8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105736]

Order Granting Conditional Exemptive Relief, Pursuant to Sections 17A and 36(a) of the Securities Exchange Act of 1934, from the Definition of an "Eligible Secondary Market Transaction" in Rule 17ad-22(a)

June 18, 2026

I. INTRODUCTION

On December 13, 2023, the Securities and Exchange Commission ("Commission" or "SEC") adopted, among other things, amendments to Rule 17ad-22(a) and (e)(18)(iv)(A) and (B) under the Securities Exchange Act of 1934 ("Exchange Act").[1] Under these amendments, covered clearing agencies that provide central counterparty services for U.S. Treasury securities ("U.S. Treasury securities CCAs") must establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation which require that any direct participant of a U.S. Treasury securities CCA submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty, and identify and monitor the U.S. Treasury securities CCA's direct participants' submission of transactions for clearing as required under the amendments (together, the "Trade Submission Requirement").[2] The amendments defined what constitutes an "eligible secondary market transaction" to include, among other things, a secondary market transaction in U.S. Treasury securities of a type accepted for clearing by a registered covered clearing agency that is a repurchase or reverse repurchase agreement

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1 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, Release No. 34-99149 (Dec. 13, 2023), 89 FR 2714, 2737 (Jan. 16, 2024) ("Adopting Release").

2 17 CFR 240.17ad-22(e)(18)(iv)(A) and (B).

collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant of a covered clearing agency.[3]

The amendments also included an exclusion from the definition of an eligible secondary market transaction for any repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities entered into between a direct participant and an affiliated counterparty (the "Inter-Affiliate Exclusion"), provided that the affiliated counterparty submit for clearance and settlement all other repurchase or reverse repurchase agreements collateralized by U.S. Treasury securities to which the affiliate is a party (the "outward facing condition").[4] The amendments define "affiliated counterparty" as any counterparty which meets the following criteria: (i) the counterparty is either a bank (as defined in 15 U.S.C. 78c(6)), broker (as defined in 15 U.S.C. 78c(4)), dealer (as defined in 15 U.S.C. 78c(5)), or futures commission merchant (as defined in 7 U.S.C. 1a(28)), or any entity regulated as a bank, broker, dealer, or futures commission merchant in its home jurisdiction (the "bank/BD/FCM condition"); (ii) the counterparty holds, directly or indirectly, a majority ownership interest in the direct participant, or the direct participant, directly or indirectly, holds a majority ownership interest in the counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both the direct participant and the counterparty (the "majority ownership condition"); and (iii) the counterparty, direct participant, or third party referenced in paragraph (ii) of this definition as holding the majority ownership interest would be required to report its financial statements on a consolidated basis under U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned party or of both majority-owned parties (the "accounting consolidation condition").[5]

II. DISCUSSION AND EXEMPTIVE RELIEF

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3 17 CFR 240.17ad-22(a).

4 *Id.*

5 *Id.*

On July 10, 2025, a trade association representing the global alternative asset management industry submitted a letter to the Commission seeking exemptive relief from the bank/BD/FCM condition of the Inter-Affiliate Exclusion to the Trade Submission Requirement for certain inter-affiliate repurchase and reverse repurchase ("repo") transactions.[6] On May 20, 2026, two additional trade associations submitted a joint letter to the Commission seeking the same exemptive relief.[7]

Specifically, the associations stated that inter-affiliate repo transactions are an "essential venue" for Private Funds to access central clearing.[8] The associations identified an approach by which certain Private Funds have sought access to central clearing by entering into a bilateral repo transaction with a subsidiary that is a direct participant of a U.S. Treasury securities CCA as a broker-dealer or futures commission merchant (the "Captive Clearing Sub") that then enters into a repo transaction with a third party.[9] The associations stated that, notably, the Captive

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6 *See* Letter from Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Funds Association ("MFA"), dated July 10, 2025 ("MFA Letter"), *available at* https://www.mfaalts.org/wp-content/uploads/2024/12/MFA-Treasury-Clearing-Mandate-Exemption-Request-inter-affiliate-exception-As-submitted-12.18.24.pdf.

