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The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Release No. 34-94524; File No. S7-12-22; Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer

Dear Chair Gensler,

Albeit having to ties to the United States from a corporate perspective we nevertheless wanted to take the opportunity to share thoughts and opinions on certain questions of the recently proposed Securities and Exchange Commission ("SEC") rulemaking under File No. S7-12-22. We appreciate consideration and remain at the SEC's disposal in case of any questions.

1. Should the Proposed Rules exclude persons that have or control less than $50 million in total assets? Are there instances in which persons that have or control less than $50 million in total assets that are buying and selling securities or government securities for their own accounts provide liquidity to the markets or have a significant impact on the markets that would warrant regulation as dealers or government securities dealers? Please explain.

   *Answer: A kind of safe-harbor rule is necessary, however a quantitative threshold of USD 50m only likely doesn't yield the desired outcome. Reason is, that control or impact of the market varies with the specific security and it's exhibited secondary market liquidity, i.e. USD 50m are more than enough to fully control the market of small capitalized stock whereas for US Treasuries the same amount represents only a fraction of the typical daily trading volume. Furthermore, an absolute threshold of USD 50m doesn't account for potential leverage being e.g. applicable if trading on futures or generally via a margin account.*
   *Albeit significantly more complex to be monitored, the proposed safe harbour rule for being exempted from the dealer licensing regime could be less than USD 50m in total assets <u>and</u> a certain maximum percentage of average daily trading volume ("ADTV") in a specific security (in analogy of the 25% ADTV threshold as per Rule 10b-18 regulating stock repurchases). As a reference see e.g. systematic internalization thresholds measures in share of total volume (2.5% up to 30%) as well as number of trades (mostly > 1 per week) under EU law as per art. 13-17 of the Commission Delegated Regulation (EU) 2017/565*
   *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN*

2. Does the proposed $50 million in total assets threshold sufficiently distinguish persons whose activity should not be captured for purposes of the Proposed Rules? If not, is there another amount or measurement that would better distinguish these smaller market participants and achieve the purposes of the Proposed Rules? Please explain.

*Answer: See question 1*

3. Would persons that would be captured by the Proposed Rules (i.e., have or control more than $50 million in total assets) restructure their activities or change their corporate structures for the purpose of avoiding registration, including withdrawing or reducing their trading activities or ceasing investment strategies that trigger the application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

   *Answer: The provisions to define "control" included in this proposal constitute an effective barrier to avoid application of the proposed rules.*

4. Should the Commission exclude registered investment companies from the scope of the Proposed Rules? Why or why not? If they are not excluded, do registered investment companies engage in activities that would be captured by the Proposed Rules? Could a registered investment company comply with the requirements applicable to dealers? What would be the potential costs and/or benefits of requiring registered investment companies to register as dealers or government securities dealers? Could the registered investment companies restructure their activities to avoid dealer registration? What would be the effects of such restructuring? Please explain.

   *No comment*

5. The Proposed Rules do not exclude private funds, that is, pooled investment vehicles that are exempted from the definition of "investment company" under Section 3(c)(1) or 3(c)(7) of the Investment Company Act. Should the Commission except or exclude private funds from the scope of the Proposed Rules? Why or why not? Should the Commission except or exclude private funds advised by registered investment advisers from the scope of the Proposed Rules? Do some private funds engage in activities that would be captured by the Proposed Rules? Could a private fund comply with the requirements applicable to dealers? What would be the potential costs and/or benefits of requiring private funds to register as dealers or government securities dealers? Would private funds restructure their activities to avoid registration as a dealer? What would be the effects of such restructuring? Would private funds cease or reduce investment strategies captured by the Proposed Rules to avoid registration as a dealer? If so, what would be the effects of removing or reducing these investment strategies from the markets? Please explain.

   *No comment*

6. Should registered investment advisers trading for their own accounts be excluded partially or entirely from the Proposed Rules? Why or why not? Could some registered investment advisers engage in activities that meet the proposed qualitative standards and trigger the application of the Proposed Rules? Could some registered investment advisers engage in trading volume in government securities that could exceed the quantitative threshold in proposed Rule 3a44-2? If registered investment advisers were captured by the Proposed Rules, how would they comply with the requirements applicable to dealers? Would the registered investment advisers restructure their activities to avoid registration as a dealer, including withdrawing or reducing their trading activities or ceasing or reducing investment strategies that trigger the

application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

*Answer: If conflicts of interest are appropriately mitigated investment advisors could theoretically be allowed to trade on their own account. However, this would imply that similar standards & rules are applicable like for banks i.e. separating the businesses internally with information barriers and constant monitoring by a compliance function. I am not sure if such a setup is viable for many investment advisers.*

7. Instead of addressing investment adviser and private fund dealer concerns under the framework of existing dealer regulation, should the Commission consider a proposed rulemaking under the Advisers Act to address these concerns? What elements should be included in such a rulemaking? For example, should it include transaction reporting and/or capital requirements?

