



## INSTITUTE OF INTERNATIONAL BANKERS

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### **Submitted via email**

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

**Re: Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, from Certain Aspects of Rule 17ad-22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment (Release No. 34-104944; File No. S7-2026-07)**

Dear Ms. Countryman,

The Institute of International Bankers (the “**IIB**”)<sup>1</sup> appreciates the opportunity to comment on the above-captioned notice of request for exemptive relief (the “**Notice**”) issued by the Securities and Exchange Commission (the “**Commission**”) in response to the request by the IIB, submitted to the Commission on February 27, 2026 (the “**IIB Request**”), that the Commission grant an exemption pursuant to Section 36 of the Securities Exchange Act of 1934 (“**Exchange Act**”) from the application of Exchange Act Rule 17ad-22(e)(18)(iv)(A) and (B) (together, the “**Trade Submission Requirement**”) to certain Non-U.S. Transactions (as defined below).

### **Requested Exemption**

The IIB Request would provide an exemption from the Trade Submission Requirement for an eligible secondary market transaction between a Non-U.S. Participant and a Non-U.S. Client (such transaction, a “**Non-U.S. Transaction**”). For this purpose, a “**Non-U.S. Participant**” would mean a direct participant of a U.S. Treasury securities covered clearing agency (“**CCA**”) that is not a U.S. person (as defined by Exchange Act Rule 3a71-3), U.S.

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<sup>1</sup> The Institute of International Bankers represents the U.S. operations of internationally headquartered financial institutions from more than 35 countries around the world. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions also enhance the depth and liquidity of U.S. financial markets and contribute significantly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital expenditures. For more information, visit [iib.org](http://iib.org).

branch of a non-U.S. person, or non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person. A “**Non-U.S. Client**” would mean a counterparty to a Non-U.S. Participant that is not a direct participant of a U.S. Treasury securities CCA, a U.S. person, a U.S. branch of a non-U.S. person, or a non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person.

In addition, acknowledging the Commission’s attention to the scope of the exemption requested for Non-U.S. Transactions and its impact on competition, the IIB would not oppose a more holistic exemption framework that would address the extraterritorial application of the Trade Submission Requirement across the different models that market participants use to access central clearing. The holistic exemption framework would supplement the exemption from the Trade Submission Requirement for Non-U.S. Transactions with exemptions for eligible secondary market repo or reverse repo transactions between a Non-U.S. Client and any affiliated counterparty that is not a U.S. person (as defined by Exchange Act Rule 3a71-3), U.S. branch of a non-U.S. person, or non-U.S. person whose obligations under the transaction are guaranteed by a U.S. person (a “**Foreign Affiliate**”) or foreign branch (as defined by Exchange Act Rule 3a71-3) of a direct participant that is a U.S. person (a “**Foreign Branch**”) (such transactions, “**Qualifying Non-U.S. Transactions**”). Noting that Qualifying Non-U.S. Transactions with Foreign Affiliates may still become subject to extraterritorial application of the Trade Submission Requirement pursuant to the condition to the inter-affiliate exception that a direct participant’s affiliated counterparty submit its other transactions for clearing (the “**Outward-Facing Condition**”) even if that affiliated counterparty is a Foreign Affiliate, the Requested Exemption would also exempt such Qualifying Non-U.S. Transactions from the application of the Outward-Facing Condition. The holistic exemption framework is referred to herein as the “**Requested Exemption**”.

The Requested Exemption is intended to resolve significant questions relating to the extraterritorial scope of the Trade Submission Requirement that, if left unresolved, would have several negative consequences for foreign financial institutions that were not considered by the Commission when it adopted the Trade Submission Requirement, as detailed in the IIB Request. Such consequences could lead non-U.S. counterparties to question their participation in the U.S. Treasury security market when they have alternative government bond markets in which they could invest without raising these issues or more generally incurring the costs of central clearing. Foreign investors’ reduced interest in the U.S. Treasury securities market could lead to a material increase in the U.S. government’s borrowing costs and impair overall U.S. Treasury security market liquidity and resiliency.

