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February 21, 2025

By Electronic Transmission

Mark T. Uyeda, Acting Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Request to Extend the Implementation Dates for File No. S7-23-22: 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

Dear Acting Chairman Uyeda:

The Investment Company Institute [1] is writing to request that the Securities and Exchange Commission (the "Commission") extend the compliance dates under the Treasury Clearing Rule[2] by a minimum of 24 months (i.e., an extension to at least June 30, 2028) for the Treasury Repo Clearing Mandate (defined below).[3]

We support the requests for extending the various compliance dates in the Treasury Clearing Rule as set forth in the SIFMA, *et. al* letter, filed with the Commission on January 24, 2025 ("SIFMA Letter"),[4] and the recommendations included therewith, which are incorporated herein by reference. In addition, however, we believe the implementation challenges for funds registered under the

[1] The Investment Company Institute ("ICI") is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds ("ETFs"), closed-end funds, and unit investment trusts ("UITs") in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $38.2 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.6 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts ("CITs") and retail separately managed accounts ("SMAs"). ICI has offices in Washington DC, Brussels, and London.

[2] *See* 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, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 Fed. Reg. 2714 (Jan. 16, 2024) (the "Treasury Clearing Rule" and the "Treasury Clearing Rule Adopting Release").

[3] This is consistent with ICI's recommendation that the Commission propose a multi-year, staged compliance schedule and that, at a minimum, compliance with a Treasury Repo Clearing Mandate be no earlier than three years after the Commission and a covered clearing agency have finalized any necessary rules or amendments. *See* Letter from Sarah A. Bessin, Deputy General Counsel, and Nhan Nguyen, Assistant General Counsel, ICI to Vanessa Countryman, Secretary, SEC (Dec. 23, 2022) *available at* https://www.sec.gov/comments/s7-23-22/s72322-20153417-320838.pdf ("ICI Letter").

[4] See letter from SIFMA, *et. al* to Mark T. Uyeda, Acting Chairman, SEC, *File No. S7-23-22: Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities* (Jan. 24, 2025).

Investment Company Act of 1940, as amended (the "1940 Act") ("registered funds") outlined in the following sections below necessitate a further extension to the June 30, 2026 compliance date for the Treasury Repo Clearing Mandate.

We believe that the current implementation timelines do not provide adequate time for all market participants, including registered funds, to transition into compliance with the Treasury Clearing Rule. Extending the compliance dates will better provide registered funds and other market participants with the time needed to resolve the many issues and steps required to successfully implement the Treasury Clearing Rule and allow the Commission and the members of the staff of the relevant divisions of the Commission time to consider and address several critical issues requiring resolution.[5] Ensuring a successful implementation is all the more critical given that the Treasury Clearing Rule directly impacts the liquidity of the market for U.S. Treasuries and, by extension, the funding of the U.S. government.

Background

Under the Treasury Clearing Rule, as of the relevant compliance date, a "covered clearing agency" ("CCA") that provides central counterparty services for transactions in U.S. Treasury securities must "require any direct participant of such [CCA to] submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty."[6] As a result, many registered funds and other entities active in the Treasury Repo market will be required to submit for clearance and settlement a significantly increased volume of their Treasury Repo transactions to a CCA. The Treasury Clearing Rule also adds numerous related requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are applicable to a CCA with respect to eligible secondary market transactions, each described in more detail in the Treasury Clearing Rule Adopting Release.

The Treasury Clearing Rule Adopting Release sets forth the following staged compliance dates for the new requirements:

- March 31, 2025: Each CCA must make certain required rule filings, which must be effective as of this date. This includes CCA rules responding to the amendments to Exchange Act Rule 17ad-22(e)(6)(i) (regarding separation of direct participant and customer margin), Rule 17ad-22(e)(18)(iv)(c) (regarding CCA access), and Rule 15c3-3

[5] The ICI Letter, which is incorporated herein by reference, identified many legal and operational issues that could be raised by a Treasury Repo Clearing Mandate and warned that it was premature for the Commission to mandate clearing of registered funds' Treasury repo and reverse repo transactions because the clearing framework was not sufficiently developed to support such a mandate.