   *No comment*

8. Should the Commission except or exclude any other categories of persons from the scope of the Proposed Rules? If so, what persons, and why? If not, why not?

   *Answer: The Commission should consider whether to apply the Proposed Rules also to persons being engaged in the activity of trading digital assets. We are aware that there initiatives / discussions on whether to qualify digital assets as securities and thus allow jurisdiction for the Commission, anyway, based on the principle of "same business, same risks, same rules" we'd recommend to have the applicability on digital asset related businesses in narrow scope.*

9. Is there sufficient specificity provided for the terms used in the qualitative standards? Are there any terms that should be defined in rule text or addressed in the release?
   - Is there sufficient specificity provided for the term "pattern"? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by "pattern"? Why or why not? Is the Proposed Rules' use of "pattern" appropriate? Would "manner" or another word be more appropriate? Why or why not?

     *No comment*

   - Is there sufficient specificity provided for the term "effect of providing liquidity"? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by "effect of providing liquidity"? Why or why not? Is the Proposed Rules' use of "effect of providing liquidity" appropriate? Would replacing "effect of providing liquidity" with "market making" be more appropriate? Are there other words that would more appropriate? Why or why not?

     *Answer: As per our understanding "market making" is a sub-type of "providing liquidity" with market making being specifically applicable for "Market Maker", i.e. regulated entities being direct members and participants*

*of regulated markets / venues quoting prices on a regular basis. Having "effect of providing liquidity" as a separate definition would expand the scope and also allow for a catching of currently unregulated entities.*

- Is there sufficient specificity provided for the term "primarily"? Should the rule text define what is meant by "primarily"? Why or why not? Is the Proposed Rules' use of "primarily" appropriate? Would "mostly" or another word be more appropriate? Why or why not?

  *Answer: "Primarily" might be a bit vague. Technically, an entity could earn more revenues by price increases on the securities being held in stock for trading than by catching bid-ask spreads. In such case primarily would not be fulfilled and hence the Proposed Rules not applicable. There is no clear solution on how to solve this but it seems as if a better indicating factor would be the mere activity of regularly quoting prices which can be interpreted as the intention to catch a spread, independently from effective revenues being generated.*

- Is there sufficient specificity provided for the term "trading venue"? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by "trading venue"? Why or why not? Is the Proposed Rules' use of "trading venue" appropriate? Are there other words that would be more appropriate? Why or why not?

  *No comment*

10. Is liquidity provision an appropriate factor to use in defining which buying and selling activity for one's own account qualifies as "regular business"? Are there other factors the Commission should include? If so, which factors and why? Are there trading activities or investment strategies that should not be considered providing liquidity? If so, please describe why.

    *No comment*

11. Are the three qualitative factors identified in the Proposed Rules as having the "effect of providing liquidity to other market participants" that would qualify as "regular business" appropriate? Are there any other forms of liquidity provision, or any other factors, that the Commission should include or exclude instead or in addition to those proposed? Are the factors over or under-inclusive? If so, please provide specific examples of any alternative suggestions.
    - For example, should the Commission include as an example of a "liquid market," "a market in which participants have the ability to readily trade at a predictable price and in a desired size without materially moving the market"? Why or why not?

      *Answer: Not needed as liquid market definition should be relatively clear to affected persons / entities.*

- In addition to passive "liquidity providing" trading strategies, the Proposed Rules would capture certain aggressive "liquidity demanding" strategies as having the "effect of providing liquidity to other market participants"? Is this appropriate? Why or why not?

  *Answer: This is appropriate. Provision of liquidity is not limited to the offer side (ASK) but also encompasses the demanding side (BID). Generally speaking liquidity is being provided if someone by whatever means is demonstrating to ready to act as the counterparty of a trade in securities.*

12. Under the Proposed Rules, a person routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day would have the effect of providing liquidity to other market participants, and therefore would be a dealer. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?

