

May 27, 2022

Via electronic submission: rule-comments@sec.gov

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer; File Number S7-12-22

Dear Ms. Countryman:

This letter is submitted on behalf of The American Council of Life Insurers (“ACLI”) in response to the Securities and Exchange Commission’s (“SEC”) request for comment on proposed new Rules 3a5-4 and 3a44-2 under the Securities Exchange Act of 1934, as amended (“Exchange Act”).¹ Each new rule would further define what it means to be engaged in “dealer” activity within the meaning of the Exchange Act. If adopted, the proposed rules would have the result of requiring certain market participants to register as broker-dealers with the SEC and become members of a self-regulatory organization (“SRO”), such as FINRA.

Executive Summary

The ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 95 percent of industry assets in the United States.

The ACLI does not oppose the registration and regulation of certain market participants who are currently unregulated. We wish to comment, however, on a fairly narrow aspect of proposed Rule 3a44-2; specifically, whether repurchase or reverse repurchase (“repo”)

¹ See SEC Release 34-94524; File No. s7-12-22, available at: [Proposed Rule: Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer](#) (hereafter the “Proposing Release”).

market activity should be excluded from the quantitative standards that would be used to determine whether a particular person must register with the SEC as a government securities dealer. As discussed below, we do not believe repo trading should be counted towards the quantitative standard.

Insurance Company Investment in Government Securities

U.S. life insurance companies sell the vast majority of life insurance and annuities purchased in the United States.² Assets held by life insurers back the companies' life, annuity, and health liabilities.³ Assets held in an insurer's general account support the insurer's contractual obligations for guaranteed, fixed-dollar benefit payments, including life insurance policies.⁴

State law restricts the types of investments that may be held in an insurer's general account.⁵ U.S. government bonds are among the permissible investments, and long-term U.S. government obligations account for a significant percentage of general account assets.⁶ At year-end 2020, more than 85 percent of general account assets invested in government securities had a maturity date longer than one year.⁷ Twenty-three (23) percent had a remaining maturity greater than 20 years.⁸ Given the long-term nature of these investments, it is not atypical for an insurer to use repurchase agreements to help manage a government securities portfolio.

Proposed Rule 3a44-2 – Qualitative and Quantitative Standards

The Exchange Act defines the term “government securities dealer” to mean any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include a person whose buying and selling for his own account, individually or in some fiduciary capacity, is not “as a part of a regular business.”⁹ The Exchange Act itself does not define what it means to engage in activities “as a part of a regular business.”

Proposed Rule 3a44-2 would address what the SEC views as a regulatory gap in the market for government securities by defining the term “as a part of a regular business” by reference to two standards: a qualitative standard¹⁰ (the “Qualitative Standard”), and a quantitative

² See 2021 Life Insurers Fact Book (ACLI)(hereafter, “ACLI Fact Book”), at: [01fb21_chapter1_overview.pdf \(acli.com\)](#)

³ Id. at [02fb21_chapter2_assets.pdf \(acli.com\)](#)

⁴ Id.

⁵ See, e.g., New York Consolidated Laws, sec. 1405, Investments of Life Insurers, available at: [New York Consolidated Laws, Insurance Law - ISC § 1405 | FindLaw](#)

⁶ *Supra* n. 3.

⁷ Id.

⁸ Id.

⁹ Exchange Act Section 3(a)(44)(A).

¹⁰ Under the Qualitative Standard, a person trading government securities would need to consider whether the person: (i) engages in a routine pattern of buying and selling government securities that has the effect of providing liquidity to other market participants by (a) routinely making roughly comparable purchases and sales of the same or substantially similar government securities in a day; or (b) routinely expressing 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; or (c) earns revenue

standard (the “Quantitative Standard”). A person found to trigger either standard would be required to register as a dealer with the SEC and become a member of an SRO, unless the persons (i) has or controls total assets of less than \$50 million, or (ii) is an investment company registered under the Investment Company of 1940.

The Quantitative Standard would apply a bright-line test: a person¹¹ trading government securities engaged in buying and selling more than \$25 billion of trading volume in each of four of the last six calendar months would be required to register with the SEC unless the person (i) has or controls total assets of less than \$50 million; or (ii) is an investment company registered under the Investment Company Act of 1940.

The Proposing Release explains that the SEC’s goal with respect to the proposed Quantitative Standard is “to capture the most significant market participants that are regularly buying and selling U.S. Treasury securities, and subject these participants that are not already registered as dealers or government securities dealers to a regulatory regime designed to minimize the risks they may pose to the U.S. Treasury market and provide regulators with appropriate oversight of their activities.”¹²

Responses to Specific Questions - Repos

Importantly, proposed Rule 3a44-2 would define “government securities” by reference to Section 3(a)(42)(A) of the Exchange Act. By defining government securities in this manner, the trading volume threshold set forth in the proposed rule would count toward the threshold trading in securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States (“U.S. Treasury Securities”), including transactions in U.S. treasury bills, notes, floating rate notes, bonds, inflation-protected securities (“TIPS”), Separate Trading of Registered Interest and Principal Securities (“STRIPS”), and when-issued transactions.¹³ Auction awards and repurchase and reverse repurchase transactions in U.S. Treasury Securities would be excluded.¹⁴ The exclusion for repurchase and reverse repurchase transactions is consistent with current FINRA transaction-reporting rules.¹⁵

In its Request for Comments, the SEC asks:

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

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 interests.

¹¹ “Person” would be defined in the new rule as having the meaning ascribed in Section 3(a)(9) of the Exchange Act.

¹² Proposing Release at 74 FR 23072.

¹³ Id.

¹⁴ Id.

¹⁵ See FINRA Rule 6730(e).

standards? Are there any types of transactions that should be included in calculating the trading volume amount?¹⁶

The ACLI's members believe that the exclusion of repurchase and reverse repurchase transactions from the Quantitative Standard in proposed Rule 3a44-2 is necessary and appropriate. It is necessary because of the regulation of insurance company general accounts which, as discussed above, dictates (through state law) the permissible investments of the general account and the quality of those investments. We are concerned that state regulation of general account investments could be unintentionally impacted if repo transactions were included in the threshold count. For example, if such transactions were included in the threshold, an insurer could find itself needing to dispose of long-term investments in government bonds in order to stay under the \$25 billion test. We do not believe that upending insurers' portfolio trading practices in this manner would be consistent with the overall management of general account assets, nor would it be consistent with the prudent investment obligations that must be complied with by those responsible for the stewardship of the general account.

General Comment

The ACLI also suggests that a general exemption be added to proposed Rule 3a44-2 which would permit the SEC to exempt from the rule any person if the SEC finds that the purposes of the rule do not require the application of the rule to the person. Such an exemption could be either unconditional or on specified terms and conditions. Other SEC rules contain this type of general exemption provision,¹⁷ and we believe it would be useful with respect to proposed Rule 3a44-2 because, if adopted, the rule may capture persons to whom the rule should not apply.

Conclusion

For the above-stated reasons, the ACLI believes that repo transactions should be excluded from the Quantitative Standard of proposed Rule 3a44-2 and that the text of the proposed rule should make this exclusion clear. We believe regulatory certainty regarding the triggers contained in the rule is important and appropriate. ACLI members are continuing to study proposed Rules 3a5-4 and 3a44-2 and may have additional comments based on further study.

Very truly yours,



Patrick C. Reeder
Vice President & Deputy General Counsel
American Council of Life Insurers

¹⁶ Supra n. 12 at 23073.

¹⁷ See, e.g., SEC Rule 15c3-3(k)(3).