[6] 17 C.F.R. § 240.17ad-22(e)(18)(iv)(A) (2024). In relevant part, the Treasury Clearing Rule defines the term "eligible secondary market transaction" as: (1) "a secondary market transaction in U.S. Treasury securities of a type accepted for clearing by" a CCA for U.S. Treasury Securities that is "a repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant" (with certain exclusions) ("Treasury Repo" and the "Treasury Repo Clearing Mandate"); and (2) "a secondary market transaction in U.S. Treasury securities of a type accepted for clearing by a registered covered clearing agency" in which one of the parties is a "direct participant of the covered clearing agency [that] brings together multiple buyers and sellers using a trading facility … and is a counterparty to both the buyer and seller in two separate transactions" ("Cash Transactions" and the "Cash Clearing Mandate"). 17 C.F.R. § 240.17ad-22(a).

(regarding margin required and on deposit with a CCA to be included as a debit in the broker-dealer reserve formula).

- December 31, 2025: All transactions within the scope of the Cash Clearing Mandate must be cleared through a CCA.

- June 30, 2026: All transactions within the scope of the Treasury Repo Clearing Mandate must be cleared through a CCA.

ICI has been working intensively with our members to implement the Treasury Clearing Rule. We lead a working group consisting of nearly 90 representatives from our member firms, which meets at least monthly to discuss implementation issues impacting buy-side participants in the Treasury market, including operational and compliance issues arising under the 1940 Act. We also have discussed these implementation issues in one-on-one member calls and consulted with outside counsel on the implications of the Treasury Clearing Rule under the 1940 Act and other applicable requirements for registered funds. Many of our members who are active in the Treasury markets have also engaged directly with other market participants in workstreams involving legal, operational, accounting, and other issues related to implementation. In addition, last year we had a number of detailed discussions with the staff of the Division of Investment Management, the Division of Trading and Markets, and the Chair's Office on the challenges that the Treasury Repo Clearing Mandate poses for registered funds. These challenges are magnified by the fact that currently, the only CCA for U.S. Treasury securities is the Fixed Income Clearing Corporation ("FICC"), although other market participants are currently looking to become a CCA. As a result of the work and engagement of ICI and its members on these issues over the past year, it has become clear that additional time for compliance with the Treasury Repo Clearing Mandate and other aspects of the Treasury Clearing Rule will be necessary.

Time Is Needed to Address Margin Issues Associated with Registered Funds' Treasury Repo Transactions

Additional time is necessary for registered funds and their counterparties to assess the relative benefits and tradeoffs of the FICC (and, potentially, other CCA) access models for Treasury Repo clearing, and for sponsoring members to negotiate the contractual terms required to enable a registered fund to deliver its assets as margin to FICC or another CCA while still ensuring its Treasury Repo transactions are "collateralized fully" under Rule 5b-3 under the 1940 Act.

Under the current and longstanding bilateral Treasury Repo transaction framework, a registered fund purchasing securities in a Treasury Repo transaction (e.g., acting as a cash lender) generally will require its counterparty to deliver to the registered fund securities with a value of 102% of the cash purchase price (which is in substance the equivalent of collateral on a secured loan that is overcollateralized at 102% of principal) (referred to as the "2% overcollateralization amount"). This 2% overcollateralization amount requirement allows for the potential decrease in market value of the purchased securities during the duration of the transaction or at time of liquidation in the case of a counterparty default without impacting the registered fund's ability to comply with the collateral value requirements set forth in Rule 5b-3. Our current expectation is that the 2% overcollateralization

amount requirement will continue following the compliance date for the Treasury Repo Clearing Mandate.