    *General answer: Reference is made to 3 select dealer definitions outside the US below which could provide for some inspiration..*

    1) *"Market Making Strategy" as per RTS 8 Article 1 of the Delegate Regulation (EU) 2017/578 (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0578&from=EN)*
    2) *Definition by BaFin to differentiate between "Eigenhandel" (proprietary trading) and "Eigengeschaeft" (proprietary business) whereas the former definition encompasses market making but also "the buying or selling activity in securities, if provided as a service to third parties" and the latter definition is a catch-all provision. Proprietary trading is generally subject to a licensing obligation whereas proprietary business does allow for limited exemptions. Unfortunately the rules are only available in German here https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Merkblatt/mb_110322_eigenhandel_eigengeschaeft_neu.html*
    3) *Definition in Singapore as per Securities and Futures Act 2001, Second Schedule which doesn't differentiate between dealer and broker ""dealing in capital markets products" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any capital markets products;" https://sso.agc.gov.sg/Act/SFA2001?ProvIds=Sc2-#Sc2-*
    4) *Definition in United Kingdom as per FCS Handbook "PERG 2.8.4" https://www.handbook.fca.org.uk/handbook/PERG/2/8.html which stipulates e.g. "holding out" as the relevant decisive criterion: "Of particular significance is the exclusion in* article 15 *of the* Regulated Activities Order *(Absence of holding out etc). This applies where* dealing in investments as principal *involves entering into transactions relating to any security or assigning rights under a* life policy *(or rights or interests in such a contract). In effect, it*

*superimposes an additional condition that must be met before a* person*'s activities become* regulated activities*. The additional condition is that a* person *must hold himself out as making a market in the relevant* specified investments *or as being in the business of dealing in them, or he must regularly solicit members of the public with the purpose of inducing them to deal. This exclusion does not apply to dealing activities that relate to any* contractually based investment *except the assigning of rights under a* life policy*."*

- For example, would the Proposed Rules capture private funds and other persons pursing investment strategies such as relative value fixed income arbitrage or share class arbitrage? If so, should such strategies be included or excluded? Why or why not?

  *Answer: See question 12 "general answer"*

- Is there sufficient specificity to determine which securities would be considered "same" or "substantially similar"? Why or why not? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should additional or different factors be considered? Are there other words that would be more appropriate? Why or why not?

  *Answer: See question 12 "general answer"*

- Should the rule text define what is meant by "same" or "substantially similar"? Why or why not?

  *Answer: See question 12 "general answer"*

- Are there other types of purchase and sale transactions that would be examples of purchases and sales of securities that are "substantially similar" (i.e., other types of roughly comparable purchases and sales of substantially similar securities, such that the sale or purchase of one security offsets the risk associated with the sale or purchase of the other, permitting a person to maintain a near market-neutral position)? Are there examples of types of purchase and sale transactions involving derivatives, or other products that represent the economic equivalent of another security, that would be purchases and sales of securities that are "substantially similar"? Please explain.

  *Answer: See question 12 "general answer"*

13. Although the Proposed Rules do not provide a bright-line test to determine "roughly comparable" purchases and sales, depending on the facts and circumstances, the Commission believes a daily buy-sell imbalance, as described below in Section V.B.2.c., between two identical or substantially similar securities, in terms of dollar volume below 20 percent may be indicative of purchases and sales that are "roughly comparable." Is this an appropriate measurement of "roughly comparable"? Why or why not? Would another measurement be more appropriate? Should there be a

minimum trading volume or dollar amount threshold as part of the qualitative standard under paragraph (a)(1)(i), daily buy-sell imbalance, or other measurement?

- Is there sufficient specificity provided for the term “roughly comparable”? Why or why not? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Is the Proposed Rules’ use of “roughly comparable” appropriate? Are there other words that would be more appropriate? Why or why not?

  *Answer: See question 12 “general answer”*

- Should the rule text define, as opposed to the release addressing, what is meant by “roughly comparable”? Why or why not?

  *Answer: See question 12 “general answer”*

- Does there need to be more specificity provided as to how many transactions must be executed (or positions opened and/or closed) in a day to be “roughly comparable”?

  *Answer: See question 12 “general answer”*

- Is “in a day” an appropriate period of time during which to measure whether a person has made roughly comparable purchases and sales of the same or substantially similar securities? If not, what is an appropriate time period?

  *Answer: See question 12 “general answer”*

- If an institutional investor seeks to rebalance its portfolio, would the institutional investor typically “routinely make roughly comparable purchases and sales of the same or substantially similar securities in a day,” or otherwise trigger the Proposed Rules?

