May 27, 2022

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File Number S7-12-22: Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer

Dear Ms. Countryman:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer (the "Proposal").[2] FIA PTG has a long history of advocating for open access to markets, efficient markets, and transparency. FIA PTG appreciates the importance of the stated goals of the Proposal to prevent market disruptions and support market transparency, integrity, resiliency, and investor protection. However, we are concerned the Proposal's approach and focus on adding additional regulation and regulatory burdens to traders trading for their own accounts and principal trading firms ("PTFs") do not further these goals. Simply put, these types of traders are not dealers, as that term has been traditionally defined, used, and understood in the industry for decades. We submit that the Proposal would inappropriately upend this distinction and reclassify their trading activity to become dealing, with marked negative ramifications. To that end, we respectfully submit the comments herein.[3]

I. Introduction

A primary stated basis for the Proposal is the belief that an increase in electronic trading and the emergence of unregulated significant market participants could be a contributing factor to more

[1] FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

[2] Found at https://www.sec.gov/rules/proposed/2022/34-94524.pdf.

[3] FIA PTG is currently signatory to a request for an extension of the date by which to file comments. If the comment period is extended, FIA PTG reserves the right to provide additional comments.

frequent market disruptions, and that these market participants are directly affecting the provision of liquidity in the markets. The Proposal also purports to support transparency, market integrity and resiliency, and investor protection by closing a purported regulatory gap and ensuring consistent oversight, including insight into firm-level and aggregate trading, requiring compliance with certain anti-manipulative and antifraud rules for orderly markets, requiring compliance with rules adopted by the US Treasury, including recordkeeping, and subjecting new dealers to SEC and self-regulatory organization ("SRO") examinations. The Proposal concludes that when market participants who effectively provide liquidity do not comply with existing dealer regulations, including rules specifically designed to limit risk-taking and to deter manipulative or fraudulent behavior, the probabilities of behaviors that are financially risky, manipulative or fraudulent increases. In addition, the Proposal notes that active traders that are not registered as dealers currently have more regulatory allowance to accept operational or financial risk. They may not have the same obligations as dealers to implement operational risk controls, are not subject to examinations or reporting requirements, nor are required to report securities transactions. The Proposal also notes that with respect to the events of March 2020, PTFs may not, or may no longer, promote market stability in all securities markets in ways that registered dealers do, and the net effect on market efficiency is uncertain.

FIA PTG fundamentally disagrees with these conclusions, and notes that principal traders and PTFs play an important role in the markets, which the Proposal does not adequately recognize. As a general principle, we believe that electronic trading and traders trading for their own accounts increase overall liquidity in the markets and improve price efficiency. We do not agree with the Proposal's premise that an increase in electronic trading and the emergence of significant unregulated market participants is the contributing factor to market disruption. We disagree that these traders negatively impact liquidity in various markets, or are engaging in dealing activity that necessitate registration.

Moreover, FIA PTG fundamentally disagrees with the inaccurate characterization of the activity in which traders engage. Principal traders and PTFs are not dealers. As the courts and the SEC have noted, a hallmark of the business of dealers is their relationships with customers. PTFs almost exclusively transact either (1) on an anonymous electronic trading venue (all of which that offer significant Treasury trading to PTFs are broker-dealers registered with the SEC and FINRA) or (2) as a counterparty to a registered dealer. They do not trade with each other or have their own clients, let alone provide "dealer services" to any "clients." To consider them similar solely by virtue of the volume of securities they trade, as opposed to the nature of the activity in which they engage, is not to "level the playing field," but rather will have a deleterious effect on the markets that presume, if not rely upon, this distinction.

The history of trading in the Treasury and equity markets shows that market disruptions are rare occasions. The bout of extreme Treasury market volatility that occurred in March 2020 upon which the Proposal relies, for example, was during an unforeseen and unprecedented event: a worldwide pandemic and across-the-board business closures during which time registered and unregistered entities alike, rationally widened out their markets as macroeconomic uncertainty increased rapidly. The volatility experienced in the equity markets in early 2021 was also caused

by other market stressors, such as internet chat rooms, rumors and retail investor panic. These events cannot be extrapolated to other circumstances and, more importantly, bear no relationship to the emergence of principal traders in US markets. Accordingly, there is no reason to think that reclassifying traders as "dealers" would at all alleviate these concerns.

