October 6, 2025

Ms. Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: ***SEC "Notice of Filing of an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934" [Release No. 34-103727; File No. 600-45]***

Dear Ms. Countryman:

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG")[1], the Securities Industry and Financial Markets Association ("SIFMA")[2] and the Investment Company Institute ("ICI"[3] and collectively, the "Associations") appreciate the opportunity to provide comments to the Securities and Exchange Commission ("SEC") in response to the above-referenced application (the "Application") from ICE Clear Credit LLC ("ICC").[4] The Associations have been active in commenting on the various aspects

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds, such as hedge funds and private equity funds.

[2] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit http://www.sifma.org.

[3] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $41.5 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[4] Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934 (Aug. 18, 2025), available here.

of the initiative to enhance the overall resilience of the U.S. Treasury securities market and wish to continue their engagement with the SEC and market participants to forge the best path forward for the industry. The addition of new covered clearing agencies ("CCAs") will facilitate access for a broader range of participants and trades and should help address the requirement that direct participants of CCAs submit their eligible secondary market transactions in U.S. Treasury securities for clearing and settlement.[5]

While the Associations strongly support the entry of new CCAs and believe the addition of ICC as a CCA will provide market access for more participants, they have certain concerns with the Application and believe that key issues in the rules proposed thereunder (the "Proposed Rules") should be addressed. When it is suggested that the "Proposed Rules" incorporate or change certain terms, it is intended that these changes be incorporated into the next iteration of the rules submitted in the Application. Terms used but not defined herein shall have the meaning given to such terms in the Proposed Rules.

Executive Summary

In many instances, the gaps or areas requiring clarification that the Associations flag below are due to the fact that, as expressed to the Associations in discussions with ICC, the Proposed Rules are still under development with respect to repurchase transactions (as opposed to cash trades).

While it is understood that this is an evolving space, the Associations strongly believe that the issues addressed in this letter are critical for risk, regulatory and operational management and do need to be more thoroughly considered before clearing through the ICC service can begin. Broadly, the key areas of concern include treatment of and calculation of margin, rights of Non-Participant Parties ("NPPs") in a structure where they are not ICC members and have no privity of contract, and more clarity on the rights granted to NPPs in the event of a Treasury Participant ("Participant") default or failure.

The Associations note that they reserve the right to provide further comments as the Proposed Rules continue to be developed by ICC, and that they encourage ICC to continue its engagement with the Associations as ICC builds out its offering.

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[5] 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, Release No. 34-99149, 89 FR 2714 (December 13, 2023) (available here) (the "Final Rule").

Discussion

I. Margin

a. *The Proposed Rules should implement a collateral-in-lieu structure*

The Associations strongly support the implementation of a collateral-in-lieu model similar to the one proposed by Fixed Income Clearing Corporation ("FICC").[6] This type of structure would leverage the haircut typically posted by Participants to registered money market fund NPPs and other cash investors in tri-party arrangements via a lien in favor of ICC that is applied instead of a guaranty of the NPP's performance and instead of an NPP's posting of margin directly to ICC. This would allow compliance by registered fund NPPs with the collateralization requirements they are subject to under the Investment Company Act of 1940, as amended (the "1940 Act"), as applicable, and would solve for the risk that Participants would be "double-margining" when they post initial margin for the trades on behalf of NPPs in addition to satisfying the over-collateralization requirement for the relevant NPP.

While ICC has indicated to the Associations that the ICC is in favor of and plan to implement such a structure, this has not been incorporated into the Proposed Rules (in relation to the Gross IM Accounts) and the Associations encourage doing so to provide a clearer framework for market participants.

b. *The Proposed Rules should have clearer account structure provisions*

It will be critical for market participants to understand where Pledged Items will be held, how any third-party custodian or clearing bank will play a role in holding such Pledged Items, and how such Pledged Items will be treated in the event of a Participant default. Details on the account structure are also necessary to determine whether ICC acts as a securities intermediary, and how perfection of security interests over such accounts will take place. These details are not currently addressed in the Proposed Rules and is critical to ensure that security interests are set up appropriately and minimal disruption in the event of a Participant default. The Associations note that ICC has conducted an accounting study addressing many of these points[7]; however, there are several points in this study that are not reflected in the Proposed Rules at this time.