  *Answer: Generally no, as rebalancing likely doesn’t occur in a substantial nor frequent manner and subsequently would not fall under the Proposed Rules. However, it cannot be ruled out that very aggressive and permanent rebalancing would trigger the Proposed Rules. Anyway, in these rare instances a regulation can be deemed reasonable.*

14. Under the Proposed Rules, a person that “routinely express[es] trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants” would have the effect of providing liquidity to other market participants, and thus would be a dealer. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?
    - Is the Proposed Rules’ use of “routinely” appropriate? Would “regularly” or “continuously” or another word be more appropriate? Why or why not?

*Answer: "Routinely" might be difficult to interpret. Is expression of trading interest to only 4 counterparties already "routinely"? Is expression of trading interest once a day "routinely"? In analogy to general answer under question 12 (BaFin wording) one could think of changing the definition to "express(es) trading interest that … to other market participants* <u>*as a service*</u>*". This still leaves room for interpretation but might be better to understand. Should "routinely" remain we'd deem a quantitative definition / measure as being valuable to avoid interpretation.*

- Is there sufficient specificity provided for the term "routinely"? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by "routinely"? Why or why not?

  *Answer: See question 14 first bullet*

- Is the Proposed Rules' use of "trading interest" appropriate? Would "quotations" or another term be more appropriate? Why or why not?

  *No comment*

- Is there sufficient specificity provided for the term "trading interest"? Should the rule text define what is meant by "trading interest"? Why or why not? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity.

  *No comment*

- The Proposed Rules would require that trading interests be communicated and represented in a way that makes them accessible to other market participants in order to come within the rule. Should the Commission require that the trading interests be communicated "widely"? Why or why not?

  *No comment*

15. Under the Proposed Rules, a person that "earn[s] revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest," would have the effect of providing liquidity to other market participants. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?
    - Is there sufficient specificity provided for the term "earn revenue"? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Is the Proposed Rules' use of "earn revenue" appropriate? Are there other words that would be more appropriate? Why or why not? Should the rule text define what is meant by "earn revenue"? Why or why not?

      *Answer: See question 2*

- Should the Proposed Rules include additional or other forms of revenue?

  *Answer: See question 2*

- Should the Proposed Rules include other measures of liquidity provision? If so, what measures and why?

  *Answer: See question 2*

- As explained above, buying at the bid and selling at the offer would include buying at lower than, and selling at higher than, the midpoint of the bid-ask spread. Should the rule text define "capturing bid-ask spread" to expressly include buying at lower than, and selling at higher than, the midpoint of the bid-ask spread?

  *Answer: Definitely not. Question will always remain which bid and which ask is applicable in case multiple trading venues are available. One could theoretically refine to "best available bid" and "best available ask" but we deem a more precise definition as not being of value and potentially rather creating room for interpretation and potentially even circumvention.*

16. Do the Proposed Rules provide sufficient specificity to permit market participants to distinguish between revenue derived from capturing bid-ask spreads and revenue derived from realization of appreciation of the underlying asset?

    *Answer: See question 2*

17. Is there sufficient specificity provided for the terms used in the quantitative standard? Are there any terms that should be defined in rule text or addressed in the release?

    *Answer: See question 2*

18. Is the threshold of more than $25 billion of trading volume in each of four out of the last six calendar months an appropriate proxy for determining whether a person is engaged in buying and selling U.S. Treasury Securities for its own account is engaged in such activity as a part of a regular business? Why or why not? If not, what thresholds would be appropriate? For example, should the quantitative standard include a separate trading volume threshold for: (1) buying; (2) selling; and (3) both buying and selling U.S. Treasury Securities, all three of which would be required to be satisfied in order to meet the quantitative standard? Commenters should provide data to support their views.

    *No comment*

19. Should the Commission apply a different look-back period for applying the quantitative threshold from four out of the preceding six months to something different? Is the time period measurement of four out of the last six calendar months an appropriate metric to evaluate a market participant's trading volume? Should the

time period be a weekly measurement or is there another measurement that would better determine whether a person is engaged in buying and selling U.S. Treasury Securities for its own account is engaged in such activity as a part of a regular business?

