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June 8, 2022

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

Re: File No. S7-12-22 (Proposed Changes to the Definitions of Dealer and Government Securities Dealer)

Dear Ms. Countryman:

T. Rowe Price is a global investment management organization with $1.42 trillion in assets under management.[1] We serve a wide a range of clients, from individual savers to large institutions and funds. We value the opportunity to comment on the above-referenced proposal (the "Proposal"), which would define the phrase "as a part of a regular business" to identify certain activities that would cause persons engaging in such activities to be "dealers" or "government securities dealers" under the Securities Exchange Act of 1934.

The Proposal states the SEC has various concerns resulting from the increasingly prominent role of certain firms, such as various principal trading firms (PTFs), that provide significant liquidity to our markets. As a key basis for the Proposal, the SEC states that to the extent these firms do not register as "dealers" or "government securities dealers" it is difficult for regulators and others to detect, investigate, understand, or address key market events.

In our view, the Proposal seeks to address these considerations by using dealer registration as a blunt instrument to address what is primarily articulated as a reporting issue related to a subset of market participants. Attempting to address a reporting concern in this way is particularly disappointing as the US financial markets are fortunate to have extensive reporting and transparency platforms such as, in the case of equities, the Consolidated Audit Trail (CAT) and a public consolidated tape, and in the case of fixed income, FINRA's Trade Reporting and Compliance Engine (TRACE).

The SEC should explore alternatives to the Proposal that would meet its objectives in a more tailored way. The Proposal's approach is overly broad and sets out ambiguous standards for when market participants would be classified as dealers.[2] If the proposed rules are adopted in their current form, it would lead to unnecessary and burdensome monitoring obligations for a range of asset management organizations and activities that, in our view, are unlikely to raise the concerns cited by the SEC. And for registered investment advisers (or their funds or their clients' advisory accounts) that would ultimately be classified as dealers, the burdens would be amplified. Regulating these parties as dealers would not serve the public's interest and would cause a host of negative impacts as discussed below.

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[1] As of April 30, 2022 (based on preliminary data).
[2] Throughout this letter, references to "dealer" are intended to also include the term "government securities dealer."

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Ideally, rather than making the proposed fundamental changes to who and what activity is subject to regulation as a dealer, the SEC should instead work in conjunction with other bodies, such as the Department of the Treasury and FINRA to consider and potentially propose reporting changes. Specifically, the SEC should study and explore initiatives to expand the regulatory reporting of PTFs' security transactions in the Treasury market, as well as the public reporting of PTFs' security transactions in other fixed income asset classes via TRACE. With respect to the U.S. equity markets, we have not observed a significant need to expand reporting of PTFs' transactions given the comprehensive nature of the public consolidated tape. The CAT also greatly facilitates the SEC's ability to reconstruct market events and its utility to regulators will be further increased later this year as the identity of broker-dealers' customers, including hedge funds, will be added. The SEC's large trader regime also helps the SEC monitor and analyze the trading of firms that trade substantial levels of exchange-traded equities.

However, if the SEC instead continues to pursue the overall framework of dealer registration as set out in the Proposal, we strongly believe the following changes would achieve a more balanced approach:

- *Registered investment advisers and their accounts should be more broadly excluded from the term "as part of a regular business."*

- *The legitimacy of "parallel account structures" should be recognized and they should not trigger potential regulatory obligations for an adviser's clients.*

- *The quantitative standard should be eliminated or modified; the qualitative intra-day purchase standard should be refined.*

We also note the Proposal is another recent example in a series of potential SEC rulemakings that have been accompanied by extremely short comment periods. While certainly many of the SEC's other recent proposals would benefit from longer comment periods (and we are pleased to see that some in fact have been re-opened), given the Proposal's overly broad and unconventional attempt to address its objective, a longer comment period is especially warranted so that the public can further analyze the Proposal and develop more fulsome alternatives for the SEC to consider.

The exclusions for registered investment advisers (RIAs) and their accounts should be expanded. In connection with the Exchange Act's definitions of the term "dealer," the Proposal states a person that is engaged in buying and selling securities for its own account is engaged in such activity "as part of a regular business" if certain qualitative and quantitative standards are met. A person that has or controls total assets of less than $50M or a person that is an investment company registered under the Investment Company Act of 1940 are each already excluded from the definition of "dealer."

We believe the trading by RIAs and the accounts they manage should also be excluded categorically from the "as part of a regular business" analysis. It appears the SEC's rationale for excluding registered investment companies is that they are subject to various requirements, including those related to custody, conflicts of interest, books and records, policies and procedures, and designation of a chief compliance officer.[3] RIAs should also be excluded as they are subject to similar requirements, as well as a robust registration regime, and must act in

[3] See pages 37-39 of the Proposal.

accordance with their fiduciary duties. Within this regulatory framework, RIAs trade in furtherance of their funds' and clients' investment objectives and desired risk/return profiles, and not for classic broker-dealer services such as market-making, underwriting, and distributing affiliated sell-side research.

