before approving the exemption.[56]

With respect to default management, the FICC-CME XM Agreement, §7, sets forth a detailed procedure governing default management protocols. Commission Regulation 39.16(b) requires CME to "maintain a current written default management plan that … include[es] any necessary coordination with … other entities …" as well as testing of that plan "on at least an annual basis." This requirement includes default management under a cross-margining program.[57]

As discussed above, the Commission crafted the Order to include conditions designed to include customer protection arrangements that are well supported legally. Further, the Order conditions the exemptive relief on CME, FICC, and the participating BD-FCMs complying with those conditions.

Given the default management requirements under CFTC and SEC regulations of CME and FICC, respectively, and with the inclusion of the conditions specified in the

[55] Better Markets Comment Letter at 2.
[56] SIFMA/SIFMA AMG Comment Letter at 3.
[57] Analogous obligations apply to FICC under SEC regulations. *See, e.g.*, 17 CFR §240.17ad-22(e)(13) (testing and review of default procedures).

Order, the Commission concludes that the cross-margining program is well designed to meet the goals of the CEA for default management and customer protection. The Commission does not view the complexity of the cross-margining program to be such that permitting its expansion to customers would undermine compliance with the standards of the CEA and the Commission's regulations.

C. Protection for the Collateral Posted by Cross-Margining Customers in the Event of a FICC Bankruptcy or a Proceeding under Title II of the Dodd-Frank Act

FCM customer funds that are held at a registered DCO, such as CME, will be protected in the unlikely event of the bankruptcy of that DCO under subchapter IV of chapter 7 of the Bankruptcy Code, pertaining to commodity brokers.[58] The term "commodity broker" includes both FCMs and DCOs.[59] Subchapter IV of chapter 7 of the Bankruptcy Code, and Part 190, which implements those statutory provisions, provide a reticulated and comprehensive set of protections for customer funds in the context of futures accounts, cleared swaps accounts, and foreign futures accounts, each of which falls under an account class. However, FICC is not a DCO, and so customer funds held at FICC will not be protected under subchapter IV in the event of FICC's bankruptcy. Nor are funds held at FICC protected under the Securities Investor Protection Act[60] or subchapter III of chapter 7 of the Bankruptcy Code,[61] both of which apply only to broker-dealers, and not to securities clearing agencies.

---

[58] 11 U.S.C. 761 *et. seq.*
[59] *See* 11 U.S.C. 101(6), 761(2).
[60] 15 U.S.C. 78aaa *et. seq.*
[61] 11 U.S.C. 741 *et. seq.*

For the reasons discussed below, the Commission is of the view that cross-margining customers' margin held at FICC would nonetheless be protected and not be available to creditors in the unlikely event of a FICC bankruptcy, except for margining or settling eligible customer positions, and would not form part of FICC's estate.

This protection will be implemented using NYUCC[62] Article 8, as applied to FICC's rulebook as it will be amended. Specifically, the Order requires FICC to take steps that the Commission believes ensure that participating BD-FCMs, on behalf of their customers, would be "entitlement holders" within the meaning of Article 8, with respect to all components of the cross-margining margin. Moreover, the only other entitlement holders would be BD-FCM members of FICC with respect to (non-cross-margined) segregated customer margin deposited by a BD-FCM (on behalf of securities customers). As explained further below, entitlement holders with respect to a particular type (e.g., issue) of financial asset have priority claims with respect to all interests in that financial asset held by FICC.

As an SEC-registered clearing agency, FICC is a "clearing corporation," and thus falls within the definition of a "securities intermediary" in the NYUCC.[63]

Under the NYUCC, a "securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset. Section (e)(v) of the Order requires that FICC shall, consistent with section 19(b) of the

[62] *See generally* NY CLS UCC, Art. 8. FICC is located in New York.
[63] *See* NYUCC 8-102(a)(5)(i) (definition of "clearing corporation"), 8-102(14)(i) (definition of "securities intermediary").

Securities Exchange Act,[64] amend FICC's rules to provide that any assets credited to a FICC XM Customer Margin Account will be used exclusively to settle and margin the customer positions and for no other purpose.[65] Further, section (e)(iv) requires FICC to amend FICC's rules[66] to provide that all assets credited to a FICC XM Customer Margin Account would be treated as "financial assets"[67] credited to a "securities account."[68]

Under the NYUCC, with exceptions not relevant here, a person acquires a security entitlement if a securities intermediary either (1) indicates by book entry that a financial asset has been credited to the person's securities account, or (2) receives a financial asset from the person and accepts it for credit to the person's securities account.[69] A person who is either identified in the records of a securities intermediary as having a security entitlement against the securities intermediary, or acquires a securities entitlement by virtue of section 8-501(b)(2), is an entitlement holder. The Commission is of the view that, in each case, both prongs would apply and the BD-FCM, acting on behalf of its customers, would be the entitlement holder and would have a security

---

[64] 15 U.S.C. 78s(b).
[65] *See* footnote 37.
[66] FICC has also proposed this rule amendment. *See id.*
[67] FICC Rule 4, section 1a, currently provides in relevant part that "[a]ll assets credited to each Segregated Customer Margin Custody Account shall be treated as 'financial assets' within the meaning of Article 8 of the NYUCC." The Commission concludes that this would include both securities and cash – while securities are included within the term "financial assets" by statute, NYUCC 8-102(9)(a)(i), that term also includes 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 under this Article."
[68] The Commission concludes that treatment of the FICC XM Customer Margin Account as a "securities account" under the NYUCC does not depend on, nor affect, the treatment of such account as a futures account for purposes of the customer cross-margining framework. *See* NYUCC 8-101, legislative intent ("Except as otherwise expressly provided in this act, the provisions of this act are not intended to change or to control the definitions of the terms 'security' and 'commodity' contained in any other laws[.]"); 8-501, comment 1 ("A securities account is a consensual arrangement in which the intermediary undertakes to treat the customer as entitled to exercise the rights that comprise the financial asset" and "[t]he effect of concluding that an arrangement is a securities account is that the rules of [the NYUCC] apply.").
[69] *See* NYUCC 8-501(b)(1) and (2).

entitlement with respect to the assets credited to the FICC XM Customer Margin Account.

Among the entitlement holder's rights is the right to have financial assets held by the securities intermediary returned and not be subject to the claims of general creditors. Per NYUCC section 8-503(a), to the extent necessary for a securities intermediary to satisfy all security entitlements *with respect to a particular financial asset*, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8-511. The relevant exception under NYUCC section 8-511(c) for "a creditor of the clearing corporation who has a security interest in that financial asset" would not be inconsistent with this approach, as FICC will be required by section (e)(vi) of the Order to amend its rules to provide that FICC shall not grant a security interest in either XM Customer Margin (except with respect to CME's security interest discussed below) or FICC Treasury securities customer margin. Thus, the Commission is of the view that, under the NYUCC, the assets credited to the FICC XM Customer Margin Account would not form part of FICC's estate but would instead be reserved for BD-FCMs for the benefit of their futures customers, subject to CME's security interest as discussed in more detail below.[70]

[70] *See* NYUCC 8-102. The Bankruptcy Code points to otherwise applicable non-bankruptcy law (such as the NYUCC) to determine whether the debtor has an interest in an asset such that the asset forms part of the debtor's estate. *See, e.g.*, *Butner* v. *U.S.*, 440 U.S. 48, 54-55 (1979), Collier on Bankruptcy §541.03. Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the FDIC as receiver of a covered financial company is bound to respect security entitlements in a number of relevant ways. *See, e.g.*, 12 U.S.C. 5390 (a)(1)(D) (FDIC resolution subject to legally enforceable securities entitlements), (b)(5) ("This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent

