



Morgan Lewis

**ADVANCED TOPICS IN
HEDGE FUND PRACTICES
CONFERENCE**

Manager and Investor Perspectives

NEW YORK

Tuesday, June 11, 2024

Treasury Clearing and FINRA 4210

Speakers



**Katherine Dobson
Buckley**
+1.617.341.7531
[katherine.buckley@
morganlewis.com](mailto:katherine.buckley@morganlewis.com)



**Penelope L.
Christophorou**
+1.212.309.6354
[penny.christophorou@
morganlewis.com](mailto:penny.christophorou@morganlewis.com)



Thomas V. D'Ambrosio
+1.212.309.6964
[thomas.dambrosio@
morganlewis.com](mailto:thomas.dambrosio@morganlewis.com)

Morgan Lewis

Treasury Market Reforms

Morgan Lewis

US Treasury Clearing Rule

On December 13, 2023, the SEC adopted Treasury Clearing Rules designed to improve risk management in clearance and settlement and to facilitate additional central clearing for the US treasury market.

It also adopted amendments to Rule 15c3-3 under the Securities Exchange Act of 1934 (the Customer Protection Rule) regarding margin held at covered clearing agencies for US Treasury securities.

The Treasury Clearing Rules will:

- require the Fixed Income Clearing Corporation (FICC), which is currently the only covered clearing agency for US Treasury securities, to have policies and procedures requiring its direct participants to submit for clearing certain eligible secondary market transactions (ESMTs);
- require that FICC have policies and procedures in place to calculate, collect, and hold margin for its direct participants' proprietary transactions separately from transactions submitted on behalf of indirect participants;
- require FICC to have policies and procedures to ensure it has appropriate means in place to facilitate access to clearance and settlement services for all ESMTs, including those entered into by indirect participants; and
- amend the Customer Protection Rule to permit margin required and on deposit at FICC to be included as a debit item in the customer reserve formula, subject to certain conditions.

US Treasury Clearing Rule

Under the Treasury Clearing Rule, ESMTs would include the following:

- ✓ All repurchase and reverse repurchase agreements collateralized by US Treasury securities to which a direct participant is a counterparty
- ✓ All purchase and sale transactions of US Treasury securities (cash transactions) for direct participants who are acting as interdealer brokers
- ✓ All cash transactions between a direct participant and any of a registered broker-dealer or a government securities dealer or broker
- ✓ Exemptions where a counterparty is a central bank, a sovereign entity, an international financial institution, or a natural person are excluded from the rule; repurchase and reverse repurchase agreements in which one counterparty is a state or local government or between a direct participant and an affiliated counterparty under certain conditions

Overview and Key Dates

FICC

- Rules for separation of house and customer margin, access to clearance and settlement services, and the Customer Protection Rule:
 - Proposal by no later than 60 days following the Treasury Clearing Rule's publication in the Federal Register
 - Effectiveness by **March 31, 2025**
- Rules for requirements to clear ESMTs and to monitor submission of those ESMTs:
 - Proposed rules no later than 150 days following publication in the Federal Register (i.e., **June 14**)
 - Effectiveness by **December 31, 2025** (for cash transactions) and **June 30, 2026** (for repos)

Direct Participants

- Direct participants are required to clear cash transactions by **December 31, 2025**, and clear repos by **June 30, 2026**



What's Next – Negotiation of Documentation

Education on the product

Decision on whether bilateral or tri-party starting point

What happens if there is a fail?

What happens if there is a customer, FICC, or sponsoring member default?