In addition, the costs of central clearing and other such negative consequences for foreign investors could also lead some foreign financial institutions to consider withdrawing from U.S. Treasury securities CCAs. Thus, contrary to one of the Commission’s core goals in promulgating the Trade Submission Requirement, which was to expand access to clearing (including through facilitating direct membership at clearing agencies),<sup>2</sup> the extraterritorial application of the Trade Submission Requirement could limit access to clearing by driving foreign financial institutions to withdraw from direct participation in U.S. Treasury securities CCAs. As a result, the extraterritorial application of the Trade Submission Requirement would

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<sup>2</sup> Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714, 2755-6 (Jan. 16, 2024).

also risk reducing the choice of potential clearing firms available for market participants that access U.S. Treasury securities CCAs indirectly, which could result in further increased costs to access clearing.

For the reasons set forth above and as further detailed in the IIB Request, the Requested Exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors, because it would help promote liquidity in the U.S. Treasury securities market by preserving foreign investor participation in that market through transactions that do not present risk to U.S. financial stability and encourage direct membership in, and indirect access to the U.S. Treasury securities market through, U.S. Treasury securities CCAs while minimizing the potential for competitive disparities and adverse structuring of repurchase (“repo”) transactions.

### **Responses to Requests for Comment**

The questions for which the Commission solicited comment are set forth below in bold text (with footnotes and citations omitted) and accompanied by the IIB’s response thereto. Terms capitalized but not defined herein have the meaning assigned to them in the Notice.

- 1. Do commenters agree that the Commission should grant an exemption from the Trade Submission Requirement for an eligible secondary market transaction between a Non-U.S. Participant and a Non-U.S. Client (such transaction, a “Non-U.S. Transaction”)?**

The IIB agrees that the Commission should grant the Requested Exemption, which would encompass an exemption from the Trade Submission Requirement for eligible Non-U.S. Transactions. For the reasons discussed above and as set out in further detail in the IIB Request, the Requested Exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors, because it would help promote liquidity in the U.S. Treasury securities market by preserving foreign investor participation in that market through transactions that do not present risk to U.S. financial stability and encourage direct membership in, and indirect access to the U.S. Treasury securities market through, U.S. Treasury securities CCAs.

- 2. If granting this relief, is it appropriate to use the definition of a U.S. person from Rule 3a71-3, or should some different definition be used? If a different definition, which one and why?**

The IIB believes it is appropriate to use the “U.S. person” definition as defined by Exchange Act Rule 3a71-3 for purposes of the requested exemptive relief because this definition is broadly familiar to market participants active in cross-border securities markets due to its use for purposes of Title VII of the Dodd-Frank Act. Furthermore, when discussing the availability of the *de minimis* exception to security-based swap dealer regulation, the Commission also previously found that the definition could be appropriately used to scope the application of a regulation on a territorial basis.<sup>3</sup>

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<sup>3</sup> See Commission, Security-Based Swap Transactions Connected With a Non-U.S. Person’s Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S.

**3. Is the scope of the definition of a Non-U.S. Participant appropriate?**

The IIB believes the scope of the definition of a “Non-U.S. Participant” is appropriately narrow to ensure the Requested Exemption applies to a limited set of transactions that lack any meaningful nexus with the U.S. The proposed definition of a “Non-U.S. Participant” is limited to direct participants of U.S. Treasury securities CCAs that are not U.S. persons (as defined by Exchange Act Rule 3a71-3), U.S. branches of non-U.S. persons or non-U.S. persons whose obligations under the transaction are guaranteed by a U.S. person, thus helping to ensure that the scope of the Requested Exemption remains narrowly targeted to transactions that do not have any economic nexus with the U.S. and, besides the fact that one (but not both) of the parties to the transaction is a direct participant of a U.S. Treasury securities CCA, are wholly extraterritorial to U.S. clearing requirements. This approach is intended to be coterminous with the analogous case of the mandatory swaps clearing requirement adopted by the Commodity Futures Trading Commission (“CFTC”), which has adopted a similar limitation on the extraterritorial scope of that requirement.<sup>4</sup>

The IIB wishes to propose one clarification to the definition, however. In some circumstances, foreign banking organizations participate in U.S. Treasury securities CCAs through their U.S. branches. The IIB’s understanding is that, in such cases, and absent the Requested Exemption, the Commission views the Trade Submission Requirement as applicable to the banking organization as a whole. To the extent such a non-U.S. person participates in a U.S. Treasury securities CCA through its U.S. branch, the non-U.S. person should qualify as a Non-U.S. Participant with respect to eligible secondary market transactions entered into through its non-U.S. branches or offices, so long as its obligations under those transactions are not guaranteed by a U.S. person.

