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Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street, NE, Washington, DC 20549-1090

May 27, 2026

Re: Notice of Request for Exemptive Relief, S7-2026-07

Dear Ms. Countryman,

I appreciate the opportunity to comment on the Notice of Request for Exemptive Relief from Certain Aspects of Rule 17ad-22(e)(18)(iv). The question is whether Treasury cash and repo transactions between non-U.S. members of U.S. clearinghouses and non-U.S. clients should be exempted from the Treasury central clearing requirement. I believe the answer is no: the Commission should decline this exemption request and consider alternative avenues of relief.

The primary problem of an outright exemption is that it will lead to, and in fact invite, evasion and cross-border arbitrage. In particular, clearinghouse members and clients, whether U.S.-based or foreign, can easily set up separate legal entities domiciled outside the U.S. and route transactions through those entities. For instance, a foreign affiliate of a U.S. clearinghouse member can be structured as a separate legal entity in a way that it would not be "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" (quote from original request). Likewise, a U.S. client (nonmember of a U.S. clearinghouse) can set up and structure its own foreign affiliate as a separate legal entity in a way that it would not be "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" (quote from original request). If the exemption request were granted, a Treasury repo transaction between a U.S. clearinghouse member and a U.S. client may end up being restructured and relabeled as between two "foreign" entities. That perverse outcome would be antithetical to the goal of enhancing the resilience of U.S. Treasury market.

The comparison between U.S. Treasury clearing and mandatory swap clearing is misleading. Mandatory swap clearing was a global effort after the G-20 summit in 2009, with rules implemented in the U.S., Europe, and Asia. For mandatory swap clearing, what was out of scope in the U.S. was generally in scope in other jurisdictions that implemented similar rules. Here, the evasion of U.S. Treasury clearing rules would not be counterbalanced by similar standards outside the U.S. Thus, the risk and cost of evasion are much higher.

That said, the fact that an outright exemption would kick the door wide open for evasion does not completely negate the need to address the practical challenges outlined by the trade association in its request. There are less risky alternatives.

On extraterritoriality, the Commission could revisit, reaffirm, and potentially update the conditional exemption it granted to Euroclear and Clearstream almost 30 years ago. The Euroclear System, based in Belgium, functions as a clearance and settlement system for internationally traded securities, including U.S. Treasury securities. It also serves "U.S. participants." While such a system would normally be required to register as a clearing agency under the Exchange Act, the Commission granted Euroclear a conditional exemption from registration in 1998.[1] Key conditions include: (1) Euroclear performs clearance, settlement, and collateral management service only for U.S. government securities (including U.S. Treasuries); (2) volume of transactions of U.S. government securities settled through the Euroclear system cannot exceed 5% of "the total average daily dollar value of the aggregate volume in eligible U.S. government securities" (quote from the order); (3) Euroclear provides the Commission quarterly information about the U.S. government securities volume settled in its system; and (4) the Commission may modify, suspend, or revoke the exemption. This conditional exemption was updated in 2016 to permit limited clearance and settlement activities in U.S. equity securities.[2] In 2017, the Commission and the Central Bank of Belgium updated their Memorandum of Understanding in cooperating and exchanging information about the Euroclear system.[3]

The conditional exemption for Luxembourg-based Clearstream (originally Cedel Bank) was granted in 1997, under essentially identical conditions.[4]

The existing conditional exemption framework for clearing agencies offers a less risky, more orderly, and more transparent route to address concerns expressed by the trade associations. Specifically, the Commission could update its conditional exemption orders to include members of U.S. Treasury clearinghouses as a separate prong of the definition of "U.S. Participant" in the original order[5] and simultaneously provide no-action relief, potentially time-limited, that U.S. Treasury cash and repo transactions settled through Euroclear or Clearstream need not be submitted for central clearing. To prevent a potential "toll booth" effect, the Commission could add a condition that pricing for clearance and settlement through the two entities must be reasonable and nondiscriminatory. The Commission should also affirm the requirement that the two conditionally exempted entities periodically submit data about transaction volume, broken down to (i) transactions that would otherwise be required to be centrally cleared absent the exemption; and (ii) transactions that are not required to be centrally cleared. Finally, the Commission could reaffirm the 5% volume cap or consider updating the cap, potentially

[1] https://www.govinfo.gov/content/pkg/FR-1998-02-18/pdf/98-3997.pdf.
[2] https://www.sec.gov/files/rules/other/2016/34-79577.pdf.
[3] https://www.sec.gov/newsroom/press-releases/2017-67-2.
[4] https://www.govinfo.gov/content/pkg/FR-1997-02-28/pdf/97-5027.pdf.
[5] The 1998 order defines "U.S. Participant" as "any Euroclear System participation having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the commission even if such broker-dealer does not have a U.S. residence."

separately for the two categories (i) and (ii) above. The volume cap should be calculated based on a long enough period to accommodate times of peak volume such as quarter-ends.

Under the clearing agency exemption approach, U.S. Treasury cash or repo transactions between Europe-based clearing members and their non-U.S. clients that settle through Euroclear or Clearstream would not be required to be centrally cleared. The same can be said about Asia-based clearing members. Clearing members that are already using Euroclear or Clearstream do not need to do any extra work, with the caveat of the volume cap. Because these two entities already enjoyed the conditional exemption, the Commission would not be "picking winners and losers" (they were picked more than 20 years ago).

Compared to the outright exemption of non-U.S. clearing members and non-U.S. clients proposed in the request, the clearing agency exemption relies on economic and market forces to combat evasion. A U.S.-based clearing member or client would have little incentive to move offshore for the purpose of evading the Treasury clearing rule, as they must incur the cost of onboarding at Euroclear or Clearstream to be eligible. Euroclear and Clearstream would have little incentive to accommodate evaders, as doing so would crowd out the "volume budget" that is best reserved for genuinely non-U.S. entities. Data sharing with the SEC and central banks facilitates regulatory oversight.

While I believe that updating the conditional exemption of clearing agency registration should address much of the extraterritoriality concern, continued modernization of the U.S. financial infrastructure offers an additional avenue of relief. Specifically, the operational hours of Treasury clearinghouses could be expanded to overlap with, or span, European and Asian market hours. This would be a significant step, but not an unprecedented one: earlier this year, NSCC announced its plan to move to 24/5 operation in June 2026,[6] before equity trading on exchanges is expected to start by the end of 2026. While equity clearing and Treasury clearing are not identical, the transition of equity clearing to 24/5 will resolve many common technological and operational hurdles and facilitate a similar transition for Treasury clearing. Similar know-how exists in the futures markets that have been operating on a 24/5 basis for years.

In summary, an outright exemption from the Treasury clearing rule based on gameable legal domicile would be a costly mistake. Updating the existing conditional exemptions granted to Euroclear and Clearstream would be a less costly and more transparent approach. In parallel, expansion of operating hours of U.S. Treasury clearinghouses would further alleviate pressure. These two options can work hand in hand. For instance, the volume cap for clearing agency exemption could start at a higher level (say 7.5%) for a limited time, until U.S. clearinghouses offer around-the-clock operation, at which point the volume cap would revert to 5%.

Sincerely,
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[6] https://www.dtcc.com/dtcc-connection/articles/2026/march/30/post-trade-in-a-market-that-never-sleeps.