The Honorable Janet L. Yellen
Secretary
Department of Treasury

The Honorable Jerome H. Powell
Chair
Board of Governors of the Federal Reserve System

The Honorable Gary Gensler
Chair
Securities and Exchange Commission

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission

Dr. John C. Williams
President and CEO
Federal Reserve Bank of New York

May 23, 2022

Dear IAWG Representatives:

Comment period extension for the Securities and Exchange Commission's proposed rule entitled "Further Definition of 'As a Part of a Regular Business' in the Definition of Dealer and Government Securities Dealer" (File No. S7-12-22)

The undersigned Associations[1] respectfully submit this letter regarding the Securities and Exchange Commission's ("Commission") proposal entitled "Further Definition of 'As a Part of a Regular Business' in the Definition of Dealer and Government Securities Dealer" (the "Proposal").[2] At the outset, we note our appreciation for the November 2021 report from the Inter-Agency Working Group on Treasury Market Surveillance (IAWG) assessing disruptions in the U.S. Treasury market and potential reforms to support the six guiding principles outlined therein.[3] It is with these principles and potential reforms in mind that we submit this letter regarding our concerns with the Proposal's impact on market participation in and the functioning of cash Treasury, Treasury futures and related markets.

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1 *See* Appendix for descriptions of Associations.

2 SEC, Proposing Release, Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, 87 Fed. Reg. 23054 (April 18, 2022) (the "Proposing Release").

3 IAWG, Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report (Nov. 8, 2021), *available at* https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf.

The Commission is proposing to amend the definitions of "dealer" and "government securities dealer" to further define these terms to identify certain activities that would constitute "as part of a regular business" thereby requiring a person engaged in those activities to register as a dealer or government securities dealer.[4] The Proposal, which includes three qualitative standards[5] and one quantitative standard,[6] focuses on market participants who engage in a routine pattern of buying and selling securities for their own account that has the effect of providing liquidity.[7]

The market needs considerably more time to assess the Proposal as there is a concern that the parameters specified by the Commission may be overly broad and may inappropriately capture unintended entities. It is therefore critical that the industry has time to weigh in, especially as the Commission explains that market participants who are forced to register as a dealer or government securities dealer will face tremendous monetary costs.[8] The Commission acknowledges that these significant costs may also affect market efficiency, competition and capital formation.[9] It further acknowledges that the Proposal's net effect on each of these aspects is "*uncertain*."[10] We believe, however, that such negative consequences will indeed materialize. Entities inappropriately captured may lead to such market participants materially curtailing their investment and trading activity in order to avoid triggering a registration obligation. This result will have broadly, negative effects throughout the securities and government securities markets.

For example, to avoid the substantial initial and ongoing costs of becoming a dealer or a government securities dealer, some market participants may change or abandon certain investment or trading strategies. This could harm price discovery and impair market liquidity and exacerbate volatility in either, or both, the securities and government securities markets, with spillover effects to futures and OTC derivatives markets, among others. Market competition may suffer as firms change their trading behavior, leading to, perhaps, a concentration of risk in fewer firms. Furthermore, it is unclear how the dealer or government securities dealer regulatory framework would actually apply for some market participants with varied organizational and operational structures.

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4 Proposing Release, *supra* note 2, at 23061.

5 Proposed Rules 3a5-4 and 3a44-2 would require a person to register as a dealer or government securities dealer, respectively, if it: (i) routinely makes roughly comparable purchases and sales of the same or substantially similar securities (or government securities) in a day; (ii) routinely expresses 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 (iii) earns 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 interests. *Id.* at 23066-67, 69.

6 Proposed Rule 3a44-2 would also establish a separate quantitative standard under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities "as part of a regular business," regardless of whether that person meets any of the Proposal's qualitative standards. *Id.* at 23071. Specifically, a person engaged in buying and selling government securities for its own account is engaged in such activity "as part of a regular business" if that person in each of four out of the last six calendar months, engaged in buying and selling more than $25 billion of trading volume in government securities. *Id.*

7 *Id.* at 23061.

8 The Commission estimates that registering with it and becoming a member of an SRO will cost $600,000 initially and $265,000 annually thereafter. *Id.* at 23089. It further estimates that per-firm costs to report to the Consolidated Audit Trail will range from $965,000 to $8,218,000 for one-time implementation, plus ongoing costs of $503,000 to $5,405,000 annually. *Id.* at 23090. These market participants will also face recordkeeping and reporting costs, direct costs that may stem from meeting capital requirements and continuous self-evaluation costs as to whether one is a dealer or not. *Id.*

9 *Id.* at 23091-92.

10 Emphasis added. "The net effect on market efficiency is uncertain." *Id.* at 23091. "The net effect that the Proposed Rules may have on competition is uncertain." *Id.* "The likely effect on aggregate market participation is uncertain." *Id.* at 23092.

The Commission has provided interested parties until May 27, 2022, to respond to the Proposal, a mere 60 days from its issuance to assess and comment on the many intended and potential, unintended, consequences that will be felt throughout the U.S. securities markets, particularly the cash Treasury and Treasury futures markets. We do not believe this comment period is sufficient for a rulemaking of this magnitude, one that will impact the investment and trading strategies, operations, risk management, compliance and reporting functions of many Association members. Instead, commenters should be given until August 16, 2022 (120 days from publication in the Federal Register) to respond to the Proposal. We are therefore respectfully requesting the IAWG support an extended comment period and encourage the Commission to provide the public with more time to fully understand and consider the Proposal's effects and practicability.

Yours sincerely,

/s/ Jennifer W. Han

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Deputy CEO, Global Head of Government Affairs
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Jennifer W. Han
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Joanna Mallers
Secretary
FIA Principal Traders Group

William Thum
Managing Director and Associate General Counsel
SIFMA Asset Management Group

James Toes
President and CEO
Security Traders Association

APPENDIX

AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2.5 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage $600 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

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MFA represents the global alternative investment industry and its investors by advocating for sound industry practices, regulatory, tax and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively mange nearly $1.6 trillion across a diverse group of investment strategies. MFA is an advocacy, education, and communications organization established to enable investment advisers in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA has a global presence and is active in Washington, D.C., London, Brussels, and Asia. For more information visit https://www.managedfunds.org/.

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STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association's founding principle, Dictum Meum Pactum – "My Word is My Bond." For more information, visit https://securitytraders.org/.