Finally, we do not believe that the Proposal's registration requirements for these market participants will affect, let alone prevent, market disruption, nor the type of extreme volatility upon which the Proposal anecdotally relies. In fact, we believe the opposite to be true – creating regulatory disincentives to participate in the market as well as unnecessary capital inefficiencies will exacerbate potential liquidity issues during periods of high market volatility. Additionally, we disagree that registration, and the related requirements for customer protection that rightfully apply to dealers facing retail customers, are at all applicable to traders trading for their own account. Registration would present only an unjustified burden on these traders, with little to no countervailing regulatory benefit.

Our more detailed comments are provided below.

II. Legal and Historical Significance of the Dealer/Trader Distinction

It is important to note the historically understood distinction, which is also recognized by the courts, between a dealer and a trader or investor who buys and sells for his own account with some frequency.

A. The SEC's Historical View

The SEC has long recognized this important distinction between a dealer and a trader and has articulated numerous important indicia relevant to a determination of whether one is a dealer or a trader. For example, in a final rule addressing when a bank is a dealer, the SEC noted that a dealer is more likely to have "regular clientele," where a trader does not; a trader would not handle the money or securities of others, whereas a dealer primarily services others; and traders would not furnish services traditionally within the realm of a dealer's business, such as rendering investment advice, extending or arranging for credit, or lending securities.[4] These key distinctions are also reflected in the 2008 SEC's staff guidance "Guide to Broker-Dealer Registration":

> The definition of "dealer" does not include a "trader," that is, a person who buys and sells securities for his or her own account, either individually or in a fiduciary capacity, but not as part of a regular business. Individuals who buy and sell securities for themselves generally are considered traders and not dealers.[5]

B. The Courts' View

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[4] https://www.sec.gov/rules/final/34-47364.htm.

[5] https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html.

Federal courts in the United States have also considered and upheld this trader/dealer distinction. The Securities and Exchange Act of 1934 defines the term "dealer" to mean "any person engaged in the business of buying and selling securities….for such person's own account through a broker or otherwise." 15 U.S.C. 78c(5)(A). The term, however, "does not include a person that buys or sells securities…for such person's own account, either individually or in a fiduciary capacity, but not as a regular part of business." 15 U.S.C. 78c(5)(B) (often referred to as the "trader" exception). The statute does not further define the included terms, although courts have. Courts have determined that the term "regular business" means the "regular business of providing dealer services to others." *In re Scripsamerica, Inc.*, No. 16-11991 (JTD), 2021 WL 5745698, at *4 (Bankr. D. Del. Nov. 29, 2021) (citation omitted). Dealer services include "soliciting investor clients, handling investor clients' money and securities, [and] rendering investment advice to advisors." *Id.* at *5. This also "distinguish[es] the activities of a dealer from those of a private investor or trader . . . an investor or trader may buy securities from issuers at substantial discounts and resell them into the public market for immediate profit, [whereas] a dealer buys and sells securities from its customer and to its customer." *Id.*; *see also In re Immune Pharms. Inc.,* No. 19-13273 (VFP), 2021 WL 5989337, at *4 (Bankr. D.N.J. Dec. 8, 2021) ("A person who buys and sells securities for his own account in the capacity of a trader or individual investor is generally not considered to be engaged in the business of buying and selling securities and consequently, would not be deemed a dealer.").

