

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lyndsay Carlson with the Part 141 Modernization Initiative Team, Office of Safety Standards, General Aviation and Commercial Division, Training and Certification Group (AFS–810), Federal Aviation Administration; telephone (202) 267–1100; email 9-AFS-Modernization-Part141-Comments@faa.gov.

SUPPLEMENTARY INFORMATION: Title 14 Code of Federal Regulations (14 CFR) part 141 (Pilot Schools) prescribes the requirements for issuing pilot school air agency certificates, provisional pilot school air agency certificates, and associated ratings, and the general operating rules applicable to a holder of a certificate or rating issued under part 141. Through a part 141 pilot school, a student may obtain equivalent levels of aeronautical experience in fewer hours than required by 14 CFR part 61 (Certification: Pilots, Flight Instructors, and Ground Instructors). Part 141 schools are required to have FAA certification and supplementary oversight. Specifically, part 141 includes curricula standards for training and procedures to ensure a training course used by a school is adequate, appropriate, and administered by qualified personnel.

The process of licensing or certification of pilot schools in the United States is approaching 100 years of existence. Although the FAA has revised certain regulatory requirements pertaining to pilot schools during this time, part 141 still has many

foundational ties to Civil Air Regulations (CAR) part 50, which was implemented in the 1940s. Regulations for pilot schools are typically promulgated to improve safety, reduce aircraft accidents, and embrace changes such as advances in technology and the need for data collection and analysis. Modernizing part 141 is essential for addressing challenges pertaining to certification, certification management, examining authority, and evolving technology and learning methods. The objective of modernizing part 141 is to increase safety and create a foundation for a more structured and robust training environment to aid in the reduction of general aviation fatal accidents.

Therefore, part 141 must be analyzed to determine how it can evolve with the changing aviation industry. Over the course of the project, the FAA is seeking engagement from the flight training industry through participation in public meetings. Collaboration is encouraged to stimulate the innovation of a modern part 141 that will serve the needs of current and future pilot schools, as well as provide a robust and safe training environment that instills the necessary knowledge, skills, critical thinking, and aeronautical decision making in its pilots to create a safer national airspace system.

Public Meeting

Information concerning the upcoming public meeting, including topics and previous meetings will be posted at the following website: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs800/afs810/modernization_of_part-141_initiative.

The meeting is open to the public for virtual or in-person attendance on a first-come, first-served basis, as there is limited space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section and provide the following information: full legal name and name of your industry association or applicable affiliation. If you wish to attend the meeting in-person, you must register before the scheduled deadline in the **DATES** section. We will not have on-site registration. The FAA will email registrants the meeting access information in a timely manner prior to the start of the meeting.

DOT is committed to providing equal access to the meeting for all participants. If you require an alternative version of files provided or alternative accommodations, such as sign language, interpretation, or other ancillary aids, please contact the Part 141 Modernization Initiative Team, at 9-

AFS-Modernization-Part141-Comments@faa.gov no later than January 22, 2026.

Comments Encouraged

The FAA encourages the public to submit comments to www.regulations.gov, Docket No.: FAA-2024-2531. Comments that the FAA would find helpful include validated data and reports, unique discussion topics or scenarios, and/or feedback specific to modernizing part 141. The public is encouraged to provide feedback regarding innovative ideas; methods; solutions; products; and/or services that have, or could have, a significant impact on pilot school training. We encourage you to submit comments during these public meetings or electronically to Docket No.: FAA-2024-2531. If you submit your comments electronically, it is not necessary to also submit a hard copy.

The submission of public comments is encouraged but not required for meeting participation. The FAA will consider public feedback to determine the need for future considerations to the CFR. The FAA will review comments that are post-marked, or submitted electronically, on or before the comment closing date of January 29, 2026. Comments made after the closing date may be reviewed as time and resources permit.

Authority: 14 CFR 11.53.

Issued in Washington, DC, on December 15, 2025.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Proposal To Provide 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: Proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is proposing to issue an order pursuant to the Commodity Exchange Act (“CEA”) that would

provide exemptive relief from the CEA and Commission regulations related to segregation and protection of futures customer funds. The order would permit 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: Comments must be received by January 16, 2026.

ADDRESSES: You may submit comments by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this proposed order and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the

¹ 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter 1 (2025) and are accessible on the Commission’s website at <https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm>.

Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT:

Eileen A. Donovan, Deputy Director, 202-418-5096, edonovan@cftc.gov, Robert B. Wasserman, Deputy Director, 202-418-5092, rwasserman@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.

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I. Introduction

A. The Petition

CME and FICC (“Petitioners”) have petitioned the Commission to grant an exemptive order pursuant to section 4(c) of the CEA. The exemptive order would provide relief necessary for Petitioners to make their existing cross-margining arrangement available to certain customers, as described below.²

The Commission is proposing to issue an order granting Petitioners the relief sought, subject to certain conditions discussed below (the “Proposed Order”).

² 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](https://www.cftc.gov/sites/default/files/filings/documents/2025/CME_FICC_XM_4c_Request_(Final_5.14.2025).pdf).

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”).³ 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 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.⁴

Currently, only one central counterparty, FICC, provides centralized clearing services for cash market transactions in U.S. Treasury securities, and for repurchase and reverse purchase transactions involving U.S. Treasury securities. FICC is registered as a clearing agency with the SEC under the Securities Exchange Act of 1934 (“Exchange Act”)⁵ and is subject to regulation under section 17A of the Exchange Act, SEC Rule 17ad-22 (as a “covered clearing agency”),⁶ and other SEC rules. FICC is designated by the Financial Stability Oversight Council (“FSOC”) as a systemically important financial market utility (“SIFMU”).⁷

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 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.⁸

³ 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).

⁴ *Id.*

⁵ 15 U.S.C. 78a *et seq.*

⁶ 17 CFR 240.17ad-22.

⁷ 12 U.S.C. 5463.

⁸ Efficiencies gained through the ability to net offsetting risks within cross-margining arrangements may be affected by existing rules and regulations for

Petitioners have an existing cross-margining arrangement.⁹ 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 derivatives clearing organization (“DCO”) with the Commission and is subject to regulation under the Commodity Exchange Act (“CEA”)¹⁰ 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). CME is also designated by the FSOC as a SIFMU.

The current 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 cross-margining arrangement permits a 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 arrangement has been approved by the Commission and the SEC.¹¹ Under the 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

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.

⁹ 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.

¹⁰ 7 U.S.C. 1 *et seq.*

¹¹ 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).

amount calculated using its independent margin model reduced by that margin savings percentage.

This current cross-margining arrangement is only available for the proprietary positions of clearing members, and not for the positions of customers who clear through 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.¹² 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”¹³

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

¹² 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.

¹³ 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>.

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.¹⁴ The contemplated cross-margining arrangement 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. In the contemplated cross-margining arrangement, futures customer funds would be held by FICC, a clearing organization that is not a DCO, and is not a permitted depository for futures customer funds.

Petitioners have 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 customer cross-margining arrangement available to certain customers. Specifically, Petitioners seek exemptive relief to:

- Permit BD-FCMs¹⁵ 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

¹⁴ 7 U.S.C. 6d.

¹⁵ 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).

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 here.¹⁶ 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.”¹⁷ 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.¹⁸

The Commission preliminarily believes that issuing the Proposed Order which grants the exemption sought by Petitioners is in the public interest and would promote responsible economic and financial innovation and fair competition. While not concluding section 4(c)(2) applies to the proposed

order, the Commission also preliminarily believes that the proposed order would meet the standards in section 4(c)(2) of the CEA. The discussion below describes why the Commission has reached this preliminary 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. 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 under the Proposed Order would allow a BD-FCM to commingle cross-margined securities positions and associated margin with cross-margined futures positions and associated margin. Permitting this commingling would allow for provision of risk offsets for

customer positions in futures and securities cleared at CME and FICC through BD-FCMs.

CME and FICC detail in their petition the structure of the arrangement they would implement under the Proposed Order and the way it is designed to protect customer funds. At a high level, a customer wishing to cross-margin its futures positions cleared at CME with its securities positions cleared at FICC would 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 would post funds to support cross-margined futures positions with CME and funds to support cross-margined securities positions with FICC. FICC would 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 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 would 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 Proposed Order would permit, subject to relevant terms and conditions, the following structure:

1. The BD-FCM would 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 Proposed Order. This would apply to both required collateral and any excess collateral.

2. The cross-margining customer would 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 would 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”)¹⁹ 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.

¹⁶ 7 U.S.C. 6(c)(1).

¹⁷ House Conf. Report No. 102-978, 1992 U.S.C.C.A.N. 3179, 3213.