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[6] Filing available here.
[7] The following document was provided to the Associations: Accounting Considerations for Participants of ICE Clear Credit U.S. Treasury Security Clearing Services, Version 1, February 26, 2025.

The Associations cannot comment on account structure in the Proposed Rules at this time because sufficient detail has not been provided, but they welcome the opportunity to provide feedback to ICC on these points, including in particular on the structure that SEC-regulated investment company NPPs will require.

c. ***The Proposed Rules should clarify that any security interest granted to ICC in Pledged Items does not conflict with the requirement that NPPs that are registered funds must have a fallback interest in such securities***

This request is being made by the Associations in order to ensure that an NPP that is a registered fund has a security interest in the collateral as required under Rule 5b-3 under the 1940 Act. The Associations note that "applicable law" is referenced in the granting provisions of the Proposed Rules, but it is not made sufficiently clear that this includes the 1940 Act provisions (as "applicable law" does not appear to be defined).

In addition, the Associations recommend that the Proposed Rules structure the grant of the security interest to ICC as a "springing" security interest, similar to the structure of the security interest granted under the Master Repurchase Agreement. This approach has the benefit of only applying the security interest, and avoiding the complications associated with the regulatory overlay of doing so, in the event that a repurchase agreement is characterized as a loan.

d. ***More clarity is required in the explanation of how Variation Payment requirements are calculated by ICC, with clarification that the marking-to-market is not with respect to Open Positions (that is, the repurchase trade) but rather with respect to the Pledged Items***

The Proposed Rules, and in particular Rule 404(a)(i), characterize the Variation Payment Requirement as the "change in value of each Open Position … determined by [ICC] by the comparison of the most recent Mark-to-Market Price for the relevant Continuing Open Position to the Mark-to-Market Price as of the preceding ICE Business Day …". Although in discussions, ICC has indicated that it intends to follow market practice, the approach in Rule 404(a)(i) does not appear to do so with respect to the tri-party repurchase agreement space, where collateral is transferred to account for changes in the value of posted collateral rather than the trade. The methodology proposed in Rule 404(a)(i) would pose tremendous costs to lenders in the event of a spike in rates, which would be contrary to the goals of the Final Rule.

e. ***The Associations urge ICC to consider cross-margining models***

The Proposed Rules as currently drafted do not appear to contain optional cross-margining provisions either across product types or across clearing agencies. Cross-margining is beneficial to market participants and furthers the policy goals of the Final Rule in reduction of systemic risk, and the Associations urge ICC to consider future implantation of such models as it revises the Proposed Rules.

f. ***The Associations request two points of clarification with respect to intraday margin***

The Proposed Rules require margin to be collected from Participants at business open based on the calculation from the prior ICE Business Day. Rule 401(a)(ii) specifies that intraday margin needs to be delivered by Participants within one hour of notice; however, it is not made clear that margin calls affecting NPPs will similarly need to be satisfied within one hour. Acknowledging that the contractual requirements relating to delivery of margin from the NPP to the Participant will need to be documented outside the Proposed Rules, the Associations nevertheless request clarity on the timing obligations relating to NPP positions.

The Associations also request that the SEC staff confirm that prefunding of intraday margin and repayment of such prefunded amount to a Participant by an NPP is consistent with the no-action relief provided by the SEC staff in the adopting release to the Final Rule.

g. ***In the event that ICC does not accept the deposit of Client-Funded Gross Collateral, the Participant should be obligated to return such collateral to the NPP***

Proposed Rule 407(k) states that ICC "will not accept the deposit of Client-Funded Gross Collateral from a Treasury Participant in respect of Client-Funded Positions in excess of the amount currently required by [ICC] as Initial Margin for such positions." In such a situation, to the extent any such excess collateral is provided to a Participant by an NPP, the Participant should be obligated under the Proposed Rules to return such excess collateral to the NPP.

h. ***The Proposed Rules should clarify that there will not be cross-contamination between Gross IM and Net IM Accounts in the event of application of funds in the Treasury Guaranty Fund***