Although some of the examples of investment company regulation cited by the SEC in the Proposal do not have a clear counterpart under the Investment Advisers Act of 1940, we do not find these differences to be a sound basis for subjecting RIAs to potential regulation as dealers. For instance, mutual funds are subject to explicit regulatory limits on borrowing and leverage whereas RIAs are not. Nonetheless, a range of other factors limit the extent to which an RIA can employ leverage in an advisory account. As examples, Federal Reserve Regulations T, U and X, and FINRA Rule 4210 constrain leverage in a range of scenarios and a RIA's fiduciary duty to its client includes a duty of care. In addition, there are typically contractual provisions that limit an account's leverage. Counterparties, prime brokers, and clearing firms impose collateral/margin requirements, as well as other risk mitigation provisions in their trading agreements. It is also common for clients to impose their own portfolio restrictions on the RIA such as: percentage limits on derivatives or leverage; minimum liquid asset coverage; and/or purpose constraints (e.g., derivatives to be used for hedging only).

We are also concerned the SEC has not adequately assessed the feasibility and impact of an RIA being regulated as a dealer while also being subject to the Investment Advisers Act of 1940 for the same activities, nor does the Proposal detail how an entity could practically comply with both regimes. Moreover, one of the main perceived benefits of dealer regulation cited by the SEC is the application of the Exchange Act's "Net Capital Rule"; however, its utility is illusory in this case. RIAs act as agents when trading for their advisory accounts and, unlike dealers, an advisory account does not trade with or have liabilities to customers. As a result, it is not evident to us what protections the Net Capital Rule would provide.

For all of these reasons, we strongly urge the SEC to provide an absolute exclusion for RIAs and their advisory accounts so that the phrase "as part of a regular business" does not apply to their activities. However, if the SEC insists on some RIA activity being subject to the Proposal, we make recommendations below regarding proprietary trading and parallel account structures to better calibrate the Proposal.

I***f some RIA activity were to remain in-scope, it should be limited to true proprietary trading by the RIA*****.** Otherwise, a variety of legitimate activities and business structures would be penalized by virtue of being considered part of the RIA's "own account." For example, it is not uncommon for an asset manager to fund an account in its own name that is run as a test portfolio in accordance with written investment guidelines. This type of arrangement allows the manager to assess the viability of a new investment strategy that may be desirable in meeting the financial objectives of existing or prospective clients. Test portfolios help establish performance track records, which are often required by consultants and certain clients before investing. By using funded, as opposed to hypothetical portfolios, the manager is also able to test the investment strategy in a more realistic operational environment. Similarly, some collective investment vehicles are initially funded entirely by the adviser or one of its affiliates to allow time for the vehicle to build a track record and eventually scale as new investors join. Also, it should come as no surprise that when an asset management organization sponsors a collective investment vehicle, one or more of the organization's advisors or affiliates are involved in the establishment, management, operation, and policies of the vehicle. Private funds, whether established as partnerships or corporate entities, are no exception to this reality. Below, we discuss additional thoughts on the treatment of private funds under the Proposal.

We note that one of the Proposal's objectives is to subject some private funds to dealer registration.[4] The SEC's main justification for not excluding private funds is that, otherwise, PTFs might convert to private funds in order to evade dealer registration. We do not find this rationale convincing as it is based on a theoretical risk. In our view, this potential risk would be more efficiently addressed by incorporating an explicit anti-evasion provision in the rule text.

The Proposal's focus on the activities of private funds is also troubling given the SEC does not put forth specific evidence of wide spread instances of private funds acting as dealers in disguise. Nor does it appear the SEC fully considered how private funds' Form PF filings could be used as a mechanism for identifying funds that may warrant additional review for dealer-like behavior. For example, Form PF captures information such as the number of open positions; asset, liability, and borrowing information; investor types and the aggregate ownership percentage represented by each type; concentration of ownership among the top 5 investors in the fund; related party information; and the percentages of fund assets managed using high-frequency trading and/or long-short strategies. Obviously, the responses to these Form PF questions do not necessarily mean a private fund is acting as a de-facto dealer. However, they could help the SEC assess whether further inquiry or explanation is needed to determine if a particular fund is acting in an abusive manner or seeking to evade regulation. In our view, this type of approach to identifying potential dealer-like activity would be more proportionate than the Proposal's framework. Requiring a broad universe of private funds to monitor and measure themselves against the proposed standards seems overly burdensome and inefficient, especially since elements of the standards are vague and the bulk of private funds are unlikely to present the trading concerns stated by the SEC.