¹⁸ 7 U.S.C. 6(c)(2).

¹⁹ 15 U.S.C. 78aaa-78lll.

Bankruptcy Code in a liquidation of the BD-FCM.

3. FICC would 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 would 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 would hold all funds credited to the FICC XM Customer Margin Accounts either in: (a) the FICC FRBNY Segregated Account;²⁰ or (b) a FICC Segregated Bank Account, each of which would 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 would 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 19 above, margin

²⁰ 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 ("Treasury Securities Segregated 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 securities customer collateral 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 Proposed Order, FICC would (if permitted by the Federal Reserve to hold cash cross-margining customer collateral in the FRBNY Segregated Account) 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 the FRBNY account notice would be amended to specify that the cash in the FICC FRBNY Segregated Account is also held pursuant to the Proposed Order and the corresponding related SEC order. Otherwise, FICC will hold such cash cross-margining customer collateral in a Segregated Bank Account that would only hold cross-margining customer collateral and would be at a commercial bank.

for positions of the 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 would hold cross-margining customer margin ("XM Customer Margin") consistently with all requirements under Commission Regulations 1.20 and 1.49 as applicable to DCOs²¹ as well as with the requirements of Commission Regulations 39.15(b)(1) and (c) and 39.36(g).

6. FICC would amend its rules²² so that: (a) all assets credited to the FICC XM Customer Margin Accounts will be treated as "financial assets"²³ 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 19 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, and FICC will not establish any additional such securities accounts without obtaining the permission of both the CFTC and the SEC.

7. CME would 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 Bankruptcy²⁴

The cross-margining framework under the Proposed Order would seek to

²¹ Funds held in the FICC FRBNY Segregated Account will be held subject to the exception for FICC Treasury Securities Segregated Margin discussed in footnote 14 above.

²² 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 Proposed 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 Proposed Order can only become effective if FICC proposes, and the SEC approves, such amendments to the FICC rulebook.

²³ All quoted terms in this paragraph refer to such terms as defined in Article 8 of the New York Uniform Commercial Code ("NYUCC").

²⁴ As a technical matter, an insolvency of a broker-dealer (including a BD-FCM) that has

protect cross-margined customer funds in the event of the bankruptcy of a participating BD-FCM. Participating customers' funds would 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 preliminarily 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 Proposed Order, that commingled customer funds, including those 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.²⁵ As discussed above, and required by the Proposed 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 would record a cross-margining customer's positions in a FICC XM Customer Position Account, which would be an account of the BD-FCM that is established for the purpose of

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), 78ff-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."

²⁵ Commission Regulation 190.09(a)(1)(i)(A).

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 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.²⁶

For these reasons, the Commission preliminarily 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 part 190's definition of "account class," the securities positions and associated collateral held in a BD-FCM's futures account pursuant to this (presumptively Commission-approved) cross-margining program will be treated as being held in the futures account class.²⁷ 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.²⁸

Third, XM Securities Customer Property held at FICC would 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

²⁶ Also, as required by the Proposed Order, a BD-FCM would 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 would 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."

²⁷ Commission Regulation 190.01.

²⁸ Commission Regulation 190.09(a)(1)(i)(G).

date.²⁹ As described above, FICC would credit margin posted for cross-margining customers' positions to a FICC XM Customer Margin Account on its books and records. This account would hold exclusively margin for cross-margining customers, and (as noted above) would also serve as collateral for associated futures positions at CME. XM Customer Margin would also be segregated in terms of its custody. Lastly, the BD-FCM would 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 preliminarily concludes that XM Securities Customer Property would be appropriately considered 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

Property is allocated in bankruptcy to the customers of a bankrupt FCM based on account and customer class and based on net equity claims.³⁰ For the reasons discussed below, the Commission preliminarily 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 such customer's accounts immediately after the transfer, liquidation, or identification for delivery of the customer's positions and offset of the customer's obligations.³¹ Under the cross-margining framework permitted by the Proposed Order, the BD-FCM would be required to credit XM Securities Customer Property to a futures customer account within the meaning of Commission Regulation 1.3. Accordingly, the Commission preliminarily 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 such 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 CEA³² provides that, notwithstanding the Bankruptcy Code, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of the Bankruptcy Code, by rule or regulation, 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 such customer less any indebtedness of the customer to the debtor. The first step of that process, set out in Commission Regulation 190.08(b)(1), requires consideration of the sum of: the ledger balance; the open trade balance; and 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.