The Proposed Rules appear to make it clear that the Client-Funded and Hybrid Gross IM Accounts are intended to protect and segregate client collateral in a manner that is consistent

with requirements registered fund NPPs may face under the 1940 Act, and it is also clear that House Positions and Client-Related Positions will also be handled in a manner consistent with the 1940 Act (e.g. Proposed Rule 20-605(h), which provides "Net amounts owed by a Defaulting Participant with respect to Client-Related Positions may be offset against net amounts owed to a Defaulting Participant with respect to House Positions; provided that net amounts owed by a Defaulting Participant with respect to House Positions may not be offset against net amounts owed to a Defaulting Participant with respect to Client-Related Positions." Nevertheless, it is not clear that there will be no cross-contamination of Gross IM Accounts with Net IM Accounts held by the same Participant in the event that Participant defaults and the waterfall is applied. The Associations request a clear statement to be made in the Proposed Rules on this point.

i. ***The Proposed Rules require slightly more precise tailoring to accommodate extending the no-action relief granted in the adopting release to the Final Rule to ICC***

In the adopting release to the Final Rule, the SEC granted no-action relief stating that "if a registered investment fund's cash and/or securities are placed and maintained in the custody of FICC for purposes of meeting FICC's margin deposit requirements that may be imposed for eligible secondary market transactions in connection with the fund's participation in the Sponsored Program, it would not provide a basis for enforcement action under Section 17(f) of the 1940 Act so long as [certain criteria are met]."[8] The Associations note that this relief was granted specifically with respect to FICC and request that the SEC explicitly extend similar relief to ICC. On the basis that ICC expects similar relief to be granted with respect to ICC, the Associations want to ensure that ICC consider the eight criteria set out in the Final Rule and address whether the Proposed Rules would satisfy such criteria and thereby allow the relief to extend to ICC.

i. ***Margin provided by fund is withdrawn only upon that registered fund's default***

Proposed Rule 402(c) states that "[ICC] may only exercise such rights with respect to, or otherwise dispose of or sell, Pledged Items Transferred in respect of Client-Related Positions and constituting Initial Margin (including Pledged Items Transferred to a Client IM Account) for the purposes of satisfying any outstanding Obligations of a Defaulting Participant in respect of Client-Related Positions and subject to the limitations set forth in these Rules."

[8] Final Rule at 2728.

The Associations believe this does not fully addresses the first criterion, because while the margin provided by the fund may only be used in respect of Client-Related Positions, it is not clear that it may only be withdrawn upon the default of the Client/NPP (the Associations also note that "Defaulting Treasury Participant" may need adjusting as a defined term to match the use of "Defaulting Participant" elsewhere).

ii. ***Margin provided by a registered fund may not be commingled with and must be kept separate from the clearing agency's assets***

Proposed Rule 407(b) states that "[a] Treasury Participant shall receive, hold and use all Client-Funded Gross Collateral only as permitted under SEC Rule 15c3-3a, Note H(b)(2), and to the extent not inconsistent with the foregoing, as set forth in these Rules and the Procedures (the "15c3 Customer Segregation Requirements")."

SEC Rule 15(c)3-3a, Note H(b)(2) requires that the cash, U.S. Treasury securities, and qualified customer securities used to margin the U.S. Treasury positions of the customers of brokers or dealers be held in an account of the clearing agency at a U.S. Federal Reserve Bank or a "bank," as the term is defined in Section 3(a)(6) of the 1940 Act, that is insured by the FDIC, and that the account at the U.S. Federal Reserve Bank or bank must be segregated from any other account of the qualified clearing agency or any other person at the U.S. Bank or bank.[9]

The Associations believe that this sufficiently addresses the second criterion but ask the SEC to consider whether cross-reference to the SEC Rule is the best approach (rather than more explicit requirements set out in the Proposed Rules directly).

iii. The clearing agency must segregate on its books and records the margin provided by a registered fund and identify the value of margin on its books and records as being attributable to the fund

Proposed Rule 407 states "[a]ll Client-Funded Gross Collateral Transferred to [ICC] by Treasury Participant on behalf of Non-Participant Parties as Initial Margin for Client-Funded Gross IM Positions shall be held in the Client-Funded Gross IM Account of such Treasury Participant in accordance with the 15c3 Customer Segregation Requirements. The Client-Funded Gross IM Account will be designated for this purpose as a "Special Clearing Account for the Exclusive Benefit of the Customers" of the Treasury Participant. [ICC] hereby notifies each Treasury Participant that Transfers Client-Funded Gross Collateral relating to Client-Funded Gross IM Positions that such Client-Funded Gross Collateral is being held by [ICC] for the exclusive benefit of the customers of the Treasury Participant in accordance with the regulations of the SEC and is being kept separate from any other accounts maintained by the Treasury Participant or any other Treasury Participant at [ICC]."