7 *See* Letter from William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, Asset Management Group ("SIFMA AMG"), and Robert Toomey, Managing Director and Head of Capital Markets, Securities Industry and Financial Markets Association ("SIFMA"), dated May 20, 2026 ("SIFMA AMG Letter"). The two trade associations state that this request is distinct from the associations' separate comment letter submitted to the Commission regarding exemptive relief for non-U.S. persons from the Trade Submission Requirement, which did not address relief from Private Funds utilizing Captive Clearing Structures. *See* Letter from Robert Toomey, Head of Capital Markets, Managing Director/Association General Counsel, SIFMA dated April 10, 2026, *available at* https://www.sifma.org/wp-content/uploads/2026/04/SIFMA-Section-36-Exemptive-Relief-Request-for-Interaffiliate-Transactions.pdf.

8 *See* MFA Letter, *supra* note 6, at 3. *See also* SIFMA AMG Letter, *supra* note 7, at 3 (stating that the "Captive Clearing Subsidiary acts as a conduit providing the fund with the economic and operational benefits of central clearing (including access to the Treasury CCA's netting, margining, and default management infrastructure)"). The associations used the term Private Fund to mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act. *See* MFA Letter, at 1 n.3 *and* SIFMA AMG Letter, at 1 n.3. For purposes of this exemption, the Commission is using this same definition of "Private Fund."

9 *See* MFA Letter, *supra* note 6, at 3; SIFMA AMG Letter, *supra* note 7, at 3. MFA expressly referred only to the Fixed Income Clearing Corporation ("FICC"), which, at the time of the MFA Letter, was the only covered clearing agency serving the U.S. Treasury market. Since that time, however, the Commission has approved applications from CME Securities Clearing, Inc. and ICE Clear Credit to serve as such covered clearing agencies. CME Securities Clearing, Inc.; Order Granting an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934, Exchange Act Release No. 34-104281 (Dec. 1, 2025), available at https://www.sec.gov/files/rules/other/2025/34-104281.pdf; ICE Clear Credit LLC; Order Granting an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934, Exchange Act Release No. 34-104762 (Jan. 30, 2026), available

Clearing Sub is a subsidiary of the Private Fund and that this structure is necessary for Private Funds to access central clearing without relying on an unaffiliated third-party direct participant to submit repo transactions on behalf of the Private Funds.[10] The associations also stated that this structure provides the Private Funds and the overall market with certain benefits, such as increased clearing capacity by enabling customers access to a U.S. Treasury securities CCA without going through an unaffiliated third-party direct participant of a covered clearing agency.[11] In addition, the associations stated that this structure would promote netting efficiency by enabling affiliated funds to net down within the affiliated group the number of repo transactions needed to be executed with third parties, which in turn could increase overall clearing capacity in the system.[12]

The associations stated, however, that the bank/BD/FCM condition eliminates the practical availability of the Inter-Affiliate Exclusion for Private Funds, which cannot otherwise directly access FICC on a cost-effective basis without relying on the Inter-Affiliate Exclusion to transact with their Captive Clearing Sub.[13] The associations stated that because the requested relief would leave intact all other required conditions to the Inter-Affiliate Exclusion, including but not limited to the outward-facing condition, the requested relief would be consistent with the Commission's rationale for the Inter-Affiliate Exclusion: "Th[e] [inter-affiliate] exclusion is appropriate to ensure that affiliated groups can continue to use inter-affiliate repo transactions to transfer liquidity or risk, while also conditioning that ability on the affiliated counterparty's submission of its eligible secondary market repo transactions for clearance and settlement."[14]

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at https://www.sec.gov/files/rules/other/2026/34-104762.pdf. As discussed further below, this exemption order applies to the definition of an eligible secondary market transaction generally and is not specific to FICC.