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.³³ 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.³⁴

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.³⁵ 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

²⁹ 7 U.S.C. 24(a)(5).

³⁰ Commission Regulation 190.08(b)(1)(ii).

³¹ Commission Regulation 190.08(b)(1)(iii).

³² Commission Regulation 190.01 (paragraph (2)(ii) of the definition of "account class").

contracts,³⁶ 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. The cross-margining customers' securities positions could also be viewed as part of the open trade balance because they would be securities positions held in a futures account pursuant to a Commission-approved cross-margining program. To the extent open securities transactions were 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 customers would have allowable net equity claims for XM Securities Customer Property and the Commission preliminarily concludes that they would receive adequate protection in bankruptcy.

3. FICC Would 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 intends to 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.³⁷ Pursuant to section (e)(viii) of the Proposed Order, FICC would be required to amend its rules to provide that, as required under Commission Regulation 190.07(a), FICC would not 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).

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, would 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.³⁸ The term "commodity broker" includes both FCMs and DCOs.³⁹ Subchapter IV, and the Commission's part 190 regulations implementing 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 would 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 Act⁴⁰ or subchapter III of chapter 7 of the Bankruptcy Code,⁴¹ both of which apply only to broker-dealers, and not to securities clearing agencies.

For the reasons discussed below, the Commission preliminarily concludes that cross-margining customers' margin held at FICC would nonetheless be protected and not 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 would be implemented using NYUCC⁴² Article 8, as applied to FICC's rulebook as it would be amended. Specifically, the Proposed Order would require FICC to take steps that the Commission preliminarily concludes would 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.⁴³

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 Proposed Order requires that FICC shall, consistent with section 19(b) of the Securities Exchange Act,⁴⁴ 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. Further, section (e)(iv) requires FICC to amend FICC's rules to provide that all assets credited to a FICC XM Customer Margin Account would be treated as "financial assets"⁴⁵ credited to a "securities account."⁴⁶

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.⁴⁷ 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 preliminarily

³⁶ 15 U.S.C. 78s(b).

³⁷ 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 preliminarily 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."

³⁸ The Commission preliminarily 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 proposed 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, cmt 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.").

³⁹ See NYUCC 8-501(b)(1) and (2).

⁴⁰ Commission Regulation 190.08(b)(1)(ii)(A)(1).

⁴¹ See Letter from Laura Klimpel, Managing Director, Head of Fixed Income and Financing Solutions, The Depository Trust & Clearing Corporation (Aug. 1, 2024) at 25, available at <https://www.sec.gov/comments/sr-ficc-2024-007/srficc2024007-500915-1465682.pdf>. Changes to FICC's rules must be approved by the SEC. See section 19(b) of the Securities Exchange Act, 15 U.S.C. 78s(b).

⁴² 11 U.S.C. 761 *et seq.*

⁴³ See 11 U.S.C. 101(6), 761(2).

⁴⁴ 15 U.S.C. 78aaa *et seq.*

⁴⁵ 11 U.S.C. 741 *et seq.*

⁴⁶ See generally NY CLS UCC, Art. 8. FICC is located in New York.

⁴⁷ See NYUCC 8-102(a)(5)(i) (definition of "clearing corporation"), 8-102(14)(i) (definition of "securities intermediary").

concludes 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 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, since FICC would be required by section (e)(vi) of the Proposed 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 preliminarily concludes 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.⁴⁸

⁴⁸ 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, 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 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 preliminarily concludes 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

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.⁴⁹ 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 and, as a result, the only entitlement holders that FICC would have would be Netting Members⁵⁰ acting on behalf of customers who posted XM Customer Margin in relation to the FICC XM Customer Margin Accounts or Treasury Securities Segregated Margin in relation to the account(s) holding Treasury Securities Segregated Margin.⁵¹ Section (i)(1) of the Proposed Order provides that FICC shall not establish any additional securities accounts without obtaining the consent of the Commission and the SEC. The Commission preliminarily concludes that, under NYUCC section 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, it would appear that if there were a shortfall in respect of a particular security or cash in either the FICC XM Customer Margin Accounts or the

be disturbed in a resolution under Title II of Dodd-Frank. 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.

⁴⁹ 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 preliminarily 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.

⁵⁰ "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.

⁵¹ Petition at 14.