[9] 7 C.F.R. § 240.15c3-3a, Note H(b)(2).

The Associations believe this is sufficient to address the third criterion.

iv. ***Margin provided by a registered fund must be custodied with a custodian that meets relevant 1940 Act and applicable laws thereunder***

Section 17(f) of the 1940 Act requires "[e]very registered management company shall place and maintain its securities and similar investments in the custody of (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors."[10]

Proposed Rule 407(g) states that "Client-Funded Gross Collateral will be held by [ICC] in an account with the Federal Reserve or a bank meeting the requirements of SEC Rule 15c3-3a, Note H(b)(2)(iv)."

The Associations believe Proposed Rule 407(g) would satisfy the fourth criterion, but ask the SEC to consider whether cross-reference to the SEC Rule is the best approach (rather than a more explicit definition of "bank" set out in the Proposed Rules directly).

v. ***Margin provided by a registered fund should not subject to loss mutualization or allocation***

Proposed Rule 407(e) states that "Client-Funded Gross Collateral in the Client-Funded Gross IM Account shall not be available to cover claims arising from the Treasury Participant that Transferred such collateral or any other Treasury Participant defaulting on an obligation to ICE Clear Credit and shall not be subject to any other right, charge, security interest, lien or claim of any kind in favor of ICE Clear Credit or any person claiming through ICE Clear Credit, except a right, charge, security interest, lien or claim resulting from a Client- Funded Gross IM Position of a Non-Participant Party of the Treasury Participant associated with the Client-Funded Gross IM Account."

The Associations believe the fifth criterion is adequately addressed by the above, as well as by the treatment of Client-Funded Gross Collateral throughout the Proposed Rules.

[10] 15 U.S. Code § 80a-17(f).

vi. ***Margin provided by a registered fund should not be used by the clearing agency for any purpose other than in connection with the registered fund's default***

Proposed Rule 407(d) states that "[p]roperty held in the Client-Funded Gross IM Account may only be applied to clear, settle, novate and margin Client-Funded Gross IM Positions as provided in these Rules and only to the extent permitted by the 15c3 Customer Segregation Requirements (as applicable)." Proposed Rule 407(h) provides that "Client-Funded Gross Collateral in the form of cash may only be invested by [ICC] in U.S. Treasury securities with a maturity of one year or less."

The 15c3 Customer Segregation Requirements permit certain posted margin to be invested in U.S. Treasury securities with a maturity of one year or less, consistent with Proposed Rule 407(h). The Associations request that the SEC clarify that investment of NPP collateral in this manner does not violate the "use" restriction in the sixth criterion of the no-action relief.

vii. Registered funds must receive a quarterly statement of accounts concerning the margin

As discussed above, more detail needs to be provided in the Proposed Rules regarding account structure generally; this applies to statements concerning the margin as well. Even if such statements are to be provided by the Participant to the NPP, it should be an obligation posed by ICC on Participants for them to provide such statements to NPPs as appropriate, in order for the seventh criterion to be appropriately satisfied.

viii. ***The account in which a registered fund's margin is deposited must be governed by a contract by and among the fund, clearing agency and sponsoring member providing for an arrangement consistent with the no-action relief***

Like the above point, this ties to the need for the Proposed Rules to set out clearer account structure provisions. While the terms of the contract itself will of course be outside the scope of the Proposed Rules, ICC should impose the obligation to enter into such a contract within its rules.