Because FICC would not use XM Customer Margin or Treasury Securities Segregated Margin other than for purposes of securing or settling cross-margining customer cross-margined positions or the positions of customers that posted segregated customer margin, respectively, it is less likely there would ever be a shortfall in the particular financial assets (here, individual issues of Treasury securities or cash) needed to satisfy the security entitlements related to either type of margin.[71] Moreover, FICC has represented that the FICC XM Customer Margin Accounts and the account(s) holding FICC Treasury Securities Segregated Margin will be the only types of securities accounts that FICC maintains. As a result, the only entitlement holders that FICC would have would be Netting Members[72] acting on behalf of customers who posted: (1) XM Customer Margin in relation to the FICC XM Customer Margin Accounts or (2) Treasury Securities Segregated Margin in relation to the account(s) holding Treasury Securities Segregated Margin.[73] This is enforced by Section (i)(1) of the Order, which provides that FICC shall not establish any additional securities accounts without obtaining the consent of the Commission and the SEC. The Commission observes that, under NYUCC section

---

that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security"), (c)(12)(B) (security entitlements not avoidable).

As a result, the Commission is of the view that NYUCC 8-503 would ensure that margin posted to FICC by BD-FCMs to secure cross-margining customer positions would not form part of FICC's estate in a bankruptcy, and the rights of the BD-FCM on behalf of its cross-margining customers with respect to such margin would not be disturbed in a resolution under Title II of the Dodd-Frank Act. Petitioners note that Article 8 of the NYUCC is also the basis on which the Depository Trust Company, banks that hold securities for customers, and numerous other custodians depend to ensure that securities and other assets they hold for their clients will not form part of their respective estates.

[71] The rights of entitlement holders under Article 8 work differently than the rights of customers of an FCM or DCO under subchapter IV. In the latter case, the customers have a pro rata interest in customer property considered on an omnibus basis. By contrast, an entitlement holder's property interest under NYUCC 8-503 is an interest with respect to a specific issue of securities or financial assets. NYUCC 8-503 comment 1. The Commission is of the view that, in light of the overall structure of the program, this distinction does not entail a materially increased degree of risk to futures customers.

[72] "Netting Member" is used herein as defined in FICC's Government Securities Division Rulebook. A Netting Member is a FICC member that is a member of FICC's Comparison System and Netting System.

[73] Petition at 14.

8-501, only a person with a securities account at a securities intermediary can have a security entitlement with respect to that intermediary.

Because the rights of entitlement holders are tied to particular issues of securities (*e.g.*, CUSIPs) or financial assets (here, pursuant to FICC rules, including cash) rather than particular accounts, if there were a shortfall with respect to a particular security or cash in either the FICC XM Customer Margin Accounts or the account(s) holding Treasury Securities Segregated Margin, the rights of customers who posted XM Customer Margin or Treasury Securities Segregated Margin would apply to any of those particular securities (or cash) held by FICC.[74] This would include the specific securities (or cash) which might otherwise be traceable to FICC members that are not entitlement holders. This further reduces the likelihood of any deficit.

If, despite the foregoing, any such deficit were to arise with respect to a particular financial asset, NYUCC section 8-503(b) provides for all entitlement holders of a securities intermediary with respect to that particular financial asset to share such deficit on a pro rata basis.

D. Protection for Customers Not Participating in Cross-Margining

The Commission concludes that the cross-margining arrangement permitted by the Order does not present unacceptable risk to customers not participating in cross-margining. The Commission believes that a variety of protections, described by Petitioners and detailed below, will mitigate the risk of a shortfall of available assets for distribution resulting from customers' participation in cross-margining.

[74] *See* NYUCC 8-503(b) ("An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.").

The first protection is Petitioners' cross-margining margin calculation methodology. Under the cross-margining arrangement permitted by the Order, eligible positions of a participating customer will be identified and considered as a combined portfolio. Each of CME and FICC will use its own margin model to determine the amount of margin savings percentage resulting from combining the portfolio and then will jointly apply the more conservative result. Thus, under the framework, both CME and FICC will use, as part of calculating the margin requirement, the same methodology developed by CME under the supervision of the Commission for non-cross-margined positions, unless the margin methodology developed by FICC under the supervision of the SEC provides a more conservative result. Given this, the margin the BD-FCM will collect after cross-margining will at no time be less than what will be required by CME's margin methodology. Thus, the risk that the BD-FCM will hold inadequate margin for cross-margining positions is no different in kind, and no greater, than the risk that the BD-FCM will hold inadequate margin for other types of positions.

Better Markets, FIA, and SIFMA/SIFMA AMG addressed in their comments the importance of adequate cross-margining margin requirements.[75] SIFMA/SIFMA AMG and FIA urged the Commission to ensure that margin requirements are sufficiently conservative.[76] SIFMA/SIFMA AMG proposed that the Commission stress test the margin calculations before approval of the proposal.[77] FIA believes it is "critical that both FICC and CME have in place plans to avoid market shocks from urgent changes to margin levels" and that "FICC, CME and the regulators …actively review the

[75] Better Markets Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 3; FIA Comment Letter at 4.
[76] SIFMA/SIFMA AMG Comment Letter at 3; FIA Comment Letter at 4.
[77] SIFMA/SIFMA AMG Comment Letter at 3.

appropriateness of margin levels and maximum offsets to ensure that margin is at all times sufficient."[78] Better Markets commented that the Commission should consider that the risks may not be well-managed in cross-margining.[79] Better Markets stated that assumptions about correlations can break down in stress and would have CME apply conservative assumptions around correlation breaks.[80]

While the Commission agrees with commenters about the importance of sufficiently conservative margin requirements, the Commission believes the margin requirements under the cross-margining program will be commensurate with the risks of each portfolio as required by Commission Regulation 39.13(g)(2)(i). The Commission has found that CME has maintained sufficient margin coverage for the proprietary cross-margining program that was originally implemented in 2004. As part of its ongoing supervision of CME, the Commission will conduct stress testing of the cross-margining program to determine that the risk exposures and margin offsets (the cross-margining levels) remain appropriate for the accounts participating in the cross-margin program. Further, the CME-FICC cross-margining program contains features aimed at maintaining conservative margin requirements, including each entity independently applying its own margin model to calculate potential margin requirements and then using the more conservative result. In addition to this, the program applies an 80 percent cap on margin benefits obtained through cross-margining, further ensuring conservativeness. As CME will be applying the same margin methodology used in the proprietary cross-margining program to the customer cross-margining program, the Commission expects the margin

[78] FIA Comment Letter at 4.
[79] Better Markets Comment Letter at 2.
[80] *Id.*

collected for customer cross-margining participants will continue to be commensurate with the risks of each portfolio.

Further, the Commission will continue to use its existing authority under the CEA, in particular Core Principle D, and its regulations (in particular, §39.13(g)) to ensure that margin levels remain commensurate with the risks of each portfolio. The Commission's oversight of CME, including its existing cross-margining programs, includes conducting yearly examinations and quarterly supervisory meetings to ensure, amongst other things, that CME maintains adequate margin levels.

Second, the Commission concludes that futures customers of each participating BD-FCM would be protected from a loss during a BD-FCM bankruptcy because, as discussed above, all customer funds, including cross-margining customer funds held by FICC, would be treated as "customer property" for purposes of applying subchapter IV of chapter 7 of the Bankruptcy Code and Part 190. This ensures that during a BD-FCM bankruptcy, all commingled customer funds in the futures account would receive similar protections, and non-participating customers would not experience a shortfall of the commingled customer funds caused by different treatment of cross-margining futures customer funds in bankruptcy.