C. The Legislative History

The important distinction between a dealer and a trader also finds a substantial basis within relevant legislative history. The 73rd Congress specifically concluded that the Act, "excludes for the definition of a broker and dealer a man who just buys securities for his own account and is not in the business of making a profit by merchandising them, like an ordinary dealer."[6] At a Senate hearing in 1934, during a colloquy on the definition of dealers, the Chair of the Committee agreed that engaging in trading for one's own account "is not a regular business."[7]

Accordingly, we believe the SEC should be cautious about changing the dealer definition given the long-recognized distinctions in these types of activities. Nowhere in the relevant discussion in which it at least recognizes trader/dealer distinction, *see* Proposal at 49-50, does the Commission address the distinction between trading for one's account and trading with customers.

III. What "Problem" Does the Proposal Seek to Solve?

Given the significant regulatory burden that would be imposed upon traders trading for their own accounts – not to mention the burden on self-regulatory organizations who would undoubtedly face a flood of new registrants in a short period of time, and whose regular role is regulating

[6] H.R. Comm. On Interstate and For. Comm., The Exchange Act of 1934: Hearings on H.R. 7852 and H.R. 8720, 73rd Cong., 687 (1934).

[7] Sen. Comm. On Banking and Currency, The Exchange Act of 1934: Hearings on S. Res. 84 and S. Res. 56 and S. Res. 97, 73rd Cong., 6727 (1934).

customer facing businesses – we believe the starting point should be determining what problem the Proposal is meant to address, and then whether registration would solve it. The Proposal aims to add requirements that would presumably result from entity registration and regulation as a dealer, including reporting and investor protection requirements.

With respect to transparency and reporting, we would note that efforts have already been made in this regard. TRACE reporting for U.S. Treasury Securities and FINRA registered broker-dealers, which includes all of the electronic trading venues, began in 2017.[8] TRACE reporting for U.S. Treasury Securities on ATSs to identify non-FINRA members was approved in 2018.[9] Additional reporting on TRACE[10] for banks starts September 1, 2022.[11] Every national bank, state member bank, state non-member bank, savings association, or U.S. branch and agency of a foreign bank that files a Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities (Form G-FIN) with average daily transaction volumes over $100 million (for U.S. Treasury debt) or over $50 million (for agency-issued debt and mortgage-backed securities) during the 12-month period ending September 30 of the prior year will be subject to the new reporting rules, regardless of the type(s) of trading activity in which such entity engages (*i.e.,* whether dealer or non-dealer activity). It would be prudent to wait to see the impact of bank reporting before adding a new, costly, and possibly redundant reporting requirement. We believe these two rules capture effectively all PTF transactions for regulatory reporting, and note the latter has not even gone into effect.

With respect to customer and investor protection, it is unclear from the Proposal what or who would be protected by classifying PTFs as dealers. Dealer customer protections, including those required by FINRA (*e.g.*, suitability), apply specifically to entities that face and interact with customers. A PTF trading for its own account does not have customers, and thus cannot provide dealer services to customers. Put simply, the types of protections that apply to dealers would simply never arise in the trader conduct. To that end, we would respectfully submit that the SEC should more fully develop and articulate precisely which protections would be enhanced by registration; whom those protections are designed for, and would, protect; and set forth clearly the anticipated benefits of dealer registration of PTFs to customers and investors.[12]

[8] https://www.finra.org/rules-guidance/notices/trade-reporting-notice-061217.

[9] https://www.sec.gov/rules/sro/finra/2018/34-83815.pdf

[10] The "Trade Reporting And Compliance Engine," designed and operated by FINRA, which facilitates the reporting of certain over-the-counter transactions.

[11] https://www.finra.org/filing-reporting/trace/federal-reserve-depository-institution-reporting.

[12] We would also note, although outside the scope of our members' comment letter, that there are other entities that would be included in the new "dealer" definition. By way of example only, registered investment advisors trading on behalf of a group of private funds might also be deemed "dealers." These and other potentially far-reaching implications are additional evidence of the overreach of the Proposal.

The Proposal also claims that expanding the definition of dealer would have the effect of preventing market disruptions. We submit that *any* market has the potential to be subject to periods of extreme volatility. This is particularly true in the case when external market factors (such as a global pandemic, supply shortages, etc.) or other potential factors such as capital constraints on market participants are involved. The registration of principal traders as dealers would have little to no ability to stabilize markets subject to volatility for these reasons.