**4. Would the requested relief impact how market participants structure their repo transactions or access central clearing (e.g., through an affiliated direct participant or by joining a U.S. Treasury securities CCA directly)? If so, please describe the impact and how this impact would occur.**

As an initial matter, we note that there are already significant incentives to central clear Treasury repo transactions, especially for financial institutions (such as the IIB’s members) that realize significant capital and balance sheet benefits to multilateral netting. In light of these benefits, the main impediments to central clearing in a cross-border context are the various legal enforceability and operational issues detailed in the IIB Request.

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Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception, 81 FR 8598, 8614 (Feb. 19, 2016), *available at*: <https://www.govinfo.gov/content/pkg/FR-2016-02-19/pdf/2016-03178.pdf>.

<sup>4</sup> See CFTC, Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45369 (July 26, 2013), *available at* <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf>. The Commission similarly took the view that, for a transaction between non-U.S. persons where “the counterparty credit risk and operational risk of such transactions reside primarily outside the United States,” its mandatory security-based swap clearing requirement should not apply. See Exchange Act Release No. 74834 (Apr. 29, 2015), 80 FR 27444, 27481 (May 13, 2015).

Against that backdrop, those issues, together with the current, extraterritorial application of the Trade Submission Requirement, create incentives for market participants to restructure their repo transactions or access to central clearing in inefficient and counterproductive ways. In particular, absent the Requested Exemption, non-U.S. market participants would have strong incentives to withdraw from participation at U.S. Treasury securities CCAs either entirely or by substituting a U.S. affiliate as their participant and accessing central clearing indirectly. These restructurings would reduce participation in U.S. Treasury CCAs and increase the costs of such participation.

In contrast, the Requested Exemption is designed to avoid a material impact on how market participants structure their repo transactions or access central clearing or result in a significant reduction in the extent of central clearing. This view is supported by the fact that limits on the extraterritorial scope of the CFTC's analogous clearing requirement have not been observed to result in any such issue. In addition, because the exemption would not apply to transactions between Non-U.S. Participants (*i.e.*, non-U.S. persons who are direct participants of a U.S. Treasury securities CCA), the overall interbank/interdealer market would remain in-scope for mandatory clearing. To the extent that U.S. market participants desired to avoid the Trade Submission Requirement by restructuring their trading activity to take place through foreign entities, they could do so even absent the Requested Exemption by limiting their dealings to foreign counterparties that are not direct participants of a U.S. Treasury securities CCA. The exemption would merely ensure that any such dynamic does not create incentives for firms to withdraw from participating at U.S. Treasury securities CCAs.

**5. Would the requested relief impact competition between different types of direct participants of a U.S. Treasury securities CCA (e.g., between banks and broker-dealers)? If so, please describe the impact on competition and how this impact would occur, as well as any potential mechanism to address that impact and the potential effects thereof.**

The Requested Exemption would not impact competition between different types of direct participants of a U.S. Treasury securities CCA on the basis of their entity form and other regulated status because the exemption would apply based on the status of a direct participant as a "Non-U.S. Person," not on form of entity or other regulated status of such direct participant. For example, the availability of the Requested Exemption may marginally incentivize a non-U.S. counterparty to trade with a non-U.S. branch of a foreign bank instead of a U.S. branch of a foreign bank, but it would not have any impact on the non-U.S. counterparty's decision to trade with a non-U.S. branch of a foreign bank versus a non-U.S. broker-dealer. The choice between the type of direct participant such a non-U.S. counterparty decides to trade with would depend on the internal risk profile of such non-U.S. counterparty and the different risk considerations associated with different kinds of regulated entities and regulatory frameworks.