Third, as described above, the Commission believes the risk that in the event of FICC's bankruptcy there would be any shortfall in the funds needed to satisfy the entitlements of cross-margining customers is low, given the protections provided under NYUCC Article 8 and the rule changes that FICC has undertaken to make - in particular, the fact that only the segregated accounts (for cross-margining customers and securities customers) would be entitlement holders. In addition, in order to allow the Commission

to confirm that FICC would be at all times holding sufficient funds in its segregated accounts to satisfy all security entitlements, FICC will provide the Commission and the SEC each business day with reporting on the cash and, by CUSIP, securities (a) owed to BD-FCMs on behalf of their cross-margining customers or securities customers and (b) maintained in such accounts. This constitutes an additional protection that will minimize the risk that FICC could pose to customers not participating in cross-margining.

Fourth, CME will have a security interest in the FICC customer property, and CME and FICC cross-guaranty to pay the other amounts owed by a defaulted clearing member in accordance with an agreed calculation methodology. In the event that CME faces a deficit based on amounts owed to CME by a defaulted BD-FCM with respect to its cross-margining customers' positions cleared at CME, FICC would guarantee those obligations up to the value of the relevant customers' FICC customer property. Petitioners designed these features to allow CME to look to the FICC customer property to satisfy deficits owing to CME by the cross-margining customers, reducing the risk of a shortfall that could adversely impact non-participating customers.

Finally, the Commission concludes that the availability of customer-level cross-margining under the customer cross-margining framework should not adversely affect the portability of non-participating futures customers. Part 190 permits a bankruptcy or SIPA trustee of a failed BD-FCM to transfer the margin and positions of a non-participant customer even if it cannot similarly transfer a cross-margining customer's positions and margin.[81]

[81] *See* Commission Regulation 190.07(d)(2) ("if all eligible commodity contract accounts held by a debtor cannot be transferred under this section, a partial transfer may nonetheless be made.").

The Commission accepts that, given the protections described above, CME and FICC should not be required to subordinate the claims of cross-margining customers relative to other futures customers pursuant to the special distribution framework in framework 1 of appendix B to Part 190.[82] That framework would effectively subordinate the claims of cross-margining customers relative to other customers.[83] In light of the foregoing, the Commission concludes that the risks posed to the BD-FCM futures customer account from the cross-margining program are not materially greater in degree or kind than the risks posed by other futures positions and portfolio margining programs. Accordingly, under the Order, the special distribution framework will not be applied to the cross-margining framework thereunder, and BD-FCMs will be permitted to hold cross-margining customers' assets commingled with non-cross-margining futures customers' assets.

IV. *Customer Protection – Permitted Depository*

The CEA and Commission regulations also protect futures customer funds by requiring that the funds be held only at a permitted depository. Pursuant to Commission Regulation 1.20(b), FCMs are only permitted to hold futures customer funds with a bank or trust company, a DCO, or another FCM. Similarly, under Commission Regulation 1.20(g), DCOs are only permitted to hold futures customer funds with a bank or trust company, which may include a Federal Reserve Bank with respect to deposits by DCOs

[82] This is consistent with the approach set forth in the GMAC Recommendation, III.2, at p. 3.
[83] Under that framework, if the percentage shortfall for cross-margining customers, considered alone, would be greater than that for non-cross-margining customers, considered alone, then the cross-margining customers would be treated separately from non-cross-margining customers, thus protecting the non-cross-margining customers. If, instead, the percentage shortfall for non-cross-margining customers is equal to or greater than the percentage shortfall for cross-margining customers, then the cross-margining customers and the non-cross-margining customers will be paid *pro rata* over the same pool, to the disadvantage of the cross-margining customers.

that have been designated as SIFMUs by the FSOC. Moreover, pursuant to Commission Regulation 1.49(d), a depository in the United States holding customer funds required to be segregated pursuant to the CEA and Commission regulations must: (A) be a bank or trust company, a DCO, or an FCM; and (B) provide appropriate written acknowledgment as required under Commission Regulations 1.20 and 1.26. Because FICC is not a bank, trust company, DCO, or FCM, it is not a permitted depository under Commission Regulations 1.20 and 1.49.

As discussed above, the customer cross-margining framework under the Order will require BD-FCMs to post to FICC, and FICC to hold, XM Customer Margin. The Commission agrees with Petitioners that it is consistent with the public interest to permit FICC to hold XM Customer Margin subject to the terms and conditions of the Order. As a designated SIFMU and an SEC covered clearing agency,[84] FICC is subject to requirements and safeguards, including in relation to capital requirements and risk management, pursuant to SEC regulations, that are broadly similar to those that apply under Commission regulations to a systemically important DCO.[85] Furthermore, the Commission agrees with Petitioners that FICC would hold XM Customer Margin in a manner that is consistent with how DCOs are required to hold futures customer funds under CEA section 4d(b).[86] Further, as required by section (e)(vii) of the Order, FICC would deposit cross-margining customer funds in accounts at the FRBNY, or at a FDIC-insured commercial bank, with names that clearly identify the accounts as holding futures customer funds. Moreover, the Commission concludes that the design and safeguards of

[84] *See* Section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(A); SEC Rule 17Ab2-1.
[85] *Compare, e.g.,* 17 CFR 39.33(a)(1) and 240.17ad-22(e)(4)(ii); 17 CFR 39.11(e), 39.33(c), and 240.17ad-22(e)(7)(i) and (ii).
[86] *See* section III.A., *supra,* Commingling.

the customer cross-margining framework under the Order, as described above,[87] will leverage both Part 190 and commercial law, in particular the NYUCC, effectively to ensure that XM Customer Margin held at FICC is available either to CME to satisfy shortfalls in its futures customer account and/or returned to customers regardless of the solvency of FICC. Thus, the Commission concludes that FICC as a depository offers similar safeguards and financial security as a DCO registered with the Commission, which is a permitted depository under Commission Regulations 1.20 and 1.49. Accordingly, the Commission believes that allowing BD-FCMs to deposit customer funds with FICC, and FICC to hold such funds in the manner described herein, is consistent with the objectives of the CEA and Commission regulations promulgated thereunder.

V. Additional Comments

The Commission received additional comments about cross-margining programs generally that pertain to DCO operational resilience; DCO publicly available information; termination of a cross-margining agreement; the impact of current bank capital rules; and the timing of the Commission's action.

A. Operational Resilience

SIFMA/SIFMA AMG commented that the Commission should ensure CME and FICC have sufficient operational resilience, suggesting that "the margin calculation mechanisms and any optimization platforms offered by the clearing houses be appropriately resilient and tested for operational resilience."[88] SIFMA/SIFMA AMG

[87] *See* section III.B, *supra,* Protection for the Margin of Cross-Margining Participants in the Event of a BD-FCM Bankruptcy.
[88] SIFMA/SIFMA AMG Comment Letter at 3.

recommended that CME and FICC have "developed and fully transparent fallback procedures for any operational issues…."[89] The Commission believes the requirements of the CEA, in particular Core Principles B – Financial Resources, D – Risk Management, and I – System Safeguards, and the Commission's implementing regulations (in particular, Commission Regulations 39.11, 39.13, and 39.18) that are applicable to CME, and the SEC operational resilience requirements that are applicable to FICC as a covered clearing agency are sufficient to address operational resilience of these clearinghouses.[90] Further, the Commission notes that CME and FICC have operated the proprietary cross-margining program for over 20 years. As SIFMA/SIFMA AMG did not identify any unique operational risks caused by extending the proprietary cross-margining arrangement to customers warranting additional operational resilience measures, the Commission did not amend the Order based on this comment.