We note further that the Treasury markets have only experienced rare bouts of extreme volatility. It is important to keep that in perspective and to recognize that volatility is not necessarily the result of disruptive trading conduct. It is also not something that can be resolved merely by registration. The SEC does not clarify how the registration of PTFs as dealers would have changed extremely volatile Treasury or equity markets, for example. Perhaps this lack of clarity stems from what appears to be a conflation of trading as a primary dealer versus via a registered broker-dealer. The primary dealer business involves benefits to trading in the markets, along with obligations to be in the markets. Trading through a broker-dealer entails no such benefits or obligations. There is nothing to suggest that simple registration as a broker-dealer will add to market participation or liquidity. In fact, the very opposite might be true.[13] Further, it is not clear whether the Proposal would help prevent market disruption. Indeed, we would submit that the *opposite* is more likely. That is, we believe that the increased "cost of doing business" that would inevitably follow from the Proposal would have the effect of *exacerbating* market disruption, to the extent that it would unquestionably inhibit participation in the markets, reduce the number of market participants, and decrease available liquidity.

The SEC also claims that an effect of the Proposal would be to "level the playing field." In making this claim, the Proposal notes that some participants are subject to dealer regulation (and its costs) and some are not. FIA PTG submits that, in fact, the playing field is already level. The current dealer registration requirement is being uniformly applied to dealer activity that requires registration. Those that must register do – those that need not, do not. One does not level a playing field by treating all participants equally, simply by "moving the line" as to what entities might require registration as a dealer. We submit that, if adopted, the Proposal would "de-level" the playing field. It would fundamentally restrict market access by smaller firms for whom registration would serve no purpose, by imposing unrealistic costs and barriers to entry. As noted above, such barriers to entry would lead to fewer participants, which would in turn have a negative effect upon market liquidity. This simply cannot be a desirable outcome.

IV. The Proposal Does Not Adequately Consider Potential Market Impact

[13] In the Government's report on the events of October 2014 in the Treasury market, it noted that PTFs remained in the market, despite no obligations to do so. Registration would not have changed that result, and indeed may have made it worse by locking up capital that could otherwise have been deployed and contributed to necessary market liquidity. *See* https://home.treasury.gov/system/files/276/joint-staff-report-the-us-treasury-market-on-10-15-2014.pdf at p.4 ("An analysis of transactions shows that, on average, the types of firms participating in trading on October 15 did so in similar proportions to other days in the sample data. Principal trading firms (PTFs) represented more than half of traded volume, followed by bank-dealers. Both bank-dealers and PTFs continued to transact during the event window, and the share of PTF trading increased significantly.").

FIA PTG submits that the Proposal does not sufficiently discuss, weigh, or justify the potential impacts of defining traders as dealers. Accordingly, the SEC has failed its requisite burden to take action under the Administrative Procedure Act. As the Proposal notes, PTFs are substantially involved in trading in the Treasury markets as well as the global equity markets. However, the Proposal fails to address the potential impacts of registration on those markets and the related markets (the cash Treasury market, repo market, auctions) and the potential impacts on liquidity provision or impacts to government borrowing costs. Similarly, the Proposal does not address the liquidity impact on Treasury futures, which is one of the most highly liquid markets in the world, other fixed income markets, or the potential effect on the equities market if a substantial number of traders were compelled to significantly reduce trading activity, or even exit such markets completely.

In addition, the Proposal, in a footnote, includes any "digital asset that is a security or a government security within the meaning of the Exchange Act." It would thus define a dealer to include a person that has more than $50 million in assets engaged in buying and selling digital assets for its own account, if the digital assets meet the "security" standard. It is unclear from the Proposal how many more traders would be captured by these terms. The digital asset marketplace is a significant and growing market, without clear regulatory guidance. There is also no staff analysis on liquidity impacts on this market. Moreover, there remains a lack of regulatory certainty over what a digital asset is, and whether and when it is or is not a security. It is important that the proper order take place for defining these terms. We submit that, at the very least, the SEC should follow the guidelines in the White House's Executive Order to articulate what, precisely, constitutes a security in this context. These terms should be defined. Such important concepts should not be relegated to a passing footnote.