- 6. Would the requested relief impact competition between direct participants of a U.S. Treasury securities CCA based on home jurisdiction (e.g., between U.S. direct participants and non-U.S. direct participants)? If so, please describe the impact on competition and how this impact would occur, as well as any potential mechanism to address that impact and the potential effects thereof. Would any such impact change if the Commission extended the requested relief to also cover eligible secondary market transactions of the non-U.S. branch of a U.S. direct participant in a U.S. Treasury securities CCA, with non-U.S. clients?**

The availability of the Requested Exemption may incentivize a Non-U.S. Client to trade with a Non-U.S. Participant over a U.S. direct participant, thus resulting in a marginal competitive benefit for Non-U.S. Participants. However, many U.S. direct participants (such as U.S. banks and broker-dealers) already transact with Non-U.S. Clients through their non-U.S. affiliates or branches, for example, due to the need to comply with non-U.S. licensing or registration requirements. The Requested Exemption would address those structures as well as trading by Non-U.S. Participants. Non-U.S. Clients also often prefer to participate in the U.S. Treasury securities market through a non-U.S. bank, branch, or broker-dealer that is local to them due to existing commercial relationships and greater familiarity with local law and regulation, independent of the application of the Trade Submission Requirement to trades submitted via such non-U.S. direct participants. To the extent a Non-U.S. Client is deterred by the application of the Trade Submission Requirement, such Non-U.S. Client is unlikely to face a decision as to whether to participate in the U.S. Treasury securities market through a U.S. direct participant versus a non-U.S. direct participant and is more likely to question whether to participate in the U.S. Treasury securities market at all. For these reasons, and based on conversations with our members, we believe that the practical effect of any such incentive is likely to be minimal.

- 7. Would the requested relief impact competition between direct participants of a U.S. Treasury securities CCA and any market participants who are not direct participants of a U.S. Treasury securities CCA? If so, please describe the impact on competition and how this impact would occur, as well as any potential mechanism to address that impact and the potential effects thereof.**

The availability of the Requested Exemption would help incentivize the use of direct participants of a U.S. Treasury securities CCA (over market participants who are not direct participants) by Non-U.S. Clients, which would help promote the Commission's policy objectives and the public interest by ensuring Non-U.S. Clients are not deterred from participating in the U.S. Treasury securities market and thus continue to promote the availability of liquidity and stability in the U.S. Treasury securities market by accessing it through direct participants that are larger, more sophisticated and more resilient institutions.

Even in the absence of clearing (and its associated risk and default management benefits), Non-U.S. Clients are likely to prefer transacting with direct participants, which are more likely to be (or be affiliated with) more sophisticated organizations with stronger internal risk management and monitoring practices and greater advisory expertise to help guide non-U.S. counterparties as they seek to achieve their capital objectives via participation in the U.S.

Treasury securities market. By removing a key barrier to Non-U.S. Clients' access to the U.S. Treasury securities market via direct participants, the requested exemption would incentivize Non-U.S. Clients to trade with direct participants so that they can obtain the benefits of trading with such sophisticated institutions without the risk of being wholly extraterritorially subjected to unfamiliar, burdensome legal requirements pursuant to the Trade Submission Requirement. By incentivizing Non-U.S. Clients to transact through direct participants, the Requested Exemption would help promote the Commission's public policy objectives and the public interest by ensuring transactions in the U.S. Treasury securities market are routed through larger, more sophisticated organizations that maintain more robust recordkeeping standards (improving transaction monitoring and default management), are more creditworthy and are better able to absorb shocks in the market (improving access to liquidity and limiting counterparty credit risk and wrong-way risk).

Furthermore, as noted above, the benefits of central clearing are likely to mitigate much of the impact that exempting Non-U.S. Transactions could have on the competitive playing field. Nonetheless, in case any doubt on this topic remains, the Requested Exemption would treat Non-U.S. Clients' eligible transactions with Foreign Affiliates and Foreign Branches in a manner consistent with Non-U.S. Participants. This treatment would eliminate any potential for competitive disparities.