B. Public Information

AIMA proposed that CME-FICC cross-margining methodology should be supported by publicly available documentation that includes "(i) the risk factors and correlation assumptions underlying cross-product offsets; (ii) the stress scenarios and lookback windows used in determining margin requirements; (iii) the processes for model calibration, backtesting and performance monitoring; and (iv) the governance framework for changes to margin models or offset parameters."[91]

---

[89] *Id*.

[90] *See* 17 CFR 240.17ad-22(e)(17) (requiring each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage operational risks by: identifying plausible sources of internal and external operational risk, mitigating their impact through the use of appropriate systems, policies, procedures, and controls; ensuring that systems have a high degree of security, resilience, operational reliability, and adequate scalable capacity; and establishing and maintaining business continuity plan that addresses events posing significant risk of disrupting operations.)

[91] AIMA Comment Letter at 2.

The Commission did not propose a public information condition specific to the expansion of the proprietary cross-margining program to include customer clearing. Commission Regulation 39.21(a) requires a DCO to "provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the" DCO, and §39.21(c)(3) requires, in relevant part, the DCO to post on its website "[i]nformation concerning its margin-setting methodology … .". CME already provides information about the SPAN margin methodology that will be applied to cross-margined accounts on its website. Similarly, SEC regulations[92] require a covered clearing agency to "[p]rovide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency, and FICC provides a tool that allows users to estimate potential cross-margin reductions. Accordingly, the Commission declines to impose a new public information requirement for the cross-margining program's margin methodology merely because the program will be expanded to include customer clearing. CME and FICC propose to use the same margin methodology as the proprietary cross-margining program that has been in operation for over twenty years, and the Commission proposes no changes that would necessitate different public information than that provided for the proprietary program.

C. Termination of Cross-Margining Participation

AIMA cautioned that without additional Commission required protections, a customer's cross-margining capabilities could be unilaterally suspended or terminated, potentially subjecting a customer to an intraday initial margin surge, which could force a

[92] Specifically, 17 CFR 240.17ad-22(e)(23)(ii).

customer to unwind certain trades and/or stress collateral during volatility.[93] AIMA requested that the Commission require CME, FICC and BD-FCMs to provide customers with clear, objective, and transparent criteria that govern when cross-margining access may be suspended or terminated; require criteria that prohibit discriminatory or commercially motivated suspensions or terminations that are unrelated to bona fide risk concerns; and require prior written notice before a customer's cross-margining capabilities are suspended or terminated.[94]

The CEA and Commission regulations place responsibility for risk management on DCOs and FCMs,[95] and any attempt to restrict their ability to terminate cross-margining participants could compromise their ability to properly manage the risk. The Commission believes that CME, FICC, and BD-FCMs, will be best positioned to assess current mark risk conditions and should therefore retain the discretion to manage risk as necessary, including by potentially suspending or terminating cross-margining participants from cross-margining programs in a timely fashion and without the delay imposed by issuing advance notice. Therefore, the Commission declines to impose additional conditions in the order regarding suspending or terminating cross-margining participation.

D. Cross-Margining and Bank Capital Rules

---

[93] AIMA Comment Letter at 2.

[94] *Id.*

[95] *See, e.g.*, Core Principle D(iii) (7 USC §7a-1(c)(2)(D)(iii)), Commission Regulation 39.13 (including, *e.g.*, §39.13(g)(8)(ii) (a DCO "shall require its clearing members to collect customer initial margin at a level that is … commensurate with the risk presented by each customer account. … the [DCO] shall also have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles.")); Commission Regulation 1.73(a)(4) (Each FCM that is a clearing member of a DCO shall "conduct stress tests under extreme but plausible conditions of all positions … in each customer account that could pose material risk to the [FCM] at least once per week.").

FIA commented that cross-margining's treatment in banking capital rules reduces the usefulness of cross-margining.[96] FIA encouraged the Commission to engage with U.S. prudential regulators to revise the capital rules for banking organizations to permit "a banking organization, including a subsidiary BD-FCM, to recognize [the cross-margining] risk-offset when calculating exposures to a customer for regulatory capital purposes."[97] ISDA also commented that adjustments to bank capital regulation to recognize corresponding cross-product netting will contribute to increased market efficiency.[98] As the comments are outside of the scope of the proposal and the Commission's statutory authority, the Commission declines to adopt changes to the Order to address them. However, the Commission will continue to engage with the prudential regulators where possible as they consider amendments to the existing bank capital framework.

E. Timing

Finally, ISDA urged the Commission to finalize the proposal expeditiously, so it may issue the Order in advance of the implementation of the Treasury Clearing Requirement.[99] The Commission acknowledges the extent of industry's preparations underway to comply with the Treasury Clearing Requirement by the December 31, 2026 implementation date for eligible cash market Treasury transactions and the June 30, 2027 implementation date for eligible repo market transactions[100] and is therefore issuing the

[96] FIA Comment Letter at 3.
[97] *Id.*
[98] ISDA Comment Letter at 2.
[99] ISDA Comment Letter at 2.
[100] SEC Press Release, SEC Extends Compliance Dates and Provides Temporary Exemption for Rule Related to Clearing of U.S. Treasury Securities (Feb. 25, 2025), https://www.sec.gov/newsroom/press-releases/2025-43-sec-extends-compliance-dates-provides-temporary-exemption-rule-related-clearing-us-treasury.

Order as effective immediately so that CME, FICC, BD-FCMs, and their customers may implement the expanded customer cross-margining arrangement as soon as operationally feasible.

VI. *CEA Section 4(c) Determination to Grant Partial and Conditional Exemption from Section 4d of the CEA and Commission Regulations 1.20 and 1.49*

The Commission observes that the Order is consistent with the public interest and the purposes of the CEA.[101] In light of the foregoing, the Commission exempts CME, FICC, and BD-FCM members of CME and FICC from section 4d of the CEA and Commission Regulations 1.20 and 1.49, subject to the conditions detailed above, to the extent necessary to permit the customer cross-margining framework described herein. The Commission will allow the commingling of futures customer funds and futures customer positions with cross-margined securities assets held at BD-FCMs, for the purpose of customer cross-margining between positions held at CME and FICC. Further, the Commission permits CME and the BD-FCM members to deposit with FICC, and FICC to receive and hold, such futures customer funds even though FICC is not a permitted depository under Commission regulations.

The Commission has in the past permitted FCMs to commingle customer futures or swap positions with cleared positions in other products for the purposes of achieving risk offsets and portfolio margining, subject to specific terms and conditions designed to protect both participating and non-participating customers.[102] As discussed above, the

---

[101] These include, as relevant here, "to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk" and "to promote responsible innovation." *See* CEA section 3(b), 7 USC 5(b).

[102] *See, e.g.*, Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (Jan. 14, 2013); Order, Treatment of Funds Held in Connection with Clearing by ICE Clear

Commission concludes that CME and FICC will hold the commingled customer funds in a manner consistent with the customer protections intended by the CEA and Commission regulations. Customer assets will be segregated from other assets, and other customer protections in Commission regulations, such as the written acknowledgement from a depository regarding its obligations with regard to customer funds, will apply.