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.⁵² This would include those particular 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 preliminarily believes that the cross-margining arrangement permitted by the Proposed Order does not present unacceptable risk to customers not participating in cross-margining. The Commission preliminarily believes that a variety of protections, described by Petitioners and detailed below, would mitigate the risk of a shortfall of available assets for distribution resulting from customers' participation in cross-margining.

The first protection is Petitioners' cross-margining margin calculation methodology. Under the cross-margining arrangement permitted by the Proposed Order, eligible positions of a participating customer would be identified and considered as a combined portfolio. Each of CME and FICC would use its own margin model to determine the amount of margin savings percentage resulting from combining the portfolio and then would jointly apply the more conservative result. Thus, under the framework, both CME and FICC would 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. The margin the BD-FCM would collect after cross-margining would at no time be less than what would be required by

⁵² 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.").

CME's margin methodology, because the margin requirement applied would be the more conservative of the requirement calculated by either FICC or CME's margin model. Thus, the risk that the BD-FCM would hold inadequate margin for cross-margining positions is no different in kind, and no greater, than the risk that the BD-FCM would hold inadequate margin for other types of positions.

Second, the Commission preliminarily believes 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 of the Commission's regulations regarding bankruptcy. 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 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 would 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 would minimize the risk FICC would pose to customers not participating in cross-margining.

Fourth, CME would have a security interest in the FICC customer property, and CME and FICC cross-guaranty to pay the other amounts owing 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 preliminarily believes 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. The part 190 regulations permit 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.⁵³

The Commission preliminarily 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 the Commission's part 190 regulations.⁵⁴ That framework would effectively subordinate the claims of cross-margining customers relative to other customers.⁵⁵ In light of the foregoing, the Commission preliminarily concludes that the risks posed to the BD-FCM futures customer account from the proposed cross-margining program are not materially greater in degree or kind than the risks posed by other futures positions and portfolio margining. Accordingly, under the Proposed Order, the special distribution framework would not be applied to the cross-margining framework thereunder, and BD-FCMs would be permitted to hold cross-margining customers' assets

⁵³ 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.").

⁵⁴ This is consistent with the approach set forth in the GMAC Recommendation, III.2, at p. 3.

⁵⁵ 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.

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 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 Proposed Order would require BD-FCMs to post to FICC, and FICC to hold, XM Customer Margin. The Commission preliminarily 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 Proposed Order. As a designated SIFMU and an SEC covered clearing agency,⁵⁶ 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 the CFTC's regulations to a systemically important DCO.⁵⁷ Furthermore, the Commission preliminarily 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).⁵⁸ Further, as required by section (e)(vii) of the Proposed Order, FICC would deposit cross-margining customer funds in accounts at the

⁵⁶ See Section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(A); SEC Rule 17Ab2-1.

⁵⁷ 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).

⁵⁸ See section III.A., *supra*, Commingling.

FRBNY, or at a commercial bank, with names that clearly identify the accounts as holding futures customer funds. Moreover, the Commission preliminarily believes that the design and safeguards of the customer cross-margining framework under the Proposed Order is intended, as described above,⁵⁹ will leverage both part 190 and commercial law, and 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 preliminarily 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 is preliminarily persuaded 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. Proposed Partial and Conditional Exemption From Section 4d of the CEA and Commission Regulations 1.20 and 1.49

In light of the foregoing, the Commission proposes to exempt 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 proposes to 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 proposes to permit 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.⁶⁰ As discussed above, the Commission preliminarily believes that CME and FICC would hold the commingled customer funds in a manner consistent with the customer protections intended by the CEA and Commission regulations. Customer assets would 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, would apply.

The Commission preliminarily believes the Proposed Order contains the terms necessary to ensure adequate protection for futures customer funds. The Proposed 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.⁶¹ The Proposed 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.⁶² The Proposed 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 property.⁶³ The Proposed Order also contains terms to ensure adequate margin is collected under the customer cross-margining program and to ensure adequate regulatory oversight.⁶⁴

The Commission preliminarily believes that the cross-margining framework under the Proposed Order would make it likely that customer funds will receive adequate protection 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 would 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 would 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 would be addressed. FICC would, consistent with the Proposed Order, take steps to ensure any assets credited to a FICC XM Customer Margin Account would 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 would not be used to satisfy the claims of FICC's creditors, except for margining or settling customer positions, and would not form part of FICC's estate. Accordingly, the Commission preliminarily believes cross-margining customer funds would be adequately protected in a FICC bankruptcy or Title II proceeding.