*No comment*

20. Should the look-back period for the quantitative standard take into consideration the general auction schedule for U.S. Treasury securities? Should the look-back period correspond with the schedule of any particular U.S. Treasury security? Why or why not? For example, the 10-year U.S. Treasury note auctions are usually announced in the first half of February, May, August, and November and generally auctioned during the second week of these months and are issued on the 15th of the same month.[177] Should the look-back period take into consideration these particular months for purposes of the quantitative standard? Why or why not? How could the look-back period incorporate the auction schedule? Please explain.

    *No comment*

21. Are there persons that would meet the quantitative standard under the proposed rule but that should not be classified as government securities dealers (i.e., is the quantitative standard over-inclusive?). If so, who are they and why should the Commission not classify them as government securities dealers?

    *No comment*

22. Are there persons that would not meet the quantitative standard under the proposed rule—and would not be otherwise captured by the qualitative factors— but that should be classified as government securities dealers based on their trading volume (i.e., is the quantitative standard under-inclusive)? If so, who are they and why should they be classified as government securities dealers?

    *No comment*

23. Should the quantitative standard include an additional standard related to routinely expressing trading interests? For example, activity related to resting orders on a central-limit order book, or expressing trading interest on Communication Protocol Systems? If so, what measure of activity, including sources of data and calculation methodology, would appropriately identify market participants as government securities dealers?

    *No comment*

24. Are there other ways of calculating a quantitative standard, such as using a measurement based on turnover (e.g., a turnover ratio) rather than volume, or other measurements of significance (e.g., a trading volume ratio, net/gross ratio) that would appropriately identify market participants as government securities dealers? If so, what are they, and why are they relevant in the context of analyzing dealer status? Commenters should provide any data or information to support their views.

    *No comment*

25. Should the quantitative standard be a dynamic trading volume threshold that changes with the market over time, such as percentage of transactions reported to TRACE, a percentage of U.S. Treasury Securities outstanding or issued, or other inflation-adjusted threshold? Why or why not?

    *No comment*

26. Should a quantitative standard be included in proposed Rule 3a5-4? To the extent a quantitative standard should be included, are there ways of calculating the standard for other securities markets? Is a trading volume threshold suitable for other types of securities markets?

    *No comment*

27. In determining whether the trading volume threshold is met, the Commission has indicated that market participants should exclude auction awards and repurchase or reverse repurchase transactions. Is this exclusion appropriate? Should some or all of these transactions be included? Are there other transactions that should be excluded (e.g., Treasury when-issued transactions)? Please explain. Should any excluded transactions be specifically addressed in rule text? Should there be a similar exclusion of these types of transactions for purposes of evaluating whether a market participant has met the qualitative standards? Are there any types of transactions that should be included in calculating the trading volume amount?

    *No comment*

28. Are there market participants that would fluctuate between meeting or not meeting the quantitative standard (or qualitative standard) (e.g., initially meet the standard, a few months later no longer meet the standard, and later meet the standard again)? Would this pattern be associated with a particular type of trading such that there may be periods in which the participant meets neither the quantitative standard nor any qualitative standard?

    *No comment*

29. Are there circumstances in which a person triggering the quantitative threshold would not also trigger the proposed qualitative standards? Please describe those circumstances in detail. In such case, would firms implement compliance systems to monitor trading volumes? Do firms have systems in place that already or could easily be programmed to monitor for the proposed quantitative threshold? What are the costs of implementing such systems or updating existing systems? Would firms be incentivized to trade below the proposed quantitative standard to avoid registration?

    *No comment*

30. Does the proposed definition of "own account" appropriately reflect complexities and differences in corporate structures and business models of proprietary trading firms, investment advisers, private funds, and other market participants, and the ownership structures of their trading accounts? Why or why not? Commenters should provide descriptions to support their responses.

*Answer: Yes. However, in terms of a more straightforward taxonomy to distinguish "broker" and "dealer" it could be beneficial to account for whether acting occurs "on whose behalf" (might also be referred to as "in whose name") and "for whose account". The following chart demonstrates the above:*

| | *On own account* | *On third party account* |
|---|---|---|
| *In own name* | *Dealer (or trader if exemption applies)* | *Broker* |
| *In third party name* | *N.D. as likely being deemed fraud and / or money laundering* | *Acquisition agent or arranger* |

31. Except as described in paragraph (b)(2)(ii), are there instances when an account of a controlled person, or person under common control, should not be considered a person's "own account" for purposes of the Proposed Rules? For example, should an account held in the name of a bank be excluded from the definition of "own account"? Commenters should provide descriptions of any such instances.

