

December 22, 2022

Submitted electronically via SEC.gov

U.S. Securities and Exchange Commission  
Attn: Vanessa Countryman, Secretary  
100 F Street NE  
Washington, DC 20549-1090

RE: SEC Proposed Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities  
File Number S7-23-22; Release No. 34-95763

Dear Ms. Countryman,

The Bank of New York Mellon Corporation (“BNY Mellon”) welcomes the opportunity to comment on the proposed Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities (the “Proposal”).

Established in 1784, BNY Mellon is a global company that delivers wealth management and investment services to institutions, corporations, and individual investors in 35 countries. BNY Mellon plays a critical role as a central orchestrator in the global financial ecosystem, touching more than 20% of investable assets globally. We are the world’s largest custodian, with \$42 trillion in assets under custody and/or administration (AUC/A); we clear about \$10 trillion of securities and process over \$2 trillion of payments per day; and we manage nearly \$2 trillion of assets on behalf of our Investment and Wealth Management clients.<sup>1</sup>

Our businesses reflect this. BNY Mellon Securities Finance is one of the largest lenders of U.S. Treasury securities, as well as the industry’s largest agent lender. BNY Mellon is also a sponsoring member in the Fixed Income Clearing Corporation (“FICC”) sponsored member program, where we submit eligible repurchase and reverse repurchase transactions in U.S. Treasury and agency securities (“Sponsored Member Transactions”) between BNY Mellon and our sponsored member clients for novation and clearing through FICC pursuant to the FICC Government Securities Division rulebook. Our Clearance and Collateral Management business settles fixed income and equity transactions globally and serves as custodian for tri-party collateral management worldwide including the Federal Reserve Reverse Repo and Standing Repo Facility programs, repo, securities lending, and uncleared margin trades. This business currently provides settlement services for a variety of structures including FICC’s central clearing activity which includes FICC’s sponsored member program (bilateral and tri-party settlement), and direct-to-customer transactions for both U.S. Treasury cash and repo markets.

This response is informed by our central role in the global financial system as a global systemically important bank (G-SIB) and one of the world’s largest investment services and investment management firms.

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<sup>1</sup> The Bank of New York Mellon Corporation (2022). Form 10-Q For the Quarterly Period Ended September 30, 2022. U.S. Securities and Exchange Commission. <https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/investor-relations/bny-mellon-form-10-q-3q22.pdf.coredownload.pdf>

## Introduction

BNY Mellon supports the Proposal's overall goal of improving the functioning and resilience of the U.S. Treasury market, and we stand ready to support the market however we can as settlement agent.

We appreciate that recent stresses in the U.S. Treasury market, including the "flash rally" of 2014, the U.S. Treasury repo market stress of September 2019, and the COVID-19 shock of March 2020, have led to concerns about the U.S. Treasury market's continuing capacity to absorb shocks and the factors that may limit its resilience under stress.<sup>2</sup> These events generally involved decreases in available liquidity, an imbalance in buyers and sellers, and/or increases in market price volatility. Central clearing should therefore be viewed together with other solutions, such as those noted by the Inter-Agency Working Group for Treasury Market Surveillance ("IAWG"), to address these recent stresses in Treasury markets by improving resilience of market intermediation.<sup>3</sup>

## Recommendations

### 1. Additional Study and Analysis Should Occur Before Mandating the Clearing of U.S. Treasury Lending Transactions

BNY Mellon supports clearing in general as one method of improving the stability and resilience of the U.S. Treasury market, including the Proposal's specific provisions that provide for central clearing of certain U.S. Treasury repurchase transactions.

In response to the Proposal's request for comment on whether securities loans involving U.S. Treasury securities should be included in the clearing mandate<sup>4</sup>, BNYM supports market changes to provide incentives for central clearing of securities lending transactions. However, any mandate to centrally clear securities lending transactions involving U.S. Treasury securities should be implemented only after careful study and analysis of the potential impacts and consequences.

