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**United States Senate**  
COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR  
LILA NIEVES-LEE, REPUBLICAN STAFF DIRECTOR

December 14, 2023

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

Dear Chair Gensler:

I am writing to express concerns with the Securities and Exchange Commission's (SEC) proposed rules titled, "Further Definition of 'As a Part of a Regular Business' in the Definition of Dealer and Government Securities Dealer."<sup>1</sup> Specifically, these proposals are overly vague, lack complete economic analysis, and will likely reduce liquidity in U.S. Treasury markets, creating widespread, adverse impacts for the American economy and Main Street investors.

The U.S. Treasury markets are the largest and most liquid financial markets in the world. A well-functioning secondary market for Treasuries contributes to economic stability. It helps support critical functions of our government, including financing, providing a benchmark for other asset classes, and aiding the flow of credit. Furthermore, Treasury markets play a critical role in supporting small businesses by facilitating the flow of capital and promoting access to credit.

Currently, a dealer is defined as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise" but excludes "a person that buys or sells securities. . . for such person's own account, either individual or in a fiduciary capacity, but not as a part of a regular business." Similarly, a government securities dealer is defined as "any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise" but excludes "any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business." The SEC's proposals contemplate the imposition of new, broad, and sweeping changes to the criteria for determining which market participants are required to register as dealers with the SEC, and therefore would significantly alter the existing relationship between dealers and those that purchase securities in the secondary market.

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<sup>1</sup> Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, 87 Fed. Reg. 23054 (proposed Apr. 18, 2022).

Under these proposals, a market participant would be required to register as a dealer if one of three qualitative standards,<sup>2</sup> or one quantitative standard,<sup>3</sup> are triggered under the proposed tests to determine whether a market participant's actions are "*as part of a regular business*" (*emphasis added*). By fundamentally changing the meaning of "as part of a regular business," these proposals greatly expand the definition of both dealer and government securities dealer (hereinafter, "dealers") and accordingly would vastly expand the scope of market participants treated as dealers. For example, these proposals would treat entities like private fund managers as dealers—which unquestionably would come with additional regulatory requirements that fail to account for the already extensive regulatory framework that currently governs registered investment advisers and private fund advisers.<sup>4</sup> This in turn may lead such entities to change their investment strategies to avoid corresponding compliance costs. These proposals, in addition to numerous other rulemakings<sup>5</sup> advanced by the SEC to inappropriately regulate capital markets, will impair market liquidity and reduce overall resiliency in the market.

I am especially concerned that the additional compliance burdens and costs associated with registering with the SEC as a dealer may cause some market participants to exit the Treasury market entirely. Decreased participation in our Treasury markets will cause wider bid-ask spreads, which inherently lead to the inefficient pricing of Treasuries. Fewer participants in the Treasury markets will also lead to a potentially dangerous reduction in liquidity in those markets. These are risks we cannot afford to take.

Moreover, not only are the proposals' new contemplated tests for determining which market participants meet the definition of a dealer overly vague and unclear, but they also lack adequate economic impact analyses mandated by the Administrative Procedures Act. Indeed, the Commission itself directly acknowledges in its proposals, "it is difficult to quantify this activity."<sup>6</sup> Moreover, the Commission admits it is not even sure how many market participants will be impacted by these proposals, stating that "the precise number of affected parties is highly uncertain,"<sup>7</sup> making it flawed in both substance and process. Overly broad regulations that unfairly and imprudently impact net economic benefits tend to be arbitrary and capricious by their nature—and I believe these proposals exemplify this adage.

I am deeply concerned that these proposals, if finalized, will result in lasting negative impacts to our Treasury markets, tightening credit conditions for small businesses, and inappropriate

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<sup>2</sup> An entity must register as a dealer if they are: (1) routinely making roughly comparable purchases and sales of the same or substantially similar securities; (2) routinely involved in trading interests that are at or near bid-ask prices that are accessible to other market participants; or, (3) earning revenue primarily from capturing bid-ask spreads or from capturing any incentives offered by trading venues to liquidity-supplying trading interests.

<sup>3</sup> An entity must register as a dealer if they are engaged in the buying and selling of more than \$25 billion in trading volume of US Treasuries in four out of the last six months.

<sup>4</sup> See, e.g., Sec. Exch. Act Rules 15c3-1, 17 C.F.R. § 240.15c3-1; c-2; c-3.

<sup>5</sup> See, e.g., The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 FR 21334 (proposed Apr. 11, 2022); Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, 88 FR 63206 (proposed Sept. 14, 2023); Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 88 FR 51896 (proposed Aug. 4, 2023); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, 87 FR 80266 (proposed Dec. 29, 2022).

<sup>6</sup> See *supra* note 1 at 115.

<sup>7</sup> *Id* at 110.

limitations of investor choice. Many Americans rely on Treasuries to secure a safe and stable retirement, and these proposals threaten to upend that reliability. During a time of escalating debt levels, rampant inflation, and highly volatile economic conditions, introducing such sweeping policy changes that lack thorough analysis and public feedback is misguided. I urge you to rescind these ill-timed and poorly conceived proposals and go back to the drawing board to ensure that any rulemaking impacting the Treasury markets is justified, does no harm, and is supported by robust economic analyses.

Thank you for your consideration.

A handwritten signature in blue ink, appearing to read "Tim Scott", with a long horizontal flourish extending to the right.

Tim Scott  
Ranking Member

cc:  
Federal Reserve Chair Jerome Powell  
US Department of the Treasury Secretary Janet Yellen