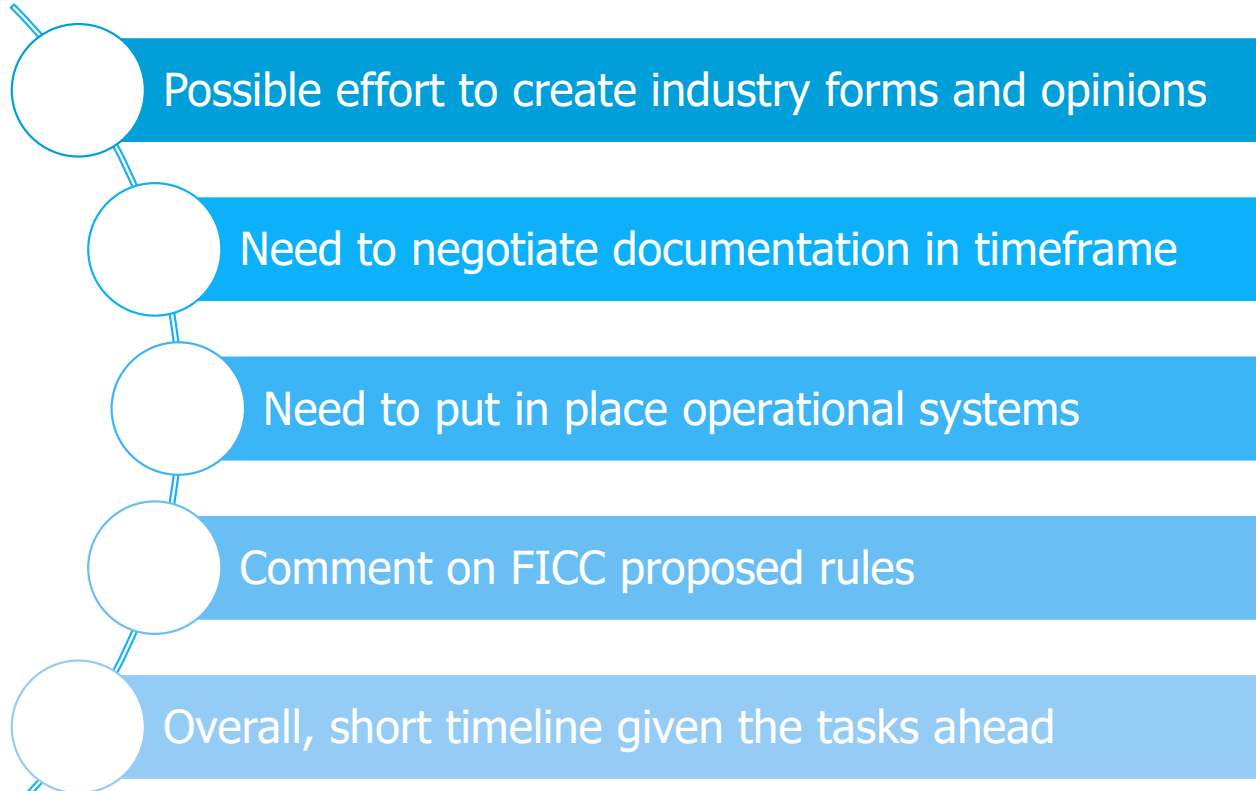
Scope of security interest grant

Margining timelines

UCC financing statements and searches

Scope of indemnities and limitation of liability, covenants, and termination rights

What's Next



FINRA 4210

Morgan Lewis

FINRA Rule 4210 (effective May 22, 2024)

“Covered Agency Transaction” means:

- ❖ To-Be-Announced (TBA) transactions, inclusive of adjustable rate mortgage (ARM) transactions, where settlement date is greater than one business day;
- ❖ Specified Pool Transactions, where settlement date is greater than one business day; and
- ❖ Transactions in Collateralized Mortgage Obligations (CMOs), issued in conformity with a program of an Agency or a Government-Sponsored Enterprise, where settlement date is greater than three business days

FINRA Rule 4210 Margin

FINRA members must collect margin or take a capital charge for each counterparty's excess net mark-to-market loss (amount more than \$250,000)

- There are rules and limits that apply to taking capital charges
- Risk procedures are required and must be enforced
- Some exemptions are available
- The right to liquidate within five business days is important

MSFTA – Overview

MSFTA = Master Securities Forward Transaction Agreement

Published by
SIFMA

Most current
version is from
December 2012

Amendment to
address FINRA
Rule 4210

Provides for
multiple
transactions under
one agreement

Provides for
bilateral
margining of
exposures

Uses Annexes to
amend the terms
of the form

Agency Annex is
available for dealing
with
advisors/agents