II. Rights of Non-Participant Parties, Treasury Participant Failures

The Associations note that the Proposed Rules intentionally omit privity of contract between NPPs and ICC. However, there are nevertheless certain areas of concern, particularly where a Participant may fail to perform or defaults on its obligations.

a. ***Depletion of Client-Related Positions***

The Associations note that Margin provided in a Client IM Account will only be applied in the loss allocation waterfall to the extent such Margin relates to losses or expenses arising out of Client-Related Positions, and only to the extent permitted by applicable law (Rule 802(a)). However, the Proposed Rules do not provide any recourse (such as dispute mechanisms) to NPPs if any such amounts are inappropriately determined, or if the Participant fails to replenish such amounts. A clearer explanation of the obligations on the Participant in such instances is requested by the Associations.

b. ***Close-out versus settlement of Transactions Post-Participant Default***

Proposed Rule 20-605 sets forth the provisions related to Participant defaults. Proposed Rule 20-605(d) describes the Closing-Out Process, where ICC will effect the close-out of the Participant's transactions. ICC has, in discussion with the Associations, indicated that it is developing an alternative to the liquidation mechanics of the Closing-Out Process that will utilize settlement. This is a critical point for the Associations, and it is not clear how settlement of NPP positions will work where there is no privity of contract between ICC and the NPP. The Proposed Rules need to be expanded to address these mechanics.

c. ***Porting of Transactions Post-Participant Default***

Porting of obligations is a critical feature to allow for continuity of trades with minimal disruption upon the default of a Participant. The Associations appreciate that Proposed Rule 20A provides for porting of Eligible Transfer Positions post-default of a Participant. However, the Associations request that effecting any porting of such positions be subject to agreement by both the transferee Participant and the NPP whose positions are being considered for transfer. It will also be necessary to notify the affected NPPs ahead of taking any porting actions.

Without these provisions in place, there is nothing in the Proposed Rules that would preclude positions of an NPP being transferred to a Participant with whom it has no trading relationship, and this would mean there is no supporting bilateral architecture in place that would be necessary to support such an outcome. An NPP should also be afforded the choice to elect Close-Out rather than porting in certain circumstances.

III. Other Recommendations

a. *Requirement to Submit Transactions for Clearing*

Proposed Rule 303 states that "[i]n furtherance of SEC Rule 17ad-22(e)(18)(iv), from and after the applicable compliance date under such Rule, each Treasury Participant shall be required to submit to [ICC] or another covered clearing agency (as defined in Rule 17ad-22) for clearing all Trades in Contracts that are eligible for clearing and are Eligible Secondary Market Transactions, promptly following the execution thereof and in any case within any timeframe required under such Rule or any related regulatory interpretation or guidance."

The Associations request further clarity on what Contracts are "eligible for clearing," by tying this more directly to the terms in Proposed Rule 30. The Associations also request that ICC incorporate the ability to adapt to potential future rule changes by explicitly incorporating any SEC interpretations or guidance relating to the requirement to submit certain transactions under the Final Rule. Finally, ICC may wish to make it clearer that all entities required to submit certain transactions under the Final Rule will be eligible Participants under the Proposed Rules.

b. *Treasury Participants should be required to satisfy net capital thresholds that are more specifically tailored to their regulatory status, and such thresholds should be adjustable based on their trading activity and associated risk*

Proposed Rule 201(b) requires that Participants have $50 million of Adjusted Net Capital, defined as "(A) for a Treasury Participant that is a Broker-Dealer, shall be its "net capital" as defined in SEC Rule 15c3-1 and as reported on its FOCUS Report, and (B) for a Treasury Participant that is not a Broker-Dealer, shall be the amount of its net capital as determined pursuant to a similar risk adjusted capital calculation methodology acceptable to [ICC]."

The Associations believe that this is not specific enough (for example, CME Securities Clearing, Inc. ("CMESC") set out specific levels for different regulated entity types other than broker-dealers in its proposed rulemaking (the "CMESC Proposal"))[11]. Further, the Associations echo their comment in their comments to the CMESC Proposal: default capital requirements should be adjusted based on the activity of the Participant. Capital requirements for Participants

[11] Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934 (Jan. 15, 2025), available here.

planning to sponsor multiple NPPs, for example, should be higher than for those Participants solely engaged in proprietary clearing in order to match their capabilities to their risk profiles.

c. ***ICC Contribution to the Treasury Guaranty Fund***

The ICC contribution (the "skin-in-the-game") appears to be dynamic and capped at a relatively high level (see Rule 801(b)).

The Associations have long advocated for an appropriately high level of skin-in-the-game to incentivize clearing houses to appropriately manage the risk in their clearing business. A dynamic calculation, reflecting a diverse set of factors (e.g., volume, liquidity, complexity, concentration, member diversification and credit risk, etc.,) is appropriate and necessary, especially given the clearing of U.S. Treasury securities has been mandated with no non-cleared alternative.