    *Answer: If it should be possible to hold an account in the name of someone else e.g. a bank under US legislation this should still count as "own account" as the relevant criterion is who beneficially owns the account and not in which name an account is being held.*

32. Is the proposed definition of "control" appropriate? What is the effect of using the Exchange Act definition of "control", as opposed to the Investment Company Act definition? Please describe potential alternative definitions and why they are more appropriate.

    *No comment*

33. Are there instances where two entities may meet the proposed definition of "control" and where these entities are in different lines of business and/or unaware of the other's trading strategies? Are there any situations where two entities may meet the proposed definition of "control" but communications between two entities would be prohibited?

    *No comment*

34. Under the Proposed Rules, a registered investment adviser would aggregate its account with its client accounts (private funds and separately managed accounts), except as described in paragraph (b)(2)(ii).
    - Should registered investment advisers be included only with respect to their own proprietary trading activities (i.e., not with respect to activities that could be attributed to them by the aggregation contemplated by the definitions of "own account" and "control")? Why or why not?

      *No comment*

- How would such aggregated accounts comply with the requirements for dealer registration?

  *No comment*

- In these cases, would the investment adviser registering itself avoid registering a private fund or separately managed account client? If not, are there other actions these accounts would seek to take to avoid all such accounts either registering as dealers or ceasing investment strategies that trigger the Proposed Rules application? Would any of such accounts avoid certain investment strategies to prevent application of the Proposed Rules? If so, which investment strategies and at which types of accounts?

  *No comment*

- Would the registered investment adviser restructure its activities or those of its private fund or separately managed account clients to avoid registering a private fund or separately managed account client as a dealer? For example, would a registered investment adviser create an affiliated broker-dealer to avoid registering itself and/or any clients as dealers? What would be the effects of any restructuring? Please explain.

  *No comment*

35. Should the Proposed Rules require registered investment advisers to aggregate client accounts when the adviser controls a person other than through an ownership interest? Why or why not? We understand that, for tax and other purposes, hedge fund offshore companies are often controlled by boards of directors or legal entities that are separate from the hedge fund's adviser. Should the aggregation provisions of the Proposed Rules cover those arrangements? Will the exclusion in paragraph (b)(2)(ii)(B) have different impacts on registered investment adviser client funds that are organized domestically as general partnerships and funds that are organized offshore as companies with independent directors? If so, could registered investment advisers restructure certain funds to avoid application of the Proposed Rules? What would be the effects of any restructuring? Would a registered investment adviser's use of an omnibus account to trade client securities on an aggregate basis present particular interpretative questions or raise operational issues for these purposes?

    *No comment*

36. Should registered investment adviser clients that are under common control solely because they are clients of the same registered investment adviser be required to aggregate accounts? Why or why not? Does the definition of "parallel control structure" adequately capture ways in which a registered investment adviser could seek to separate trading activities among accounts to avoid registration by their clients? Would the aggregation provisions of the Proposed Rules appropriately capture activity that would raise the concerns that the Proposed Rules are designed to address? Would the aggregation provisions of the Proposed Rules capture activity that it should not? If so, please explain.

    *No comment*

37. Are there any incentives created by the aggregation provisions that may cause market participants to reevaluate or restructure their corporate structures? What costs and benefits are there associated with restructuring?

    *No comment*

38. Would market participants exit certain strategies or exit the market to avoid registration? If so, what would be the effects?

    *No comment*

39. Are there standards of activity other than the standards under the Proposed Rules that the Commission should apply in the context of analyzing dealer status? If so, which standards and why?

    *No comment*

40. Would the Proposed Rules capture persons that should not be regulated as dealers? If so, who? Why would they be captured under the Proposed Rules, and why is that not appropriate?

    *No comment*

41. Are there any categories of persons that would not meet the Proposed Rules, yet should be registered as dealers? Commenters should identify any such categories of persons and describe why they should be registered despite not meeting the proposed thresholds.

    *Answer: See question 8*

42. Would the Proposed Rules cause market participants to reevaluate or restructure their activities to avoid registration as a dealer or cease investment strategies that trigger the application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

    *No comment*

43. For purposes of determining whether a person is a dealer, are there significant differences between equity securities, government securities, or other securities that should be addressed by the Proposed Rules? Commenters should identify and discuss any such differences.

    *Answer: See question 1*

44. Would the Proposed Rules appropriately apply the requirements applicable to dealers (e.g., capital, margin, and business conduct requirements) to the entities that would be subject to those requirements? Is the scope of the Proposed Rules appropriate in light of the costs and benefits associated with those substantive rules?