10 *See* MFA Letter, *supra* note 6, at 3; SIFMA AMG Letter, *supra* note 7, at 3.

11 *See* MFA Letter, *supra* note 6, at 3; SIFMA AMG Letter, *supra* note 7, at 3.

12 *See* MFA Letter, *supra* note 6, at 3; SIFMA AMG Letter, *supra* note 7, at 3.

13 *See* MFA Letter, *supra* note 6, at 3; SIFMA AMG Letter, *supra* note 7, at 3.

14 *See* MFA Letter, *supra* note 6, at 4 (*citing* Adopting Release, *supra* note 1, at 2737). *See also* SIFMA AMG Letter, *supra* note 7, at 4 (stating that the requested relief does not affect the outward-facing condition, the

After considering these requests, the Commission is providing an exemption, pursuant to Sections 36(a) and 17A(b)(1) of the Exchange Act, from the definition of an eligible secondary market transaction in Rule 17ad-22(a). Specifically, this exemption would exclude, from the definition of eligible secondary market transaction, repo transactions between a Private Fund and its Captive Clearing Sub that is a direct participant, provided that the following conditions are met:

(1) the Captive Clearing Sub is directly or indirectly wholly owned by one or more Private Funds;

(2) to the extent that the Captive Clearing Sub is owned by more than one Private Fund, those Private Funds are managed by a common investment adviser or affiliated group of investment advisers; and

(3) the Private Funds and the Captive Clearing Sub satisfy the other applicable conditions to the Inter-Affiliate Exclusion, *i.e.*, the majority ownership condition, the accounting consolidation condition, and the outward facing condition (to the extent the outward-facing condition would otherwise apply).

Section 36(a) of the Exchange Act authorizes the Commission, by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[15] In addition, under Section 17A(b)(1) of the Exchange Act, the Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this

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majority ownership condition, or the accounting consolidation condition, and "therefore does not reduce the volume of transactions subject to central clearing").

15 15 U.S.C. 78mm.

section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[16]

The Commission is using its authority under Section 36 and Section 17A of the Exchange Act to provide a conditional exemption from the definition of an eligible secondary market transaction under Rule 17ad-22(a), meaning that a U.S. Treasury securities CCA will be exempt from enforcing the Trade Submission Requirement with respect to repo transactions between a Private Fund and its Captive Clearing Sub that is a direct participant if the conditions stated above are met. The Commission finds such conditional exemption to be consistent with the public interest and the protection of investors, as required under Section 36, and with the purposes of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, as required under Section 17A.

First, this conditional exemption is consistent with the rationale for the Trade Submission Requirement, *i.e.*, reducing the amount of contagion risk to a U.S. Treasury securities CCA.[17] With this exemption, a Captive Clearing Sub would be able to submit for central clearing the repo transactions of its affiliated Private Funds. Because these transactions would be submitted for central clearing, the U.S. Treasury securities CCA would be able to risk manage these transactions, pursuant to uniform risk management procedures that the Commission has reviewed and approved. In addition, the outward-facing condition, in which the Private Fund must submit for clearance and settlement all other repo transactions to which the Private Fund is a party,

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16 15 U.S.C. 78q-1(b)(1).

17 *See* Adopting Release, *supra* note 1, at 2717 (stating that "the requirement to clear eligible secondary market transactions is designed to reduce the amount of 'contagion risk' to a U.S. Treasury securities CCA arising from what has been described as 'hybrid clearing'" in which "a direct participant's transactions that are not submitted for central clearing pose an indirect risk to the covered clearing agency, as any default on a bilaterally settled transaction could impact the direct participant's financial resources and ability to meet its obligations to the covered clearing agency").

would continue to apply. Therefore, under this exemption, the contagion risk would already be addressed because the external repo transactions between the Captive Clearing Sub, or the Private Fund, and a third-party would be centrally cleared, and requiring the inter-affiliate transaction to be cleared would not create additional benefits.[18] Thus, the exemption is consistent with reducing the contagion risk to a U.S. Treasury securities CCA, which in turn, is consistent with promoting the prompt and accurate clearance and settlement of U.S. Treasury securities and the safeguarding of securities and funds.