For the reasons discussed in section III.D above, the Commission also preliminarily believes 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 would 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 preliminarily does not believe the risks posed to the BD-FCM futures customer account from the cross-margining program under the Proposed Order are materially greater in degree or kind than the risks posed by other futures positions and portfolio margining. Thus, the Commission does not propose to impose via its order the special distribution framework in framework 1 of appendix B to the Commission's part 190 regulations.

The Commission also preliminarily believes, for the reasons discussed in

⁵⁹ See section III.B, *supra*, BD-FCM Bankruptcy Protection for Cross-Margining Participants.

⁶⁰ 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 Europe Limited of Contracts Traded on ICE Futures Europe, ICE Futures US, and ICE Endex (Mar. 26, 2015).

⁶¹ Proposed Order, sections (b), (d) and (e)(v).

⁶² Proposed Order, sections (c), (e)(iv), (e)(vii) and (e)(viii).

⁶³ Proposed Order, sections (e)(i)–(iii) and (e)(vi).

⁶⁴ Proposed Order, sections (f)–(k).

section IV above, that customers would not be harmed by allowing FICC to act as a depository for customer funds. As discussed above, FICC would 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 preliminarily believes 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 proposed customer cross-margining framework. Specifically, the Commissioner preliminarily accepts Petitioners’ assertion that each eligible customer would 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 proposed customer cross-margining framework would not unduly expose such customers to additional risk. Additionally, the customer cross-margining framework under the Proposed Order and the Proposed Order itself include the customer protection and risk management safeguards discussed above to ensure that the requested relief would 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 preliminarily concludes that, in light of the risk mitigants and customer protections discussed above, customer cross-margining under the Proposed Order would support the stability of the

broader financial system. Cross-margining would 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 would 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 preliminarily believes the Proposed Order would promote responsible economic and financial innovation and fair competition, and would be consistent with the public interest, as that term is used in section 4(c) of the CEA.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)⁶⁵ requires that agencies consider whether the proposed exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission believes that the proposed exemption will not have a significant economic impact on a substantial number of small entities.

The Proposed 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. 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.⁶⁶ The Commission has previously determined that DCOs, are not small entities for purposes of the RFA.⁶⁷ Further, the Commission has previously determined that registered FCMs are not small entities for the purpose of the RFA,⁶⁸ 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.⁶⁹ The Commission notes that FICC processed \$11.8 trillion on a single day, June 30, 2025,⁷⁰ and, as of December 31, 2024, held in excess of \$76 billion in post-haircut clearing fund contributions from its participants.⁷¹

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 exemption proposed 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 proposed 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.

Accordingly, the Commission does not expect the proposed exemption to have a significant impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether there is a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (“PRA”)⁷² are, among other things, 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

⁶⁵ 17 CFR 240.0-10(d).

⁶⁶ See 47 FR 18618, 18618–18621 (Apr. 30, 1982).

⁶⁷ See 66 FR 45604, 45609 (Aug. 29, 2001).

⁶⁸ See 47 FR 18618, 18619 (Apr. 30, 1982).

⁶⁹ See <https://www.dtcc.com/news/2025/july/02/ficc-successfully-processes>.

⁷⁰ See <https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Public-Quantitative-Disclosures---Q4-2024.pdf> at 8.

⁷¹ 44 U.S.C. 3501 et seq.

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 would not impose any new recordkeeping or information collection requirements, or other collections of information, on ten or more persons that require approval of the Office of Management and Budget.

C. Cost and Benefit Considerations

The Commission recognizes that the proposed order may impose costs. The Commission has endeavored to assess the expected costs and benefits of the proposed order in quantitative 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 proposed amendments in qualitative terms.

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission’s ability to quantify or qualitatively describe the costs and benefits of the proposed order; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission’s discussion.

1. Baseline

The Commission identifies and considers the benefits and costs of the proposed 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 would be impacted by the proposed amendments are discussed in more detail below.

2. Costs

The proposed exemption would conditionally exempt 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 would 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 design of the cross-margining program proposed by the Petitioners and are necessary to achieve the risk mitigants and customer protections that are the basis of that program.

The cross-margining program that would be permitted under the Proposed 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 adequate margin is deposited to cover extraordinary market events, one or more additional adjustments may be applied in calculating a customer’s required margin.⁷³

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.