    Answer: Subject to the comments provided, yes.

45. How are each of PTFs, hedge funds, and investment advisers typically capitalized? Would the requirement of the Net Capital Rule (Exchange Act Rule 15c3-1) deter any of these entities from registering? Would the Net Capital Rule cause these entities to alter trading activity that would trigger the rules' application?

    *No comment*

46. Would a pension plan or other institutional investor that rebalances its portfolio be captured by the Proposed Rules? Please explain how. If so, should the rule specifically exclude periodic portfolio rebalancing (e.g., on a monthly or quarterly basis) from the concept of "as a part of a regular business?" Why or why not?

    *No comment*

47. Should the Commission view rebalancing differently if it occurs only at a certain frequency or by certain institutional investors? Why or why not?

    *No comment*

48. Are there any other terms used in the Proposed Rules that the Commission should define? Why or why not? Please identify what term(s) and how the term(s) should be defined.

    *Answer: See question 30*

49. Should the Proposed Rules include an anti-evasion provision similar to Rule 13h-l(c)(2), and why?

    *No comment*

50. Will the Proposed Rules appropriately account for trading activity occurring through sponsored access arrangements? Is there anything more that the Commission should address regarding how such Proposed Rules will interrelate with such arrangements?

    *Answer: The way a person / entity fulfill the criteria of the Proposed Rules (diret member of an exchange / trading venue or indirect access) should not be decisive whether or not the rules apply.*

51. If the Proposed Rules are adopted, which staff letters, if any, should or should not be withdrawn, and why?

    *No comment*

52. Are there additional standards, consistent with the Commission's objectives, that should be incorporated into the Proposed Rules? Commenters should identify and discuss any such standards.

    *No comment*

53. Are there any additional factors that the Commission should address in relation to the Proposed Rules?

*No comment*

54. Are there any alternative approaches to the Proposed Rules that the Commission should propose? Commenters should identify any such alternative approach and describe the advantages and disadvantages of the alternative approach.

    *No comment*

55. Other than what is discussed herein, are there any costs of compliance with the Proposed Rules that the Commission has not addressed? Commenters should describe any additional costs of compliance with the proposed rule and include any empirical data, to the extent available.

    *No comment*

56. The Commission is proposing a one-year compliance period from the effective date of any final rules if adopted. Would the proposed compliance period provide sufficient time for market participants to comply with the Proposed Rules? Why or why not?

    *No comment*

57. Are firms that are not registered as dealers or as government securities dealers important participants in securities market? If so, in which markets and in what ways? Do commenters agree that such firms have emerged as *de facto* liquidity providers?

    *Answer: See question 8 (albeit digital assets do currently not necessarily qualify as securities)*

58. The quantitative factor in proposed Rule 3a44-2 would identify as government securities dealers persons that trade more than $25 billion of Treasury securities monthly, during four out of the past six calendar months. Do you agree that approximately 46 firms would be government securities dealers based on this standard? Responses should provide empirical support, if possible.

    *No comment*

59. One of the rules' qualitative factors would identify as dealers and government securities dealers persons that "routinely [make] roughly comparable purchases and sales of the same or substantially similar securities in a day." Approximately how many firms would be dealers or government securities dealers based on this factor? Responses should provide empirical support, if possible.

    *No comment*

60. Do you agree that PTFs have emerged as de facto liquidity providers in the market for U.S. Treasury securities? To what extent do PTFs also provide liquidity in other securities markets?

    *No comment*

61. Do you agree with the Commission's description of the potential market disruptions that may follow the failure of one or more market participants that are not registered as dealers—i.e., the potential negative effects on creditors, counterparties, market liquidity, and market volatility? Why or why not?

    *Answer: Yes. In addition, the arguments of transparency and possibility of penalization in case of misconduct are also of relevance.*

62. Do you agree with the Commission's description of the externality that arises due to the possibility of manipulative or fraudulent behavior? Why or why not?

    *Answer: Yes. See also question 61*

63. Do you agree with the Commission's statement that the lack of regulatory insight into the practices and transactions of unregistered market participants negatively impacts markets by constraining regulators' ability to understand and respond to significant market events? Why or why not?

    *Answer: Yes. See also question 61*

64. Do you agree that the Proposed Rules would promote investor protection and orderly markets by increasing the financial stability and resiliency of individual liquidity providers in securities markets, particularly those liquidity providers that are not registered with the Commission? Why or why not?