This 2% overcollateralization amount requirement must be considered in connection with other margin requirements that apply to cleared transactions but do not exist for uncleared repo transactions. FICC, the only current CCA for Treasury Repo clearing, requires each participant in a clearing Treasury Repo transaction to post margin to FICC to guard against the possibility of either the purchaser of securities or the seller not performing in connection with the unwind of the transaction (unconnected to increases or decreases in the market value of the purchased securities). We expect this to continue following the compliance date for the Treasury Repo Clearing, although some of the details may change. Currently, for voluntarily cleared Treasury Repo transactions, a registered fund's counterparty, in its capacity as the registered fund's sponsoring member, typically satisfies both its own margin obligations as well as those of the registered fund in connection with a registered fund's cleared Treasury Repo transactions. This is because many of the benefits of clearing such transactions accrue to the sponsoring member and clearing such transactions often occurs at times that are beneficial to such sponsoring member. Once clearing all such transactions is mandated, however, the economics for sponsoring members may no longer support this arrangement and the margin obligations may outweigh any benefits that clearing provides to the sponsoring member.

While the market is still developing, counterparties and other sponsoring members may, as a result, not be willing to continue to both deliver the 2% overcollateralization amount to the registered fund and also satisfy the FICC margin posting requirements applicable to a registered fund's transactions for both itself and the registered fund. Market participants, and specifically registered funds, in discussion with the Commission, are still considering the optimal way to address both the business realities and compliance obligations of the 1940 Act. As discussed in more detail below, potential solutions are being discussed, including the expanded use of triparty repo through potential new CCA access models; however, neither the CCA access models associated with such solutions nor the CCA rules related to such new access models have been finalized, and even once such access models are available, documentation associated with the same will need to be approved at an industry level and then negotiated by registered funds and their counterparties.

Even without the market changes contemplated by the above, there are other issues associated with registered fund-posted margin under the Treasury Clearing Rule. As was required under the Treasury Clearing Rule, FICC has adopted rule amendments providing a mechanism for a sponsoring member to deposit "Segregated Customer Margin" with FICC on behalf of its customers (including its registered fund customers) in a "Segregated Customer Margin Custody Account." We understand these FICC rule changes are intended to address the conditions of the Commission's time-limited no-action position that provides relief from the 1940 Act custody requirements applicable to registered funds' posting of margin, which was provided in the Treasury Clearing Rule Adopting Release ("FICC No-Action Relief"), among other applicable requirements.[7] The FICC No-Action Relief requires that the contract between a registered fund and its sponsoring member include specific terms that do not exist in current (bespoke) sponsoring member agreements negotiated between a registered fund and sponsoring members; nor do all such

[7] Treasury Clearing Rule Adopting Release at 2729.

terms currently exist in the new industry standard documents published by SIFMA for use with done-with Treasury Repo transactions.

As a result, to the extent that a registered fund determines to post its own margin to FICC in accordance with the FICC No-Action Relief, the registered fund and each of its counterparties will need to negotiate the related contractual terms so that the registered fund maintains compliance with the 1940 Act and the terms also are agreeable to that individual counterparty, or the industry will need to develop new standardized terms, and then registered funds and their counterparties will need to implement those terms, each of which will take time (even once the other margin issues are addressed). Negotiations associated with clearing member documentation alone (even if standardized terms to address the above can be reached by the industry) can take months or even a year or longer. When the negotiation time is added to the time needed to sort out the margin issues (and to be onboarded, set up operational connections, etc.), it seems clear that the June 2026 compliance date of the Treasury Repo Clearing Mandate is already in jeopardy.

As a result, we believe that without more time registered funds will not be able to utilize FICC's Segregated Customer Margin framework to post margin to FICC in accordance with the FICC No-Action Relief, or potentially to transact in Treasury Repo at all. Not having the ability to post margin to FICC could result in registered funds having to pay financing costs to their counterparties and sponsoring members in order to induce them to continue satisfying FICC's margin posting requirements relating to the registered fund's cleared Treasury Repo transactions or make the terms uneconomical to the sponsoring members. This could disincentivize registered funds from trading in Treasury Repo transactions as cash lenders, as the expense paid could exceed or decrease the yield or return that a registered fund may achieve (i.e., negatively impacting investors' returns). Further, this could incentivize registered funds to seek alternative types of cash investments, which could reduce liquidity in the Treasury Repo market.

Based on the above, we believe that additional time is necessary for registered funds and their counterparties to negotiate the required contractual terms, and to perform the significant additional onboarding and operational work, that would enable registered funds to post margin through their sponsoring member counterparties to a CCA pursuant to the FICC No-Action Relief and FICC's Segregated Customer Margin framework.