The Commission concludes the Order contains the terms necessary to ensure adequate protection for futures customer funds. The Order provides for the safe treatment of cross-margining customer funds through terms requiring FICC and CME to carry cross-margining customer assets separately and treat them as belonging to the customers of the BD-FCM.[103] The Order also contains terms supporting the bankruptcy treatment for cross-margining customer funds described above, including a term requiring BD-FCMs to enter into agreements with participating customers acknowledging their assets' bankruptcy treatment; terms on FICC holding customer margin segregated in a "securities account" at appropriate depositories and agreeing to treat such margin as "financial assets," as such terms are defined under NYUCC Article 8; and a term requiring FICC to permit the porting of customer property.[104] The Order further requires Petitioners to have the rules and agreements necessary to ensure customer cross-margining functions as described above, by having rules on customer and position eligibility and on the granting of security interests in cross-margining customer

Europe Limited of Contracts Traded on ICE Futures Europe, ICE Futures US, and ICE Endex (Mar. 26, 2015).

[103] Order, sections (b), (d) and (e)(v).

[104] Order, sections (c), (e)(iv), (e)(vii) and (e)(viii).

property.[105] The Order also contains terms to ensure adequate margin is collected under the customer cross-margining program and to ensure adequate regulatory oversight.[106]

The Commission believes that the cross-margining framework under the Order will make it likely that customer funds will appropriately be protected during a BD-FCM bankruptcy. As described above, the customer funds held by FICC would constitute "customer property" held by the BD-FCM in its capacity as an FCM for the purposes of distribution in bankruptcy and would be available to customers. This is designed to ensure that cross-margining customers will have the same priority right to receive distribution on their allowed claims against the customer property as other customers of the insolvent BD-FCM in the futures account class. In addition, FICC and CME will provide for the porting of the commingled cross-margined positions in the event of a clearing member default.

As described in section III.B above, the risks to cross-margining customers posed by a FICC bankruptcy will be addressed. FICC will, consistent with the Order, take steps to ensure any assets credited to a FICC XM Customer Margin Account will be available for distribution to customers in a FICC bankruptcy or a proceeding under Title II of the Dodd-Frank Act. For the reasons discussed in section III.C above, under applicable law, customer property will not be used to satisfy the claims of FICC's creditors, except for margining or settling customer positions, and will not form part of FICC's estate. Accordingly, the Commission believes cross-margining customer funds will be adequately protected in a FICC bankruptcy or Title II proceeding.

[105] Order, sections (e)(i) – (iii) and (e)(vi).
[106] Order, sections (f) – (k).

For the reasons discussed in section III.D above, the Commission also concludes customers who do not participate in cross-margining are unlikely to be impacted by the cross-margining arrangement. As described above, the more conservative cross-margining margin methodology of either CME or FICC will be applied. Also, customer funds are likely to be effectively protected in the unlikely event of a FICC bankruptcy, making it unlikely non-participating customers would experience losses in that case. Further, portability for non-participating customers is not adversely affected by other customers participating in cross-margining. The Commission does not believe the risks posed to the BD-FCM futures customer account from the cross-margining program under the Order are materially greater in degree or kind than the risks posed by other futures positions and portfolio margining programs. Thus, the Commission does not impose via its Order the special distribution framework in framework 1 of appendix B to Part 190.

The Commission also concludes, for the reasons discussed in section IV above, that customers will not be harmed by allowing FICC to act as a depository for customer funds. As discussed above, FICC will offer similar safeguards and financial security as a DCO registered with the Commission, because it is a designated SIFMU and an SEC covered clearing agency. BD-FCMs depositing customer funds with FICC, and FICC holding such funds, is consistent with safety and security purposes of the Commission regulations requiring that only certain depositories hold customer funds.

The Commission concludes the participants will be appropriate persons. The definition of "appropriate person" under section 4(c)(3) of the CEA includes specified categories of persons as well as "other persons that the Commission determines to be

appropriate in light of their financial or other qualifications, or *the applicability of appropriate regulatory protections*" (emphasis added).

Each of FICC, CME, and the eligible BD-FCMs is an appropriate person under prong (F), (I), or (J) of the definition.

The Commission determines cross-margining customers should be treated as appropriate persons for purposes of section 4(c)(3) of the CEA in light of the existing and appropriate regulatory protections for eligible customers under the CEA and Commission regulations as well as the safeguards under the customer cross-margining framework. Specifically, the Commission accepts Petitioners' assertion that each eligible customer will be a person that is permitted to transact through a BD-FCM. In other words, such customers are already persons that Congress and regulators have determined to be appropriate to engage in such transactions. Allowing eligible customers to opt into cross-margining under the customer cross-margining framework will not unduly expose such customers to additional risk. Additionally, the customer cross-margining framework under the Order and the Order itself include the customer protection and risk management safeguards discussed above to ensure that the requested relief will not cause any material adverse effect on the Commission's or CME's ability to fulfill its regulatory or self-regulatory duties.

Finally, the Commission concludes that, in light of the risk mitigants and customer protections discussed above, customer cross-margining under the Order will support the stability of the broader financial system. Cross-margining will, on balance, lower the cost of central clearing for Treasury securities transactions and certain Treasury and interest rate futures, by decreasing customers' initial margin requirements to reflect

the risk of a combined portfolio. Lowering clearing costs will support the implementation, and lower the financial burden, of the Treasury Clearing Requirement, which itself supports financial stability by increasing central clearing. In light of the foregoing, the Commission believes the Order will promote responsible economic and financial innovation and fair competition, and is consistent with the public interest, as that term is used in section 4(c) of the CEA.

VII. Findings and Conclusions

After careful review and consideration of the comments, and for the reasons cited herein and set forth in the Proposal, the Commission has determined that the requirements of Section 4(c) of the CEA have been met with respect to granting Petitioners the relief sought, subject to certain conditions of the Order. The Commission is therefore issuing an order granting the exemption essentially as proposed. However, the Commission is making minor technical corrections to the language of the order.[107] The Commission believes the exemption would promote responsible economic and financial innovation and fair competition, and is consistent with the "public interest," as that term is used in Section 4(c) of the CEA.

VIII. *Related Matters*

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[108] requires that agencies consider whether the exemption will have a significant economic impact on a substantial number

[107] In particular, (A) corrected the definition of Segregated Customer Margin to refer to FICC rules, which have been found by the SEC to be consistent with the conditions in 17 CFR 240.15c-3a, Note H (*see* 89 Fed. Reg. 94801), and (B) corrected a number of references to Segregated Customer Margin to use the correct term.

[108] 5 U.S.C. 601 *et seq*.

of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission finds that the exemption will not have a significant economic impact on a substantial number of small entities.

The Order will directly impact three categories of entities: CME (a DCO), FICC (a clearing agency registered with the SEC) and BD-FCM members of both CME and FICC that are dually registered with the CFTC and SEC. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its actions on small entities in accordance with the RFA.[109] The Commission has previously determined that DCOs, are not small entities for purposes of the RFA.[110] Further, the Commission has previously determined that registered FCMs are not small entities for the purpose of the RFA,[111] and BD-FCMs are, by definition, FCMs.

With respect to FICC, the SEC has established threshold definitions in its regulations governing when clearing agencies registered with the SEC qualify as small entities. Specifically, the SEC's regulations provide that, when used with reference to a clearing agency, the terms "small business" or "small organization" shall include a clearing agency that: (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year; (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter); and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[112]

---

[109] *See* 47 FR 18618, 18618 – 18621 (Apr. 30, 1982).
[110] *See* 66 FR 45604, 45609 (Aug. 29, 2001).
[111] *See* 47 FR 18618, 18619 (Apr. 30, 1982).
[112] 17 CFR 240.0-10(d).