Second, the Commission agrees with the associations that the conditional exemption will accommodate a form of direct access to central clearing by Private Funds, which in turn should help facilitate increased access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities. Application of the bank/BD/FCM condition eliminates the practical availability of the Inter-Affiliate Exclusion for Private Funds because Private Funds, through their Captive Clearing Subs, would not be able to directly access central clearing on a cost-effective basis. In turn, this would limit a Private Fund's only means of accessing central clearing to unaffiliated third-party direct participants, which may be unwilling or unable to centrally clear all transactions on behalf of the Private Funds.[19] By providing this conditional exemption, a Private Fund would be able, consistent with current practice, to access central clearing through its Captive Clearing Sub, which could increase clearing capacity and bring the risk-reducing benefits of central clearing to more transactions involving U.S. Treasury securities than may otherwise occur once the Trade Submission Requirement is effective, thereby lowering overall systemic risk in the market. Therefore, the exemption is consistent with

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18 *See* Adopting Release, *supra* note 1, at 2737 (stating that "[r]egarding the conditional nature of the exclusion, the Commission agreed with the commenter that if the external transaction of a 'back-to-back' arrangement in which the related external transaction between the affiliated counterparty and a non-affiliated counterparty is centrally cleared, the contagion risk would already be addressed and requiring the inter-affiliate transaction to be cleared would not create additional benefits.").

19 *See, e.g.*, SIFMA AMG Letter, *supra* note 7, at 3.

promoting the prompt and accurate clearance and settlement of securities transactions, the public interest, and the protection of investors.

Third, using this form of direct access generally means that a Private Fund would use its own capital to fund its margin requirements, through its Captive Clearing Sub, to the U.S. Treasury securities CCA entirely (*i.e.*, the Private Fund would not rely, in whole or in part, on the capital of unaffiliated third-party direct participants to fund the Private Fund's margin requirements). By having the Private Funds fund their own margin, this structure could free up capital for unaffiliated third-party direct participants to sponsor other, smaller market participants into central clearing. As mentioned above, increased clearing capacity could bring the risk-reducing benefits of central clearing to more transactions involving U.S. Treasury securities, thereby lowering overall systemic risk in the market, which is consistent with promoting the prompt and accurate clearance and settlement of securities transactions, the public interest, and the protection of investors.

Furthermore, providing this exemption that should allow Private Funds to access central clearing through a Captive Clearing Sub should continue to help facilitate a U.S. Treasury securities CCA's ability to isolate the risk profile of the Private Funds and thereby understand its risk exposure to the Private Funds and manage the risks of Private Funds' transactions, including, among other things, the collection of margin.[20] As the Commission recognized in the Adopting Release, the centralization of activity at clearing agencies makes risk management at

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[20] *See, e.g.*, 17 CFR 240.17ad-22(e)(6)(i) and (ii)(A) (requiring that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to, cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and, if the covered clearing agency provides central counterparty services for U.S. Treasury securities, calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the covered clearing agency's payment, clearing, or settlement facilities, and marks participant positions to market and collects margin (including variation margin or equivalent charges if relevant) at least daily).

such entities a critical function.[21] Because this structure will preserve these risk controls and margin funding obligations, the exemption is consistent with the safeguarding of securities and funds as well as the public interest and the protection of investors.

III. CONCLUSION

Accordingly, *IT IS ORDERED*, pursuant to Sections 17A and 36 of the Exchange Act, that the Commission grants a conditional exemption for the transactions described in this Order, from the definition of an eligible secondary market transaction in Rule 17ad-22(a).

By the Commission.

Dated: June 18, 2026.

Vanessa A. Countryman,

Secretary.

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[21] *See* Adopting Release, *supra* note 1, at 2716.