Time Is Needed for Review of Potential New FICC Risk Management Framework

A CCA that provides Treasury clearing services is generally subject to requirements under Rule 17ad-22 under the Exchange Act that the CCA cover its credit exposures to its participants by establishing a risk-based margin system (among other things). We understand that FICC is currently seeking to establish new access models that may provide a means other than FICC's current margin framework to manage the risks posed by registered funds that participate in Treasury Repo transactions cleared through FICC. This alternative framework, which would be achieved via an enhancement to FICC's current access model offerings, would avoid applicable registered funds and their counterparties having to satisfy the FICC Clearing Fund margin posting requirements as described above, such that registered funds' counterparties could potentially offer better commercial terms to registered funds. FICC has not yet submitted the related proposed changes to its rulebook to the Commission. As a result of this potential new FICC framework, certain registered funds may not need to participate in Treasury Repo transactions pursuant to the FICC No-Action Relief and FICC's

Segregated Customer Margin framework. This potential new FICC framework could allow certain registered funds to avoid the need to negotiate the required contractual terms that would enable registered funds to post margin through their sponsoring member counterparties to FICC pursuant to the FICC No-Action Relief and FICC's Segregated Customer Margin framework (although different documentation may be required for the potential new FICC framework). Further, FICC's alternative access model framework could allow registered funds to achieve relatively more efficient transactions because no margin will be required to be posted to FICC and it could greatly simplify registered funds' process for coming into compliance with the Treasury Repo Clearing Mandate. However, registered funds and the staff of the Commission's Division of Investment Management will need to consider whether any such new framework is consistent with the requirements of Rule 5b-3 under the 1940 Act, among other matters.

As a result, we believe that more time is needed for FICC to develop this proposal, for the registered fund market and Commission staff to fully consider the implications of such proposal, including the Commission providing FICC with the necessary rule approvals, and for registered funds to put in place any necessary documentation with their counterparties and sponsoring members to implement the new framework if it is determined to be commercially viable and ultimately adopted.

Time Is Needed to Develop Done-Away Capabilities

As discussed in the SIFMA Letter and above, the industry is working to develop industry capabilities to transact in Treasury Repo on a done-away basis.[8] However, many challenges exist including payment and margin flows, operational connections, lack of middleware solutions and platforms, accounting treatment, and development of documentation, among others. All of these need to be addressed in a timely fashion, but doing so will be particularly challenging given materially different done-away models potentially being offered by FICC versus other expected market entrants as CCAs, and the absence of any commercial infrastructure currently for done-away trading in Treasury securities. These issues are exacerbated potentially for registered funds, which, in addition to the above, have to consider interactions and documentation associated with custodial and other regulatory requirements for registered funds.

On the documentation piece alone, standard documentation to facilitate the developments required under the Treasury Clearing Rule will need further customization once finalized to address registered fund issues. The standardized clearing agreement for the done-with model has been finalized, but standardized clearing agreements for the done-away model may require a significant additional period of time to develop. In addition to the clearing agreement, based on the experience for other cleared products such as swaps, the industry may also need to develop additional documents related to execution, including agreements between registered funds and the executing repo counterparties and/or between such counterparties and the clearing/sponsoring members. Once finalized, the done-away documents will need to be analyzed to consider any 1940 Act specific issues to be negotiated between the parties that may not be addressed in the documents. In addition, registered funds and other market participants will then need to take additional steps, including the development of legal opinions on bankruptcy and enforceability. As noted above, on average it takes a registered fund

[8] Under the done-with model, a market participant must execute Treasury Repo transactions with the same party that is a FICC netting member. The done-away model allows a market participant (including a registered fund) to elect to execute Treasury Repo transactions with one party and clear them with another party that is a FICC netting member.

several months (and potentially longer) to negotiate the bespoke sponsoring member documentation necessary to participate in the FICC "sponsored service." While market participants may agree to the use of the SIFMA template standard documentation for both the done-with and done-away models, the done-away agreements likely will contain complex issues that still will need to be heavily negotiated to ensure that the transactions reasonably comply with applicable 1940 Act requirements. For example, as noted above, even the current done-with documents still require certain contractual terms to be negotiated to ensure that a registered fund is in compliance with the custody requirements under Section 17(f) of the 1940 Act and the related conditions to the FICC No-Action Relief.