We would therefore propose the SEC engage in an additional study on the Proposal's potential economic or adverse impacts on the markets. We would submit that the areas of inquiry could include – but should not be limited to:

- Does the Proposal create barriers to entry in these markets?
- How many firms would exit the business in response to the Proposal?
- Would traders scale back some activities in response to the Proposal? Which activities?
- What would be the market impact of scaling back activity on liquidity? On pricing?
- Would there be other potential entities not included in the SEC's count that would step in to fill their place? If not, what is the impact?
- What if equity market liquidity is decreased and penalizes retail investors? What would be the impact to the retail investor market?
- What if Treasury market liquidity was being drained while the Federal Reserve was unwinding its balance sheet? How would that impact the market?
- How does trader registration as a dealer improve market efficiency and stability?
- What is the cross-border effect? How does this affect foreign traders or dealers, if at all? Would this disadvantage U.S. entities?

In lieu of the missing SEC analysis, our members have attempted to undertake a hypothetical calculation of the additional costs of typical types of trading activity that PTFs, and many others in the market, often employ. The below table[14] shows a mix of deliverable and non-deliverable cash vs futures basis and simple spread trades among cash bonds. Using industry standard capital calculations and changes to margin requirements for trading treasuries and futures in a broker-dealer, the overall cost increases of these typical strategies are material, and we believe would cause market participants employing similar strategies to resize their role in both the cash treasury and futures markets. This increased capital requirement is dramatically higher than conservative industry best practice estimation of the risk of these portfolios. They reflect only an unnecessary new cost of doing business under the Proposal's regime. That is, this chart highlights the substantial impact on liquidity the market is likely to suffer, in exchange for little to no reduction of risk or regulatory gain.

Portfolio	Change in Cost if Held in a BD
Two year futures vs On the Run cash	828%
Five year futures vs On the Run cash	595%
Ten year futures vs On the Run cash	718%
Ultra Bond futures vs Deliverable bonds	1117%
Two Year futures vs Off the Run 2s	34%
Ultra Bond futures vs On the Run 30s	645%
Off-the-run Bond Butterfly	580%
US/20yr/WN Butterfly	718%
TY futures vs. Off the Run cash	171%
Two offsetting Butterfly positions in bonds	913%
On the Run vs Off the Run 20yrs	530%
5s30s Flattener	207%
TY Cash futures basis vs TU Cash futures basis	742%
Ultrabond futures vs. CTD Cash bonds	612%
On the Run 30 Year vs. Aug47s	615%
On the Run 30 Year vs. Feb42s	315%

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[14] Data as of April 20, 2022.
Analysis Methodology: The 'Change in Costs if Held in a BD' is calculated by comparing 'Today's Requirements' to the 'Broker Dealer Requirements,' both of which are defined below.
Today's Requirements: non-Broker Dealer entity with Risk Based Margin Financing available. Risk requirements were calculated by using a 5-Day, 99% Confidence VaR, which recognizes offsets between futures and bonds (i.e.: cross margining).
Broker Dealer Requirements: The greater of (a) and (b), as defined below:

- (a): Broker Dealer Net Capital requirements as defined by SEA Rule 15c3-1.
- (b): The sum of (1) the initial margin on the futures positions and (2) the haircuts posted when financing each fixed income position bilaterally, which does not include any cross margining.
    - Haircuts used: 0-3 years: 0.25%; 3-7 years: 0.50%; 7-10 years: 0.75%, 10+ years: 2.00%

On the Run 30 Year vs. Feb36s	173%
Low Risk Tight 3 Year Micro RV	522%

V. The Proposal Does Not Adequately Consider the Implications of Classification as a Dealer, and the Related Registration Requirements

The proposed overbroad definition of a dealer would unquestionably impose a number of new and ongoing costs on traders. These include the cost of capital requirements, registration, SRO membership fees, and new recordkeeping and reporting. These costs are significant and could limit trading activity and liquidity provision or cause smaller participants to exit the market. Moreover, these new requirements and their attendant costs would have little to no application to the day-to-day activities of principal traders.