**8. Would the requested relief have any impact on existing U.S. reporting requirements (e.g., FINRA's TRACE reporting or the requirements with respect to certain non-centrally cleared bilateral repo reporting established by the Office of Financial Research within the U.S. Department of the Treasury)? Please explain.**

As discussed above, Non-U.S. Clients' decision to transact with U.S. versus non-U.S. counterparties is driven primarily by risk considerations and clients' familiarity with local legal and regulatory frameworks and, in the absence of the Requested Exemption, it is likely that Non-U.S. Clients would continue to transact with non-U.S. counterparties (even if it means exiting the market for U.S. Treasury securities and shifting towards non-U.S. bond markets). Accordingly, even though the Requested Exemption might theoretically result in a marginal incentive for Non-U.S. Clients to shift from U.S. to non-U.S. branches of foreign institutions (with resulting impacts on transaction reporting), the practical impact of the Requested Exemption on reporting activity under such requirements is likely to be limited as Non-U.S. Clients already predominantly prefer non-U.S. counterparties and that is unlikely to change irrespective of the availability of the Requested Exemption.

**9. Would the requested relief have any impact on liquidity and/or overall resiliency of the U.S. Treasury markets? If so, please describe the impact on liquidity and overall resiliency and how the impact would occur.**

For the reasons detailed in the Notice and the IIB Request, by removing a key barrier to Non-U.S. Clients' interest in participating in, and promoting greater non-U.S. capital flows into, the U.S. Treasury securities market, the Requested Exemption would significantly improve the liquidity and overall resiliency of U.S. Treasury markets.

**10. Would the requested relief have any impact on foreign participation in U.S. Treasury markets? If so, please describe the impact on foreign participation and how the impact would occur.**

For the reasons detailed in the Notice and the IIB Request, by removing the extensive costs of clearing, concerns regarding legal enforceability and unfamiliar legal frameworks and operational/time zone issues raised by cross-border transactions subject to clearing, the Requested Exemption would have a significant positive impact on foreign investor interest and participation in the U.S. Treasury market.

**11. Would the requested relief impact a U.S. Treasury securities CCA's ability to risk manage the transactions of its direct participants? If so, please describe the impact on a U.S Treasury securities CCA's risk management.**

Because of the enforceability, operational and other issues faced by foreign institutions in the U.S. Treasury securities market as discussed herein and detailed in the IIB Request and the resulting burden associated with submitting Qualifying Non-U.S. Transactions to U.S. Treasury securities CCAs, such transactions likely would not be submitted for clearing in any event. Thus, the key question from a risk management perspective is whether the existence of non-cleared repos entered into by a direct participant has a negative impact on a U.S. Treasury securities CCA's risk management. In response to this question, the IIB notes that U.S. Treasury securities CCAs have a variety of tools available to manage their exposure to direct participants, including participation standards and clearing fund contributions, and the lack of universal application of clearing requirements to direct participants in other markets (such as swaps) has not been an impediment to clearinghouse risk management.

**12. Would the requested relief impact contagion risk for U.S. Treasury securities CCAs, or systemic risk more broadly?**

The IIB recognizes that the scope of the requested exemption could be seen to undercut some of the Commission's rationale for the requirement, including the Commission's goal of reducing the "contagion risk" that a default on a bilaterally settled transaction could impact a direct participant's financial resources and ability to meet its obligations to the U.S. Treasury securities CCA and helping any U.S. Treasury securities CCA to avoid a potentially disorderly participant default due to variable default management techniques for bilaterally settled transactions. We respectfully note, however, that the same objection arises in connection with other exceptions to the Trade Submission Requirement already adopted by the Commission, as detailed in the IIB Request. As with those exceptions, for the reasons detailed in the IIB Request, we think the broader public interest considerations at play here outweigh any potential reduction in indirect risk to U.S. Treasury securities CCAs from requiring clearing for Qualifying Non-U.S. Transactions.