In short, we do not believe the current implementation timeline provides adequate time for registered funds to resolve the complex issues associated with done-away trading, let alone for registered funds and their counterparties to complete the operational and follow-on work that would be needed to make done-away trading for Treasury securities a marketplace reality.

Time Is Needed to Allow for Other CCAs to Enter the Market

As noted above, FICC is the only CCA for U.S. Treasury securities. A second potential CCA, CME Securities Clearing, Inc., submitted its application to be considered by the Commission, and the Commission published the application for review and public comment on January 15, 2025.[9] Others have expressed interest in entering the market as well with their own solutions to the Treasury Repo Clearing Mandate.[10] Time will be needed for the industry as a whole to work through these offerings and for registered funds to review and work through any specific 1940 Act regulatory issues and business issues presented by other CCA solutions for Treasury Repo clearing. In addition, to the extent that other clearing houses determine to apply to register as a CCA, extending the implementation deadlines would facilitate their application and allow applicants to develop necessary systems and processes and test them in advance. Facilitating entry of other CCAs into the market would provide the asset management industry with a broader choice of CCAs and diversify participants' clearing house exposures. As a result, we believe that additional time is warranted before the Treasury Repo Clearing Mandate takes effect to allow these other clearing houses the opportunity to apply to register as CCAs, for the industry, including the registered fund industry, to provide public comment on such applications, and for each CCA to build and test its systems.

More Time Is Needed to Address Other Requirements

In addition, to the extent that they fall within the scope of the Cash Clearing Mandate, it would be desirable to have additional time for registered funds and other buy-side participants that do not currently have a means to access cash clearing to develop the operational systems to comply with the Cash Clearing Mandate. If a registered fund or other buy-side participant is unable to develop the operational systems needed to access clearing of cash Treasury securities in line with the Cash Clearing Mandate, this would cut off certain counterparties from a registered fund's menu of sell

[9] CME Securities Clearing, Inc. – Form CA-1 Application and Exhibits, Exchange Act Release No. 34-102200; File No. 600-44 (Jan. 15, 2025).

[10] *See, e.g.*, *ICE Clear Credit U.S. Treasury Clearing Services*, https://www.ice.com/clear-credit/us-treasury-clearing (last visited February 12, 2025) (stating that ICE Clear Credit "expects to provide a robust and capital efficient clearing solution, which will bring competition to the U.S. Treasury (UST) cash and repo markets in compliance with the recently published SEC rules").

side counterparties. Market participants will need time to address these changes. As a result, we reiterate SIFMA's request that the Commission extend the compliance date for transactions that fall within the scope of the Cash Clearing Mandate for at least 12 months.

Further, we also reiterate SIFMA's request that the Commission extend the March 31, 2025 compliance date for at least 12 months to allow other clearing houses the opportunity to apply to register as a CCA.

Conclusion

In light of the foregoing, we believe that the current implementation timeline will not afford enough time for the complex issues the market is working through to be resolved in a timely manner to ensure the successful implementation of the Treasury Clearing Rule. As we note above, if registered funds cannot fully replicate the current level of Treasury Repo trading seamlessly when the Treasury Repo Clearing Mandate goes live, liquidity in the Treasury markets will suffer, potentially impacting the ability of the U.S. government market to fund its obligations. Therefore, we respectfully request that the Commission extend the implementation timeline by at least 24 months for transactions that fall within the scope of the Treasury Repo Clearing Mandate and extend the other compliance dates as proposed herein.

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We would be happy to discuss our request in more detail and provide more information. If you have any questions, or if we can be of assistance in any way, please contact us at eric.pan@ici.org or paul.cellupica@ici.org.

Sincerely,

/s/ Eric J. Pan

President & CEO

/s/ Paul Cellupica

General Counsel

cc: The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
David H. Saltiel, Acting Director, Division of Trading and Markets
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