By way of example, the SEC's Net Capital Rule is designed to ensure that a broker-dealer holds, at all times, more than one dollar of highly liquid assets for each dollar of liabilities (*i.e.*, money owed to customers and counterparties), excluding liabilities that are subordinated to all other creditors by contractual agreement.[15] If a broker-dealer fails, it should be in a position to meet all unsubordinated obligations to its customers and counterparties and generate resources sufficient to wind down its operations in an orderly manner. Certainly, an assurance that a broker-dealer can meet its customer obligations (and cannot use customer funds to satisfy its own liabilities) is vital to the protection of customers and to the orderly functioning of the retail marketplace. Requiring a trading firm to maintain net capital when it has no customers to protect is simply nonsensical – yet the Proposal would presumably require just that. Imposing capital requirements that are intended to benefit customers, not traders without customers, does not help investors or the market, and serves no purpose other than as an unnecessary barrier to entry and impediment to liquidity.

Moreover, the capital costs in conjunction with the fact that this capital will remain locked in the broker-dealer, and for a substantial period of time, are significant. The futures margin requirement (*i.e.,* the cash required for a trading firm to trade futures and options on futures contracts) would increase from the current margin levels imposed by CME, to 150% [16]of those levels. This would have a marked impact on the liquidity of the futures markets. "Locking up" trading capital for no reason and to no benefit would simply hamper the operations of whatever markets – futures, Treasuries, equities, or digital assets – in which these entities trade. Lack of capital flexibility may impact the ability to provide enhanced liquidity during periods of market volatility. This would apply to not just the Treasury market, but equities and all other asset classes in which PTFs transact.[17]

[15] FIA PTG notes that market makers get capital relief, but trading entities defined as dealers under this Proposal would not.

[16] *See* CFTC Reg. § 1.17(c)((5)(x)(B).

[17] It is FIA PTG's understanding that the Proposal would apply to the holding company even if it does not engage in any trading activity, as well as the trading entity. Besides being unwarranted and overburdensome, this would tie up additional capital.

The Proposal would also impose upon trading firms the costs of SRO membership and related regulatory examinations and inspections. These examinations and inspections are certainly important to retail operations – self-regulatory organizations fulfill the important role of assessing a broker-dealer's interactions with the retail investing public. This has little to no purpose for a firm trading its own account with its own money. Such a firm does not recommend trades. It does not advertise or otherwise solicit customers. It does not clear customers transactions. It does not extend margin to customers. It does not execute trades for customers. It has no sales pitches. It does not charge commissions or management fees for its own money. The costs associated with discharging these functions, while important, should not be borne by entities who are not impacted by them.[18]

Similarly, the Proposal would also impose significant costs associated with new, ongoing regulatory reporting. Of course, FIA PTG supports, and has a history of supporting, not only reporting, but timely reporting along with public access to trade data.[19] The reporting that would be required by the Proposal goes beyond that. As noted above, most PTF trades are currently (or will be by September 1, 2022) TRACE-reported, so any additional TRACE reporting requirement would be duplicative and unnecessary. Accordingly, the SEC has not articulated what, if any, reporting "gap" the proposal would purport to close. Conversely, we submit that the relevant regulatory authorities have a comprehensive and appropriate view of the market, and will have an even better view in September once banks commence TRACE reporting. If there are any reporting gaps the SEC can identify, we remain happy to engage with staff and discuss.

The Proposal would also impose new compliance and legal, additional recordkeeping and report filing, and supervisory responsibilities. We believe that these too are generally meant for customer protection purposes, and that they are unnecessary for PTFs as PTFs do not have customers.