While repo and securities lending transactions may look similar from an economic perspective, the securities lending market differs materially from the repo market. The securities lending market is demand driven, as borrowers seek out securities for many reasons such as settlement, hedging, and collateral needs. From a lender's perspective, securities lending can be viewed as an investment overlay strategy, whereby beneficial owners who are large holders of U.S. Treasury securities lend those securities to generate incremental income on their portfolios. They expect to receive excess cash collateral in return, in effect receiving cash margin rather than posting cash margin. The cash collateral received by the lender is invested in short-term fixed income instruments which may include U.S. Treasury repurchase transactions that fall within the Proposal's current mandate. The yield earned on the investment of the cash collateral is used by the lender to pay transaction expenses, which include the agent lender's fee and may also include a rebate payment to the borrower representing a fee for the use of the cash, which varies based on the level of demand for the lent securities. The remaining amount of the yield after expenses is the revenue earned by the beneficial owner for the lending transaction. To the extent that changes impose additional costs, impact pricing, or otherwise change the market structure such that the yield on the cash collateral can no longer support the expense, beneficial owners may withdraw their portfolios from lending. This could

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<sup>2</sup> See 87 Fed. Reg. 64684 (Oct. 25, 2022).

<sup>3</sup> See RECENT DISRUPTIONS AND POTENTIAL REFORMS IN THE U.S. TREASURY MARKET: A STAFF PROGRESS REPORT (November 2021) available at <https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf>.

<sup>4</sup> See 87 Fed. Reg. at 64629 ("In the event that a U.S. Treasury securities CCA were to offer clearance and settlement services for securities lending transactions in which U.S. Treasury securities are borrowed, should the Commission include such transactions in the definition of an eligible secondary market transaction in Proposed Rule 17Ad-22(a)? Would a failure to include such securities lending transactions in the definition of "eligible secondary market transactions" create opportunities for gaming or evasion of the requirements of Proposed Rule 17Ad-22(e)(18)(iv)(A)? Are there economic or other distinctions that mitigate against including securities lending transactions in the definition of an eligible secondary market transaction?").

exacerbate the very liquidity concerns the Proposal seeks to address. Accordingly, BNY Mellon urges careful study and analysis prior to implementing any mandate to clear securities lending transactions.

## **2. The SEC Should Consider Future Development of a Non-Cash Model for Clearing Treasury Lending Transactions**

After further study and assessment, we recommend consideration of a non-cash model for clearing treasury lending transactions through a covered clearing agency. In this model, non-cash loan collateral would be held in a segregated account at a third-party custodian in the lender's name and pledged back to the central clearing facility as security to cover any default by the lender. This model would serve as an alternative to cash margin, and could reduce the need for clearing fund and sponsor guarantee requirements, reduce costs, and facilitate additional clearing – all of which would likely increase access to the Treasury market and help to maintain liquidity.

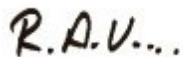
## **3. Any Final Rule Should Allow Sufficient Time for Implementation**

We support an extensive implementation timeframe that is appropriately prioritized and sequenced due to the breadth of the Proposal, the time and resources necessary for a covered clearing agency to revise its policies and procedures, and the changes necessary for market participants' compliance. Once a covered clearing agency has revised its policies and procedures, implementation of such changes will require many adaptations across many market participants, including material technology & infrastructure, legal, onboarding, and operational changes. While this effort differs from the tri-party repo infrastructure reform previously implemented by the market, lessons learned through that reform effort may be instructive here. Tri-party repo market reform was deliberately sequenced, and implementation took nearly five years to complete. The result was a successful transition without market disruption. We recommend the Commission take a similar, calculated approach and continue to engage with market participants to stage the implementation.

## **Conclusion**

We appreciate the opportunity to respond to this important proposal. BNY Mellon supports the overall goal of strengthening the structure and resilience of the U.S. Treasury market through targeted reforms that incentivize broader market participation, and we stand ready to support the market however we can as settlement agent.

Sincerely,

Handwritten signature in black ink that reads "R.A.V..."

Robin Vince

President and Chief Executive Officer  
The Bank of New York Mellon Corporation