The Commission notes that FICC processed $11.8 trillion on a single day, June 30, 2025,[113] and, as of September 30, 2025, held in excess of $77 billion in post-haircut clearing fund contributions from its participants.[114]

The Commission also believes the exemption will not have a substantial impact on a substantial number of small entity customers. Participation in cross-margining is voluntary. Further, the exemptive order granted by the Commission will lower costs for customers with positions at both CME and FICC, reducing the cost of clearing to reflect that of the total portfolio. As discussed above, the Commission expects that under the cross-margining framework, participating cross-margining customers' funds will still receive the level of protection mandated by the CEA and Commission regulations. Finally, as discussed above, non-participating customers will not be meaningfully impacted by the other customers participating in cross-margining. The Commission did not receive any comments on whether there is a significant impact on a substantial number of small entities.

Accordingly, the Commission does not believe the exemption will have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the exemption will not have a significant economic impact on a substantial number of small entities.

---

[113] *See https://www.dtcc.com/news/2025/july/02/ficc-successfully-processes*.

[114] *See https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Public-Quantitative-Disclosures---Q3-2025.pdf* at 8.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[115] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any "collection of information," as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and budget ("OMB").[116] The PRA is intended, in part, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, "regardless of form or format," whenever the government is "obtaining, causing to be obtained [or] soliciting" information, and requires "disclosure to third parties or the public, of facts or opinions," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." The PRA would not apply in this case given that the exemption will not impose any new recordkeeping or information collection requirements, or other collections of information, on ten or more persons that require approval of the OMB. Accordingly, the CFTC has not prepared a PRA submission to OMB with respect to this order.

C. Cost and Benefit Considerations

The Commission recognizes that the Order may impose costs. The Commission has endeavored to assess the expected costs and benefits of the Order in quantitative

[115] 44 U.S.C. 3501 *et seq*.
[116] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

terms, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable amendments in qualitative terms. The Commission received two comments on its cost benefit considerations or analysis.

1. Baseline

The Commission identifies and considers the benefits and costs of the Order relative to a baseline standard of those generated by the current statutory and regulatory framework applicable to futures contracts, i.e., the status quo. This framework includes the provisions in section 4d of the CEA and current Commission Regulations 1.20 and 1.49(d). The specific elements of the baseline that will be impacted by the amendments are discussed in more detail below.

2. Costs

The exemption conditionally exempts CME and FICC from limited aspects of sections 4d of the CEA and from the permitted depository requirements in Commission Regulations 1.20 and 1.49. While complying with the Commission's Order would entail compliance costs for CME, FICC, and eligible BD-FCMs, the Order does not mandate participation in cross-margining and the assumption of these costs. To the extent CME, eligible BD-FCMs, and futures customers elect to participate in cross-margining, they are electing to assume any associated costs. Moreover, the conditions to the Order are consistent with the Petitioners' design of the cross-margining program and are necessary to achieve the risk mitigants and customer protections that are the basis of that program.

The cross-margining program permitted under the Order is an instance of a portfolio margining system. Portfolio margining is widely used throughout the futures

industry, both within individual DCOs and in cross-margining programs between clearing organizations (such as the existing proprietary cross-margining program between the Petitioners).

Portfolio margining establishes margin levels by assessing the market risk of a ''portfolio'' of positions in securities or commodities. Under a portfolio margining system, the amount of required margin is determined by analyzing the risk of each component position in a customer account (e.g., a class of option with the same expiration date) and by recognizing any risk offsets in an overall portfolio of positions (e.g., across options and futures on the same underlying instrument). So that margin that is commensurate with the relevant risks is deposited to cover extraordinary market events, one or more additional adjustments may be applied in calculating a customer's required margin.[117]

The calculation of the risk offsets that are recognized in a portfolio margining system is based on a combination of statistical analysis of the correlation between the components of the portfolio and judgment, and is subject to rigorous risk management, including through back-testing and stress testing.

Nonetheless, inherent in any portfolio margining system is the possibility that, during a particular stressed market movement, the losses experienced on the combined position will exceed the margin requirement remaining after including those risk offsets, leading to a margin deficiency that is greater than would have been the case had the risk offset not been recognized.

[117] Customer Margin Rules Relating to Security Futures, 67 FR 53146, 53148 (Aug. 14, 2002).

If such an event were to occur within the context of the cross-margining program that is the subject of the Order, and the margin deficiency within the futures or securities customer accounts of a participating BD-FCM were to exceed the capital and other resources available to that BD-FCM, leading to bankruptcy, then customers might suffer losses in the bankruptcy of that BD-FCM that would be larger than if that cross-margining program were not enabled. This possibility is a cost of granting the Order.

However, the Commission believes that the likelihood of such losses is low if the risks are well managed as required in the customer cross-margining framework. Given the highly regulated and resilient natures of CME as a DCO and FICC as a securities clearing agency, the experience the two clearing organizations have in implementing portfolio margining and in particular cross-margining programs, the risk management requirements described in section III.D, and the protections included in the customer cross-margining framework, the Commission estimates that the circumstances that may give rise to such costs would be very remote. The costs associated with these risks are difficult to quantify because they depend on unknown and unlikely future events to materialize, but the Commission acknowledges some residual risk remains that could impose costs on Petitioners, clearing members, and customers.

The Commission received comments from AIMA and SIFMA/SIFMA AMG pertaining to cost in support of the exemptive order.[118] As discussed below, AIMA agreed with the Commission that "expanding cross-margining arrangements to customers, pursuant to the Proposed Order, can increase clearing efficiency, reduce the costs of clearing, bolster the broader financial system and more."[119] SIFMA/SIFMA

[118] AIMA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2.
[119] AIMA Comment Letter at 2.

AMG also agreed that "cross-margining reduces clearing costs. These cost reductions will help support and counterbalance potential clearing cost increases Treasury market participants may experience with mandatory clearing of certain U.S. Treasury transactions taking effect later this year and in 2027."[120]

3. Benefits

The exemption would benefit market participants by reducing the costs of clearing Treasury securities transactions in a manner that aligns the margin required for a portfolio of risk-related positions, involving positions cleared at CME and positions cleared at FICC, with the risk of the portfolio considered as a whole. ISDA agreed with the Commission "that the proposed exemption is instrumental in facilitating the efficient implementation of the SEC's treasury clearing rules" and the "resulting reduction in duplicative margin will make clearing more efficient and offset some of the additional financial resource requirements that the industry will face upon implementation of the [SEC's] U.S. Treasury clearing mandate."[121] Eligible customers participating in cross-margining will benefit from the reduced margin costs for their overall portfolio.[122] BD-FCMs will also benefit from more efficient clearing, as they, and in turn FICC and CME, will reduce their risk exposure to the cross-margining customer.

The exemption will also benefit the broader financial system. By making Treasury security clearing less costly, the exemption is expected to incentivize clearing of Treasury security transactions. As discussed above, centralized clearing reduces the risk of default by imposing a central counterparty between buyers and sellers, and can lower

[120] SIFMA/SIFMA AMG Comment Letter at 2.
[121] ISDA Comment Letter at 2.
[122] For a discussion of the mechanics of reduced margin costs, see note 15 above and accompanying text.

the potential for a single market participant's failure to destabilize other market participants or the financial system more broadly. The Commission considers central clearing through a highly regulated clearing organization to be highly supportive of financial stability. Thus, the customer cross-margining framework benefits the public interest because it will support the stability of the broader financial system.

D. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA.[123] Section 15(a) requires the Commission to consider the costs and benefits of its action in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

1. Protection of Market Participants and the Public

The Commission believes the exemption will benefit the public and market participants while not adversely affecting protections. The exemption will serve the public by encouraging the clearing of Treasury securities transactions, thus increasing

[123] 7 U.S.C. 19(a).

financial stability, which serves the public's interest generally. Market participants' individual financial interests are also served by making clearing less expensive and more efficient.

Although less margin will be collected through the cross-margin program, the Commission does not believe that the exemption will adversely impact the security of market participants' assets. As discussed above, the conditions in the Order that will permit the customer cross-margining framework also implement safeguards to protect futures customer funds. The cross-margined funds will be segregated from any proprietary funds and will still receive the protections found in the CEA and Commission regulations. The futures customer funds will be subject to the CEA's protections in a potential bankruptcy of a participating BD-FCM (or CME) and will be protected under NYUCC Article 8 in a potential bankruptcy of FICC. In addition, the Commission believes the risks to non-participating customers, such as clearing in an account class in which other participants have margin set through portfolio margining incorporating Treasury securities, are similar to the risks posed by customers clearing in a class where others hold futures positions and have their positions portfolio margined. Finally, FICC, as a depository regulated as a covered clearing agency and a SIFMU by the SEC, is comparable as a matter of safety to other permitted depositories, so no material additional risk is anticipated for market participants by the Commission permitting FICC as a depository.

SIFMA/SIFMA AMG and ISDA agreed that the expansion of the cross-margining agreement would support customer protection.[124] SIFMA/SIFMA AMG supported the

[124] SIFMA/SIFMA AMG Comment Letter at 2; ISDA Comment Letter at 2.

exemptive order "as an appropriately tailored approach to achieving broader capital efficiency while maintaining the customer and market resiliency protections of centralized clearing."[125] Similarly, ISDA commented that the "proposed treatment of customer funds pursuant to well-established statutory and regulatory frameworks is designed to deliver these efficiencies without jeopardizing customer protections or legal certainty."[126]

2. Efficiency, Competitiveness, and Financial Integrity

The Commission believes that the exemption will benefit the efficiency, competitiveness, and financial integrity of the derivatives markets. The exemption will make clearing more efficient by permitting cross-margining of Treasury futures with Treasury securities resulting in the reduction of duplicative margin and offsetting some of the additional financial resource requirements that the industry will face upon implementation of the SEC's U.S. Treasury clearing mandate. Cross-margining enables CME and FICC to lower margin requirements, however, this more accurately reflects the risk of the aggregate portfolio instead of the aggregate risk of the separate futures and securities positions, increasing the competitiveness of their offering.

The exemption also benefits financial integrity. The exemption will support the implementation of the Treasury Clearing Requirement, an SEC mandate enacted, in part, to increase the financial integrity of the Treasury securities market through expanded use of central clearing. A more stable Treasury securities market also benefits the financial integrity of the financial system (including the derivatives markets) more broadly. ISDA agreed that "[b]y enhancing the stability of the Treasury market, these measures also

[125] SIFMA/SIFMA AMG Comment Letter at 2.
[126] ISDA Comment Letter at 2.

contribute to the overall robustness and reliability of both the derivatives markets and the wider financial system."[127]

SIFMA/SIFMA AMG also noted the benefit of enhanced efficiency for customers that will be eligible to participate in the cross-margining agreement with the exemptive relief.[128] "As noted in the CFTC's Global Markets Advisory Committee's [] February 2024 recommendation entitled FICC-CME Customer Position Cross-Margining Structure Recommendation, there is a history of regulated central clearing counterparties successfully leveraging limited cross-margining to optimize capital efficiency without undermining the market resiliency afforded by centralized clearing and associated margin requirements. For example, since 2004, CME and FICC have had a cross-margining agreement that applies only to the proprietary futures and securities positions of CME-FICC joint clearing members, enabling them to more efficiently manage the risk associated with their proprietary positions in U.S. Treasuries and Treasury futures as a single portfolio. The Proposal would extend this cross-margining program to customer accounts of eligible BD-FCMs (many of which are sophisticated institutional customers), allowing participating customers to benefit from the same level of capital efficiencies as BD-FCMs."[129]

3. Price Discovery

The Commission does not anticipate the exemption to have an impact on price discovery.

---

[127] *Id.*
[128] SIFMA/SIFMA AMG Comment Letter at 2.
[129] *Id.*

4. Sound Risk Management Practices

Although less margin is collected under the cross-margining program, the Commission believes that the exemptive order, in light of the conditions included, reflects sound risk management practices. Encouraging central clearing supports sound risk management. As stated above, centralized clearing through a highly regulated clearing agency decreases the risk of default and risk of market destabilization. Additionally, cross-margining reflects sound risk management because margin costs will be properly calibrated to the risks for futures customers' overall portfolios.

The Commission further notes that, notwithstanding the exemption and as discussed above, cross-margining futures customers will receive protections comparable to what they would have received absent the exemption. Risks to customer funds will be managed and minimized according to the standards set forth in the CEA.

5. Other Public Interest Considerations

The Commission believes the relevant public interest considerations are already discussed in the foregoing.

IX. *Order of Exemption*

After considering the above factors, the Commission issues the following:

Order

The Commission, pursuant to its authority under section 4(c) of the CEA, 7 U.S.C. 6(c), and subject to the conditions below, hereby grants (A) a limited exemption to Commission Regulations 1.20 and 1.49 to permit dually-registered BD-FCMs that are clearing members at both CME and FICC to deposit at FICC, and to permit FICC to hold, customer funds and margin associated with customer cross-margining, and to permit

CME to treat FICC as a permissible location to hold the foregoing; and (B) a limited exemption to section 4d(a)(2) of the CEA and Commission regulations thereunder to permit eligible BD-FCMs to hold, in a futures account, eligible securities positions and associated money, securities, and property of eligible customers, together with the futures positions and futures customer funds held by the eligible BD-FCM.

The relief granted above is subject to FICC, CME, and the relevant Eligible BD-FCMs complying with the requirements set forth below as applicable to each:

(a) *Definitions*.

i. "Customer" has the meaning set forth in Commission Regulation 1.3.

ii. "Eligible BD-FCM" means an entity that is (1) a Netting Member (as such term is defined in FICC Rule 1 of the FICC Government Securities Division Rulebook); (2) a clearing member of CME; (3) registered with the Commission as a futures commission merchant; and (4) registered with the Securities and Exchange Commission as a broker-dealer.

iii. "Eligible Customer Positions" means Eligible Futures Positions and Eligible Securities Positions.

iv. "Eligible Futures Positions" means Customer positions in the CME products listed as "CME Eligible Products" in Exhibit A to the Amended and Restated Cross-Margining Agreement between FICC and CME dated January 22, 2024, as that exhibit may be amended from time to time.

v. "Eligible Securities Positions" means Customer positions in U.S. Treasury Notes and Bonds held in a cross-margining account at FICC.

vi. "FRBNY" means the Federal Reserve Bank of New York.

vii. "NYUCC" means the New York Uniform Commercial Code.

viii. "Segregated Customer Margin" means margin deposited by a Netting Member of FICC and held by FICC in a manner consistent with FICC rules that the Securities and Exchange Commission has determined to meet the conditions of Note H of 17 CFR 240.15c3-3a in a notice that has been published (and not subsequently withdrawn) pursuant to paragraph (b)(3) of such Note H.

ix. "XM Securities Customer Property" means Eligible Securities Positions and associated margin held in a cross-margining account at FICC.

x. "XM Customer Margin" means customer property deposited to margin, secure, or guarantee Eligible Customer Positions.