    *Answer: Yes. See also question 61*

65. Do you agree that the Proposed Rules would promote investor protection and orderly markets by better informing regulators through more comprehensive transaction reporting, annual filings by newly registered dealers, and examinations?

    *Answer: Yes. See also question 61*

66. Do you agree that the Proposed Rules would deter manipulation or fraud behavior, by improving the Commission's ability to detect it? Why or why not?

    *Answer: Yes. See also question 61*

67. Do you agree with the Commission's description of the direct costs incurred by new registrants—e.g., costs of registering, costs of SRO membership, costs of reporting, etc.? Why or why not?

    *No comment*

68. Do you agree that the Proposed Rules would have offsetting positive and negative effects on market participation, market liquidity, price efficiency, competition among liquidity providers, and capital formation? Are the overall effects on each of these likely to be positive or negative? Please explain.

    *Answer: Overall effects are positive. Technical and regulatory developments have created new fields of businesses (might be referred to as being part of the "shadow*

*banking system") and activities which according to the principle "same business, same risks same rules" should be regulated equivalently to provide for a level playing field.*

69. How will firms that register as dealers in response to the Proposed Rules bring themselves into compliance with the net capital requirements? Please provide details regarding how the new dealers will implement and manage their compliance.

    *No comment*

70. Do you expect market participants, especially those captured by the Proposed Rules, to alter their legal structures? What changes are they likely to make and what effects will those changes have?

    *No comment*

71. Do you expect some market participants, whom the Proposed Rules would otherwise require to register as dealers, to reduce or exit certain activities in order to avoid the requirement to register? What types of entities would do so, and which activities would be affected?

    *Answer: Alteration to avoid registration might be applicable for a limited amount of market participants, likely stemming out of the currently unregulated family office area. However, a deteriorating impact on effectiveness of the Proposed Rules likely is insignificant as the amount and importance of such market participants is limited. With regards to participants active in digital asset trading the Proposed Rules will have a more severe impact. However, it seems certain part of "digital asset liquidity providers" – which could qualify as dealers under the Proposed Rules provided digital assets are being qualified as securities in future - are already as per now domiciled in seemingly "more favorable" jurisdictions outside the US.*

72. What benefits or costs would result from setting the threshold on the quantitative factor higher or lower than $25 billion monthly volume during four out of the past six calendar months?

    *No comment*

73. What benefits or costs would result from limiting the quantitative threshold by incorporating other characteristics of trading activity, such as turnover or balance of buys and sells? For instance, an alternative quantitative standard could require firms to register as dealers if they met BOTH a dollar volume threshold and a turnover threshold; another alternative standard could require firms to register if they meet BOTH a buy-volume threshold and a sell-volume threshold.

    *Answer: see question 1*

74. What benefits or costs would result from replacing the qualitative factors with quantitative "bright-line" thresholds?

*Answer: Benefit would be a crystal-clear interpretation of rules, however cost will likely be an altered behavior to match the quantitative standards and thus avoid a registration which deteriorate effectiveness of the rules.*

75. What benefits and costs would result from removing the exclusion for registered investment companies? How would these benefits and costs differ from the benefits and costs described above?

    *No comment*

76. What benefits or costs would result from removing the exclusion for registered investment advisers that only have investment discretion over client funds?

    *No comment*

77. What benefits or costs would result from excluding private funds?

    *No comment*

78. Are there other reasonable alternatives to the Proposed Rules that the Commission has not addressed? Commenters should describe any additional alternatives, along with the benefits and costs relative to the Proposed Rules.

    *Answer: Alternative suggestions where valuable in our opinion have been addressed in this feedback*

79. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

    *No comment*

80. Evaluate whether the Commission is adequately capturing the number of respondents that would be subject to the burdens under the Proposed Rules;

    *No comment*

81. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

    *No comment*

82. Evaluate the accuracy of the Commission's estimates of the costs associated with the proposed collection of information, including but not limited to any start-up, technology, personnel, legal services, operational, or maintenance costs, to comply with the collection of information;

    *No comment*

83. Evaluate whether the Proposed Rules would have any effects on any other collection of information not previously identified in this section; and

*No comment*

84. Determine whether any aspects of the Proposed Rules that are not discussed in this PRA analysis impact the burden or costs associated with the collection of information.

    *No comment*

Sincerely,

Julian Gretzinger
General Manager