The Associations recommend that the SEC evaluate the amount, structure, and adjustment cadence to assess the adequacy of the ICC contribution and we will similarly assess this on an ongoing basis and provide feedback as necessary.

d. ***ICC should not dictate the terms of the relationship between Participants and NPPs***

While the Proposed Rules generally do not impose obligations directly on NPPs, the Associations note that there are certain instances where it appears to do so.

For example, Proposed Rule 316(a) states that "the Non-Participant Party becomes liable to reimburse and indemnify the Treasury Participant in respect of performance by the Treasury Participant under such Contract, subject to the provisions of these Rules". Imposition of such a liability is not appropriate in the Proposed Rules; if ICC wishes to address the point, it should frame this as an option the parties may have in their bilateral agreement.

Another example is in Proposed Rule 30B-02(g), which states that "For the avoidance of doubt, upon acceptance of a Repurchase Contract for clearing by [ICC] under these Rules, such Contract shall be subject solely to these Rules and the Procedures, and any pre-existing master repurchase agreement or other documentation between the original parties to such contract shall not apply to the cleared Contract". It may be the case that certain provisions of the pre-existing bilateral agreement between the Participant and the NPP in question may need to continue, and the Proposed Rules should not attempt to supersede any such contractual continuation. To the extent the novated portion of the trade is no longer subject to a bilateral contract, this should be addressed in the bilateral documentation itself.

e. ***ICC should prepare for the acquisition of legal opinions to support satisfaction of the requirement under Rule 17ad-22 that it have a well-founded, transparent and enforceable legal basis for each aspect of its clearing activities in all relevant jurisdictions.***

While the Associations understand that several aspects of the Proposed Rules remain under construction, they want to emphasize the importance of ICC working with counsel in each jurisdiction in which it operates and in which a Participant or NPP is organized.

The Associations note the clarifying positions provided in Rule 611, which are helpful.[12] However, while building out the account structure mechanics discussed above, the Associations request that ICC emphasize the intention that Participant and NPP assets at ICC will be held in such a way that they satisfy the requirements under 17 CFR Part 190 and under standard bankruptcy remoteness principles.

Proposed Rule 401(k) provides that "Each Transfer of Variation Payment shall constitute a settlement [rather than as posted margin] …". This is a critical point for NPPs' treatment of variation payment amounts and is in line with the position set out by the Federal Reserve, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation in joint guidance in the cleared derivatives context.[13] While this statement in the Proposed Rules is helpful, the Associations request that ICC add the language in square brackets above for further clarity. The Associations also request that ICC obtain, and make available to all NPPs on a reliance basis, a reasoned legal opinion from outside counsel, in which counsel opines with, at minimum, a "should" level of comfort that cash transferred as Variation Payments will be treated as settlement payments rather than posted margin.

Conclusion

The Associations reiterate their strong support of the Application and the entrance of ICC as a CCA, which continues to expand the range of clearing services available to market participants. The recommendations and requests made above are intended to aid ICC in developing and providing a service that properly addresses repurchase transactions and that will serve the purpose of Rule 17ad-22(e)(18)(iv)(C): ensuring appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities. The Associations appreciate the engagement they have received thus far

[12] The Associations note that the characterization of each Open Position as a "swap agreement" under FDIA in Proposed Rule 611(b) appears to be an error.
[13] SR 17-7: Regulatory Capital Treatment of Certain Centrally-cleared Derivative Contracts under the Board's Capital Rule (August 14, 2017) (available here).

from ICC staff and encourage further engagement as ICC continues its process of building a robust framework for these products.

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On behalf of SIFMA AMG, SIFMA, and ICI, we appreciate the opportunity to respond to the Proposals and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact us by calling William Thum at (202) 962-7381, Rob Toomey at (212) 313-1124, or Tara Buckley at (202) 326-6274.

Sincerely,

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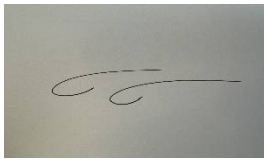

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cc: Honorable Paul S. Atkins, Chair, U.S. Securities and Exchange Commission
Honorable Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
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Honorable Mark T. Uyeda, Commissioner, U.S. Securities and Exchange Commission