VI. The Proposal Contains Quantitative and Qualitative Flaws in its Impact Measurement Methodologies

The Proposal states that its quantitative measure for what constitutes a dealer should be expected to capture approximately 46 new firms, and that its qualitative measurement would be expected to capture approximately 51 new firms.[20] The reasoning provided is that these numbers would reflect "those providing an important liquidity provision function" using "activity-based standards." This begs the question that the SEC is posing. A trader's routine pattern of buying and selling securities for its own account may have the effect of providing liquidity to the market, it may also have the

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[18] FINRA unquestionably discharges certain vital duties – in the customer markets. Its focus is on customer business and customer protection, and would not be a good fit for traders.

[19] *See, e.g.,* FIA PTG Comment Letter to proposed enhancements to TRACE reporting for US treasury securities, February 22, 2021, found at: https://www.finra.org/sites/default/files/NoticeComment/FIA%20Principal%20Traders%20Group%20%5BJoanna%20Mallers%5D%20-%20FIA%20PTG%20Comment%20Letter.pdf

[20] FIA PTG has no way of confirming the accuracy of these estimates.

effect of taking liquidity from the market. The distinction between these two – liquidity providing or liquidity taking should not be the determining factor as to whether one is classified as a dealer.

The analysis in the Proposal also states that it will primarily require registration by PTFs and some private funds and possibly investments advisors, based on "routinely" expressing trading interests more frequently than occasionally, but less than continuously. It is unclear what "routinely" means. The Proposal states that it is intended to capture those who express trading interests at a high enough frequency to play a significant role in price discovery and the provision of market liquidity, but these are unclear metrics by which to evaluate the type of activity.

FIA PTG also submits that the quantitative threshold that applies to Treasuries should be removed. In addition to having no basis in any statute or rule and being extremely low relative to the size of the market, it also incorrectly aggregates *all* types of trading activity as dealing activity when measuring who needs to register as a dealer. Its across-the-board approach fails to consider the nature of the trading activity in any way – and would thereby gut the historical distinction between dealing and trading. It would even capture hedging, risk-reducing activity and arbitrage trading, which are not dealing activity and are important to efficient, risk-managed markets. The measure of defining dealing activity must be to look at the nature of the activity and whether it is dealing activity, and not simply at the quantity of trades.

Indeed, the SEC has long recognized that volume alone is not a determinative factor for assessing dealer status. For example, in a release adopting rules regarding the registration of municipal securities dealers, the SEC stated:

> While the determination of when a bank is a municipal securities dealer might be premised on, among other matters, the number of transactions engaged in by the bank in a non-fiduciary capacity or the rate of turnover of the bank's inventory of municipal securities, the Commission does not now have sufficient data or experience with bank municipal securities dealers to ascertain whether such tests are appropriate. In any event, it would appear that the nature of a bank's activities, rather than the volume of transactions or similar criteria, are of greater relevance in determining when a bank is a municipal securities dealer.[21]

While that release speaks in the context of a municipal securities dealer, the core dealer functions in that definition are the same as in the Dealer Definition and the definition of a government securities dealer – being engaged in the business of buying and selling securities for one's own account. In this regard, we find it interesting that the SEC would impose a volume standard only with respect to the definition of a government securities dealer while simultaneously stating that:

> The legislative history relating to the enactment of the Government Securities Act of 1986 provides that the term government securities dealer "would utilize key

[21] https://www.sec.gov/rules/final/1977/34-11742.pdf.

> concepts from the current definitions of . . . 'dealer' and 'municipal securities dealer.'"

VII. Conclusion

FIA PTG appreciates the opportunity to comment. However, for the reasons stated in this letter, we urge the Commission to not move forward with finalizing this Proposal. If you have any questions or need more information, please contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group

Joanna Mallers
Secretary

cc: Gary Gensler, Chair
Hester M. Peirce, Commissioner
Allison H. Lee, Commissioner
Caroline A. Crenshaw, Commissioner