Parallel account structures should not be penalized. As proposed, accounts that are in a parallel structure[5] would be considered under common control with each other and, as a result, would need to attribute their trading activity to one another when determining whether any of the proposed qualitative and quantitative standards are met. In the event the SEC does not adjust the Proposal by creating an absolute exclusion for RIAs and their accounts from the phrase "as part of a regular business," we strongly recommend the SEC not view these structures as common control scenarios. If not remedied, there would be inappropriate and impractical outcomes for clients and RIAs, including potentially triggering a requirement for a client or one of the RIA's investment vehicles to register as a dealer.

Similar to our earlier statements regarding the legitimacy of seeding and private fund arrangements, the use of parallel account structures is quite common by large and global investment managers. Managers may offer the same investment strategy in a variety of formats, such as through mutual funds, ETFs, UCITS, private funds, other collective investment vehicles, and/or separately managed accounts. Doing so allows the manager to accommodate certain types of investors such as ERISA plans, investors from certain jurisdictions, and investors with different tax objectives. Also, the label "parallel account structures" for these situations is in many ways a misnomer. For example, each account has its own investment

[4] See Page 15 of the Proposal.
[5] As the SEC knows, the Proposal defines "parallel account structure" as a structure in which one or more private funds, accounts, or other pools of assets managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another fund, account or pool in the structure.

guidelines or policy and the RIA owes a separate fiduciary duty to each account and is obligated to act in the account's best interests. In addition, although accounts that follow the same investment strategy may often transact in the same or similar securities and same direction, in some cases their trading behaviors and the direction of trading (buy vs. sell) may diverge due to cashflow differences, current and target exposure levels, and other considerations.

Nonetheless, the SEC proposes to attribute the trading of various accounts to one another to prevent evasion and intentional avoidance of dealer registration.[6] We think this is a far-fetched justification. Regardless of whether accounts are related, and even in cases where they may trade the same security in opposite directions, we think attribution and aggregation among the owners or sponsors of these accounts is inappropriate. As previously mentioned in our discussion of private funds, a better way to address potential abusive situations is to simply have an anti-evasion clause.

The standards for "part of a regular business" should be less arbitrary so that they are more tailored to identifying actual market-making and more conducive to monitoring. The quantitative and qualitative standards should be modified. As the SEC knows, one of the proposed standards for activity that is "part of a regular business" for purposes of the Exchange Act's definitions of "dealer" and "government securities dealer" is routinely making roughly comparable purchases and sales of the same or substantially similar securities or government securities in a day. While we appreciate that the SEC included some examples in the Proposal for what does and does not constitute a substantially similar security, we recommend this standard purely focus on the same security. Invariably, there would be ambiguities and differing approaches taken by firms as to what is considered a substantially similar security. Including substantially similar securities in the proposed standard is also less conducive to enabling systematic monitoring by RIAs of their trading activity. The interpretive approach required by the Proposal would lead to manual and costly processes.

We are also concerned that the proposed quantitative standard for government securities activity would trigger dealer registration requirements purely based on exceeding a trading volume threshold. As the SEC is aware, the Proposal provides that a person would be deemed to be engaged in buying and selling government securities for its "own account" and "as a part of a regular business" if, in each of four out of the last six calendar months, the person engaged in buying and selling more than $25 billion of trading volume in government securities. Although $25 billion is a high figure, it cannot substantively distinguish between dealing and ordinary trading by investors. Government securities, particularly certain US Treasuries, may be the subject of large trades as part of ordinary course cash and risk management. Also, the Proposal's aggregation and parallel account structure rules further exacerbate this flaw by raising the probability of exceeding the $25 billion threshold. In sum, while trading volume and the value of a person's controllable assets can be used as factors, it would be inappropriate to impute dealer status and regulation on a party based purely on numeric thresholds without consideration of the style, intent, and purpose of the trading activity.

Our recommendations for each of the above standards would reduce their overly broad nature. We believe there would be minimal risk to the SEC if these changes are accepted given the

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[6] See page 84 of the Proposal.

Proposal's "no presumption" clause[7] and the additional guardrails that would be provided by our suggestion to include an anti-evasion provision.

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Thank you for the opportunity to share our views on the Proposal. If you would like to discuss our letter, please feel free to contact us.

Sincerely,

/s/
Mehmet Kinak
Vice President and Global Head of Equity Trading

/s/
Jonathan Siegel
Vice President and Managing Legal Counsel (Legislative & Regulatory Affairs)

[7] The Proposal's rule text states no presumption shall arise that a person is not a dealer within the meaning of the Exchange Act solely because that person does not meet any of the qualitative or quantitative standards in the Proposal.