**13. Would the requested relief impact any of the benefits that the Commission identified as arising from the Trade Submission Requirement, such as decreasing counterparty credit risk, decreasing the risk of a disorderly member default, increasing multilateral netting?**

For the reasons discussed above and detailed in the IIB Request, the practical value of these benefits is often limited in the context of Qualifying Non-U.S. Transactions, even in the best of circumstances, due to differences in legal enforceability and lack of non-U.S. counterparty familiarity with such practices across non-U.S. jurisdictions. Furthermore, as discussed in the context of the impact of the Requested Exemption on competition between direct participants and non-direct participant market participants, any increase in such risks would be partially limited by incentivizing non-U.S. counterparties to trade with larger, more sophisticated direct participants that pose lower counterparty credit risk and have robust recordkeeping and monitoring practices to enable orderly default management. In any event, for the reasons detailed herein and in the IIB Request, as with the other exceptions to the Trade Submission Requirement authorized by the Commission, we think the broader public interest considerations at play outweigh any potential reduction in indirect risk to U.S. Treasury securities CCAs from requiring clearing for Qualifying Non-U.S. Transactions.

**14. Should we add any conditions to the requested relief, such as an activity limit threshold (meaning, for example, that Non-U.S. Transactions would be exempted so long as they did not surpass a particular portion of the direct participant's overall U.S. Treasury market activity)? If so, please describe what those conditions should be and why. For conditions specific to an activity limit threshold, please describe what the threshold should be and why that threshold would be appropriate.**

The Requested Exemption would be subject to the condition that the transaction at issue involve only a Non-U.S. Participant, Foreign Affiliate or Foreign Branch and a Non-U.S. Client. Given the appropriately narrow scope of the Requested Exemption, the IIB does not believe that any other conditions should be added to the requested exemption.

In particular, the IIB does not believe that an activity limit threshold or similar condition would be necessary for the Requested Exemption as the exemption is designed to address an issue of kind, not quantum. Qualifying Non-U.S. Transactions ought to be exempted from the Trade Submission Requirement because all transactions of this kind necessarily lack a meaningful nexus with the U.S., irrespective of the volume of activity involved. Furthermore, adding an activity limit threshold would undercut the principal benefit of the Requested Exemption: the promotion of foreign investor participant in the U.S. Treasury securities market. If the Requested Exemption is rendered unavailable to foreign investors over a certain activity limit threshold, it would deter some of the largest and most active foreign investors (who would be the most able to contribute to liquidity and resiliency in the U.S. Treasury securities market) from participating in the U.S. Treasury securities market, thus undermining the Requested Exemption's benefits for the liquidity and resiliency of the U.S. Treasury securities market discussed in further detail in the Notice and the IIB Request.

Nevertheless, the IIB recognizes that data regarding Qualifying Non-U.S. Transactions as presently conducted remain sparse and the impact of the Requested Exemption may be difficult to foresee with granularity at this time. To the extent the Commission determines that additional review and analysis would be helpful to assess the Requested Exemption, it will be in a better position to conduct that review once the Trade Submission Requirement and Requested Exemption take effect. For example, during the first 24 months following initial implementation, the Commission could collect and analyze data on Qualifying Non-U.S. Transactions activity to assess the impact of the Requested Exemption. If warranted based on that review and analysis, the Commission could then, to the extent supported by the data and public comment, issue an additional order imposing a volume cap on a subset of Qualifying Non-U.S. Transactions,<sup>5</sup> potentially subject to carve-outs for particular types of Qualifying Non-U.S. Transactions that pose minimal evasion risk.<sup>6</sup>

Effectively, this approach would phase-in the Trade Submission Requirement for Qualifying Non-U.S. Transactions, giving market participants bandwidth to focus their implementation efforts on the domestic Treasury securities repo market before turning to the international market, while allowing the Commission to refine the Requested Exemption to the extent required to minimize unintended adverse consequences. The Commission may also wish to consider whether an equivalent phase-in should apply in favor of U.S. direct participants' repos with Non-U.S. Clients where such repos do not constitute Qualifying Non-U.S. Transactions. The Commission has taken a similar approach in other contexts where further, post-implementation analysis was warranted before finalizing how it calibrated a requirement.<sup>7</sup>

**15. Please describe how the requested relief would or would not protect investors and the public interest consistent with Sections 17A and 36 of the Exchange Act.**

As set out in further detail in the IIB Request and in the other IIB responses included herewith, the Requested Exemption is necessary and appropriate in the public interest, and is

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<sup>5</sup> The target level of any such volume cap should be determined based on the data collected during the 24-month review period and could be phased down over time (*e.g.*, with progressively lower caps taking effect on an annual basis over some period of years). The Commission should solicit public comment regarding these matters, as well as mechanical details such as how to calculate the cap as well as the consequences should a firm exceed the cap.