(b) *BD-FCM Treatment of Customer Positions and Margin.* All assets received by an BD-FCM to margin, guarantee, or secure Eligible Customer Positions, or accruing as a result of such trades or contracts, and held subject to the terms of the Order shall be carried by the BD-FCM in a futures account for or on behalf of the cross-margining customers and shall be deemed to have been received by the Eligible BD-FCM and be accounted for and treated and dealt with as belonging to the cross-margining customers of the eligible BD-FCM consistent with section 4d(a)(2) of the Commodity Exchange Act and the Commission's regulations thereunder.

(c) *BD-FCM Cross-Margining Customer Agreements.* Each Eligible BD-FCM shall enter into a participation agreement with each cross-margining customer prior to the cross-margining customer's participation in cross-margining under the customer cross-margining framework, pursuant to which the cross-margining customer shall specifically agree and acknowledge that:

i. Its XM Securities Customer Property will not receive customer treatment under the Securities Exchange Act of 1934 or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD-FCM;

ii. Its Eligible Securities Positions and associated margin held in a cross-margining account at FICC (*i.e.*, XM Securities Customer Property) will be subject to any applicable protections under subchapter IV of chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; and

iii. Claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the Eligible BD-FCM with respect to its Eligible Securities Positions and associated FICC-held margin will be subordinated to the claims of all other customers, as the term "customer" is defined in 11 U.S.C. 741 or SIPA.

(d) *FICC Operations.* FICC shall operate the cross-margining program in accordance with the following:

i. FICC will record all of a BD-FCM's customers' Eligible Securities Positions in an account on its books and records for recording the BD-FCM's cross-margining customers' transactions.

ii. FICC will credit margin it collects to collateralize a BD-FCM's customers' Eligible Securities Positions to an account as specified in section (e) below.

(e) *FICC and CME Rules.* FICC shall, consistent with section 19(b) of the Securities Exchange Act, 15 U.S.C. 78s(b), and CME shall, consistent with section 5c(c) of the Commodity Exchange Act, 7 U.S.C. 7a-2(c) and Part 40 of the Commission's Regulations, 17 CFR Part 40, amend their rulebooks (and shall comply with the relevant portions of such rulebooks), and the two organizations shall amend their proprietary

cross-margining agreement, as may be necessary to effect the customer cross-margining framework as described in CME and FICC's petition and the terms of this Order. This specifically includes addressing the following:

i. Cross-margining is available to Eligible Customer Positions only if both the eligible customer and its Eligible BD-FCM agree to participate;

ii. Positions of an eligible customer shall be eligible for cross-margining if and only if such positions are otherwise eligible positions under the proprietary cross-margining arrangement;

iii. Each BD-FCM shall grant to CME a security interest in the value of each cross-margining customer's Eligible Securities Positions and associated margin held in a cross-margining account at FICC;

iv. FICC shall credit margin received in connection with Eligible Securities Positions to a "securities account" and agree in its rules to treat such margin as "financial assets," as such terms are defined under NYUCC Article 8;

v. FICC rules will provide that any collateral received from a BD-FCM as XM Securities Customer Property and credited to a FICC cross-margining customer margin account will be used exclusively to settle and margin the Eligible Securities Positions of the BD-FCM and for no other purpose;

vi. FICC rules will provide that FICC shall not grant a security interest in either XM Securities Customer Property (subject in this case to the proviso that the BD-FCM can grant CME and FICC a lien to implement the cross-margining program) or Segregated Customer Margin;

vii. FICC rules will provide that it shall hold all XM Customer Margin in an account of FICC at either a bank that is insured by the Federal Deposit Insurance Corporation or at the FRBNY. Such account shall be:

1. Segregated from any other account of FICC and shall be used exclusively to hold XM Customer Margin, except that the account at the FRBNY may also hold Segregated Customer Margin.

2. In the case of a bank other than the FRBNY, subject to a written notice by the bank, provided to and retained by FICC, that the assets in the account are being held by the bank pursuant to the order of the Commission under section 4(c) of the Commodity Exchange Act and are being kept separate from and not commingled with any other accounts maintained by FICC or any other person at the bank.

3. In the case of FRBNY, subject to a written notice provided to and retained by FICC that the assets in the account are being held by the bank pursuant to SEC Rule 15c3-3 and the order of the Commission under section 4(c) of the Commodity Exchange Act and are being kept separate from and not commingled with any other accounts maintained by FICC or any other person at the bank.

4. Each such account shall also be subject to a written contract between FICC and the bank or FRBNY which provides that the assets in the account are subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or FRBNY or any person claiming through the bank or FRBNY.

viii. FICC rules will provide that, consistent with the requirement applied to registered derivatives clearing organizations under Commission Regulation 190.07(a), FICC would not interfere with the acceptance by a BD-FCM of transfers of XM

Securities Customer Property from a BD-FCM that is either required to transfer accounts pursuant to 17 CFR 1.17(a)(4) or from a BD-FCM that is a debtor as defined in 17 CFR 190.01 (in the latter case if the transfer has been approved by the Commission pursuant to Commission Regulation 190.07(a)(3)), in either case subject to FICC's contractual right to liquidate or transfer positions and ability adequately to manage risk.

(f) *Margin Requirements.* Each of FICC and CME shall calculate initial margin requirements for Eligible Customer Positions on a gross (*i.e.*, customer-by-customer) basis using a Commission reviewed methodology (in the case of CME) or a methodology reviewed by the Securities and Exchange Commission (in the case of FICC), and hold such initial margin collected from the Eligible BD-FCMs in a manner generally consistent with Commission Regulation 1.20(g), notwithstanding that FICC is not a permitted depository under Commission Regulations 1.20 and 1.49, provided that, with respect to FICC, the requirements with respect to acknowledgement letters set out in Commission Regulation 1.20(g)(4) shall be replaced with those set forth in paragraph (e)(vii) above.

(g) *BD-FCM Margin Collection.* Each Eligible BD-FCM shall collect from each of its cross-margining customers, at a minimum, the aggregate amount of initial margin required by each of FICC and CME in respect of the cross-margining customer's Eligible Customer Positions.

(h) *FICC's Regulatory Status.* FICC shall maintain its status as a covered clearing agency registered with the Securities and Exchange Commission.

(i) *FICC Article 8 Securities Accounts.*

1. FICC shall not establish any additional "securities accounts" (beyond those for Segregated Customer Margin and XM Customer Margin) for purposes of the NYUCC without obtaining the consent of the Commission and the Securities and Exchange Commission.

2. The Commission delegates its authority under paragraph i(1) of this Order to the Director of the Division of Clearing and Risk in consultation with the General Counsel.

(j) *FICC Reporting of Financial Assets Held and Owed.* FICC shall, on every business day, report to the staff of the Division of Clearing and Risk and to the Securities and Exchange Commission, the amount of cash and, by CUSIP, securities that are:

1. Held in its accounts for Segregated Customer Margin or XM Customer Margin at (i) FRBNY and (ii) any bank insured by the Federal Deposit Insurance Corporation in which such margin is deposited or custodied; and

2. Owed to BD-FCMs on behalf of their cross-margining customers or securities customers.

(k) *General Compliance.* CME and each Eligible BD-FCM must continue to comply with all other applicable requirements under the CEA and Commission regulations.

This Order is based upon the analysis set forth above and the information contained in the petition. Any material change in law or circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption contained herein is appropriate and/or consistent with the public interest and

purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities described herein should be subject to the Commission's full jurisdiction, and to condition, suspend, terminate, or otherwise modify or restrict the exemption granted in this Order, as appropriate, upon its own motion.

Issued in Washington, D.C., on April 15, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.