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.

If such an event were to occur within the context of the cross-margining program that is the subject of the

Proposed 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 Proposed Order.

However, the likelihood of such losses is low if the risks are well managed as required in the proposed 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 proposed 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.

3. Benefits

The proposed 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. Individual market participants participating in cross-margining will benefit from the reduced margin costs for their overall portfolio. 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 proposed exemption will also benefit the broader financial system. By making Treasury security clearing less costly, the proposed 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 the potential for a single market participant’s failure to destabilize other market participants

⁷³ Customer Margin Rules Relating to Security Futures, 67 FR 53146, 53148 (Aug. 14, 2002).

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 proposed 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.⁷⁴ 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 proposed exemption will benefit the public and market participants while not adversely affecting protections. The proposed exemption would serve the public by encouraging the clearing of Treasury securities transactions, thus increasing 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.

The Commission does not believe that the exemption would adversely impact the security of market participants' assets. As discussed above, the conditions to the proposed order that would permit the proposed cross-margining framework 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 added for market participants by the Commission permitting FICC as a depository.

2. Efficiency, Competitiveness, and Financial Integrity

The Commission believes that the proposed exemption will benefit the efficiency, competitiveness, and financial integrity of the derivatives markets. The proposed exemption will make clearing more efficient by permitting cross-margining of Treasury futures with Treasury securities. Cross-margining enables CME and FICC to lower margin requirements to reflect the risk of the total portfolio instead of the separate futures and securities positions, increasing the competitiveness of their offering.

The proposed exemption also benefits financial integrity. The proposed exemption will support the implementation of the Treasury Clearing Requirement, a mandate implemented 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.

3. Price Discovery

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

4. Sound Risk Management Practices

The Commission believes that the proposed 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 represent the risks for futures customers' overall portfolios.

The Commission further notes that, notwithstanding the proposed exemption, cross-margining futures customers would 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.

VII. Request for Comment

The Commission requests comment on all aspects of the proposed exemption, including, without limitation, the Commission's determination that the proposed exemption is consistent with the public interest, and the Commission's consideration of the costs and benefits of the proposed exemption.

VIII. Proposed Order of Exemption

After considering the above factors, the Commission proposes to issue the following:

Proposed 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

⁷⁴ 7 U.S.C. 19(a).

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-Margin 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 BD-FCM pursuant to Item 15 of 17 CFR 240.15c3-3a.

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-Margin 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 DCO 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 existing 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 FICC Treasury securities 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 Segregated Customer Margin in the account is being held by the bank pursuant to the order of the Commission under section 4(c) of the Commodity Exchange Act and is 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 Segregated Customer Margin in the account is 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 is 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 Segregated Customer Margin in the account is 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, DC, on December 15, 2025, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Proposal To Provide Exemptive Relief To Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation—Commission Voting Summary

On this matter, Acting Chairman Pham voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2025-23150 Filed 12-16-25; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2025-0936]

RIN 1625-AA08

Special Local Regulation; Milwaukee River, Milwaukee, WI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to update special local regulations (SLR) for certain navigable waters of the Milwaukee River. The SLR update is needed to make the regulations more accurate and to continue to protect personnel, vessels, and the marine environment from potential hazards created by a boat race. This proposed rulemaking would delete an outdated SLR for the Milwaukee Open Water Swim and update the Milwaukee River Challenge to change the date from "1 day; the third Saturday of September," to "1 day; on or around early October." We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 16, 2026.

ADDRESSES: To submit comments and view available documents, go to the Federal Docket Management System at <https://www.regulations.gov> and search for USCG-2025-0936.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact LCDR Lynn Schrayshuen, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-378-0111, or email Lynn.M.Schrayshuen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

II. Background and Authority

On September 24, 2025, the Coast Guard met with the event sponsors for the Milwaukee River Challenge and confirmed that their event, which is in its 24th year, will occur annually on or around the beginning of October due to reduced conflict with recreational and commercial vessels during that timeframe. The Captain of the Port Sector Lake Michigan (COTP) is proposing to update the Special Local Regulations in Table 1 to 33 CFR 100.903 for recurring marine events in the COTP Zone to reflect this change and to eliminate outdated regulations. The COTP is proposing these updates under the authority in 46 U.S.C. 70041 and 33 CFR 1.05-1, as they are needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area. The regulatory text we are proposing appears at the end of this document.