<sup>6</sup> In particular, whether due to the relatively more episodic nature of their Treasury securities repo activity, location in a jurisdiction for which there are questions about the legal enforceability of client clearing arrangements, or location in a distant time zone, or their lack of other connections to the U.S. (among other factors), some Non-U.S. Clients are likely to find it impractical to clear their repo transactions. For these reasons, these Non-U.S. Clients are unlikely to present evasion risk, since they inherently face serious barriers to clearing.

<sup>7</sup> *See, e.g.*, 17 C.F.R. 240.18a-1(a)(1) (providing authority for the Commission to change the level of a security-based swap dealer's "risk margin" capital requirement based on further analysis); *see, also* 17 C.F.R. 240.3a71-2(a)(1) and (2) (similar approach in connection with the security-based swap dealer de minimis threshold) and 17 C.F.R. 240.18a-10(f) (similar approach in connection with eligibility for the security-based swap dealer alternative compliance framework).

consistent with the protection of investors, because it would help promote liquidity in the U.S. Treasury securities market by preserving foreign investor participation in that market.

**16. Please describe how the requested relief would or would not help to facilitate the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds consistent with Section 17A of the Exchange Act.**

The IIB believes that the Requested Exemption would help promote the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds consistent with Section 17A of the Exchange Act by reducing the clearing burden currently imposed on U.S. Treasury securities CCAs by eligible Non-U.S. Transactions, which often raise administrative and legal complications for non-U.S. counterparties subject to clearing requirements, and thus freeing up time and resources for U.S. Treasury securities CCAs to focus on the prompt and accurate clearance of transactions that have a meaningful nexus with the U.S.

Applying the Trade Submission Requirement in an extraterritorial manner, in the absence of the Requested Exemption, would have several negative consequences that would inhibit the prompt and accurate clearance and settlement of Qualifying Non-U.S. Transactions. As noted in the Notice, no U.S. Treasury securities CCA currently operates on a 24-hour basis, and it is unclear how two non-U.S. counterparties engaging in a bilateral repo transaction could submit the transaction for “prompt” clearance if both counterparties are based in a jurisdiction (*e.g.*, Singapore) where no U.S. Treasury securities CCA would be operating during the normal business hours for such jurisdiction. In addition, as discussed in the Notice, certain fundamental requirements for prompt and accurate clearance, such as netting (including close-out netting), may not be enforceable in all relevant jurisdictions implicated in a Qualifying Non-U.S. Transaction, and the lack of legal certainty with respect to such issues also makes it impracticable for non-U.S. counterparties to submit transactions for prompt and accurate clearance.

Non-U.S. counterparties, particularly those that are transacting only locally, are unlikely to be familiar with the evolving conventions of the U.S. domestic repo market and the administrative and legal complications (such as the ones discussed in the preceding paragraph) raised by the clearing requirement for such repo transactions. Such counterparties are less likely to sign on to documentation that, in their domestic market, is wholly novel, not explained by a local law requirement and burdensome, without further discussion and explanation by the U.S. Treasury securities CCAs they are seeking to trade through. If such transactions were exempt, U.S. Treasury securities CCAs would be able to reallocate some of the time, personnel and expense they dedicate to onboarding such non-U.S. counterparties to their clearing functions, thus helping to facilitate more prompt and accurate clearance for transactions that have a meaningful U.S. nexus and merit submission pursuant to the Trade Submission Requirement.

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We appreciate the opportunity to provide our views on the Notice. Please do not hesitate to contact Stephanie Webster (swebster@iib.org) with any questions you may have.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephanie Webster". The signature is written in a cursive style and is placed on a light gray rectangular background.

Stephanie Webster  
General Counsel  
Institute of International Bankers

cc: Chairman Paul S. Atkins  
Commissioner Hester M. Peirce  
Commissioner Mark T. Uyeda