**DEPARTMENT OF THE TREASURY**

**Office of the Under Secretary for Domestic Finance**

**17 CFR Parts 400 and 420**

**RIN: 1505–AA53**

## Government Securities Act Regulations: Large Position Rules

**AGENCY:** Office of the Under Secretary for Domestic Finance, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury (''Department'' or ''Treasury'') is publishing for comment proposed rules that would establish a new Part 420 providing recordkeeping and reporting requirements pertaining to large positions in certain Treasury securities. The proposed regulations are being issued pursuant to the Government Securities Act Amendments of 1993, which authorized the Secretary of the Treasury to prescribe rules requiring persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and file reports of such large positions.

The proposed recordkeeping rules require any person or entity that controls a position equal to or greater than $2 billion in a Treasury security to maintain and preserve certain records that enable the entity to record, compile, aggregate and report large position information. The proposed reporting rules require entities to file a large position report with the Federal Reserve Bank of New York if their reportable position equals or exceeds the large position threshold in a particular Treasury security as specified by the Treasury in a notice requesting large position information. The Department's proposed large position rules are intended to provide the Treasury and other securities regulators with information on concentrations of control that would enable them to better understand the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities.

**DATES:** Comments must be received on or before February 16, 1996.

**ADDRESSES:** Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street, N.W., Room 515, Washington, D.C. 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

**FOR FURTHER INFORMATION CONTACT:** Ken Papaj, Director, or Don Hammond, Assistant Director, Government Securities Regulations Staff, at 202–219–3632. (TDD for the hearing impaired is 202–219–3988.)

**SUPPLEMENTARY INFORMATION:**

I. Background

*Statutory Authority*

In response to certain events that occurred in the government securities market in 1990–1991—short squeezes in the two-year Treasury notes issued in April and May 1991 and bidding improprieties in several auctions of Treasury securities in 1990–1991 [1]—Congress included in the Government Securities Act Amendments of 1993 (GSAA) [2] a provision granting the Department the authority to write rules for large position reporting in certain Treasury securities. Specifically, Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934,[3] authorizes the Treasury to adopt rules requiring specified persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to maintain records and file reports regarding such positions.[4] This provision is intended to improve the information available to the Treasury and other regulators regarding very large positions of recently-issued Treasury securities held by market participants and to ensure that regulators have the tools necessary to monitor the Treasury securities market.

The GSAA gave the Department wide latitude and discretion in determining several key features and conditions that would form the underpinnings of the large position recordkeeping and reporting rules. Among the most significant of these features were: defining which persons (individually or as a group) hold, maintain or control large positions; determining the minimum size of positions to be reported; determining what constitutes ''control'' for the purposes of the rules; prescribing the manner in which positions and accounts are to be aggregated; identifying the types of positions to be reported; determining the securities that would be subject to the rules; and developing the form, manner and timing of reporting. The proposed rules address these points.

*Participation in Rulemaking Process/ Solicitation of Comments*

In formulating the process to be used to develop large position rules, the Department, early on, made a decision to obtain the views of the market participants who would be directly affected by such regulations. We also decided that it would be useful to explain the Department's initial thoughts on the structure and purposes of the rules, to explore various conceptual approaches to designing a large position recordkeeping and reporting system and to obtain industry comment and feedback before actually drafting proposed rules. We believed that market participant involvement in the rulemaking initiative from its outset would facilitate greater understanding of, and support for, the final rules when implemented.

Accordingly, in order to involve market participants and other interested parties at the earliest phase of the rulemaking process, the Department issued an Advance Notice of Proposed Rulemaking (ANPR) on January 24, 1995.[5] The ANPR addressed several key issues, concepts and approaches to be considered in developing large position recordkeeping and reporting rules, and solicited comments, suggestions and recommendations regarding how the requirements should be structured. Rather than repeating that information here, readers are encouraged to review the ANPR to familiarize themselves with these issues. The ANPR also contains a detailed historical background that provides a fuller understanding of the events and circumstances that resulted in the establishment of this regulatory authority, the purposes and objectives to be achieved from large position rules, and the Congressional intent behind this legislation.

The 90-day comment period on the ANPR was extended, in response to an industry request, for an additional 30 days through May 24, 1995.[6] In response to the ANPR, the Department received seven comment letters which are summarized in the next section of the preamble.

[1] For a discussion of the events that gave rise to the establishment of large position reporting authority, see the *Joint Report on the Government Securities Market*, Department of the Treasury, Securities and Exchange Commission and Board of Governors of the Federal Reserve System, (1992); Salomon Brothers Inc. Press Releases dated August 9 and 14, 1991; S. Rep. No. 103–109 (July 27, 1993); H.R. Rep. No. 103–255 (September 23, 1993); and 60 FR 4576 (January 24, 1995).

[2] Pub. L. No. 103–202, 107 Stat. 2344 (1993).

[3] 15 U.S.C. 78o-5.

[4] Pub. L. No. 103–202, Sec. 104; 107 Stat. 2344, 2346–2348; 15 U.S.C. 78o-5(f).

[5] 60 FR 4576 (January 24, 1995).

[6] 60 FR 20065 (April 24, 1995).

In addition to considering the views expressed by the commenters to the ANPR, Department staff has also consulted with various regulatory agencies (i.e., staff of the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York (FRBNY)) in developing this proposal. We intend to continue to involve interested market participants and the regulatory agencies in the development of the large position regulations through the completion of the rulemaking process. Accordingly, the Department welcomes and strongly encourages market participants to submit comments on the proposed rules and any suggestions for reducing burdens on the industry while still achieving the objectives of the rules.

*Balancing of Regulatory and Market Needs*

The Department has attempted to strike a balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. For the following reasons, we believe that the rules being proposed successfully achieve this balance.

First, the proposed rules envision reports to be submitted only in response to a specific request by the Treasury for large position information on a particular Treasury security issue. Under this approach, reporting should be an infrequent event required primarily in response to pricing anomalies in a specific Treasury security rather than a regular, on-going process resulting from a certain pre-determined large position threshold being exceeded in a broader range of securities.

Second, the proposed rules establish a minimum large position threshold of $2 billion below which the Treasury would not request large position reports. As a result, we believe that very few entities would be required to file large position reports.

Third, the recordkeeping requirements would generally not apply to any reporting entity (as defined in the rules) that did not control a position that equalled or exceeded $2 billion in a Treasury security.

Fourth, for those entities currently subject to recordkeeping rules of the SEC, the Treasury or the bank regulatory agencies, the proposed rules impose only minor additional recordkeeping requirements and only if certain conditions are present. Finally, the proposed rules adopt several concepts from the Treasury's auction rules (e.g., positions to be included in a reportable large position, definition of a reporting entity and method of aggregating positions) which have been in effect since March 1993 and are understood by many of the major participants in the Treasury securities market.[7] This should reduce the time and costs that affected entities will need for training their employees on the large position rules.

*Scope of Large Position Rules*

It is important for all market participants to recognize that large position rules create a requirement to maintain records and report information about such positions. However, these requirements only apply to entities that hold or control (i.e., exercise investment discretion) large positions, as determined by the Department, in specific Treasury security issues. Accordingly, there is no obligation on executing brokers and dealers to report large trades nor is there an affirmative duty to inform their customers of the large position recordkeeping and reporting requirements being proposed as part of this rulemaking.

The Department reiterates that large positions are not inherently harmful and there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because a position is large enough to be subject to the Treasury rules. In addition, the proposed rules do not establish trading or position limits or require the identification of large traders or the reporting of large trades. Finally, the GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act.[8]

## II. Comments Received in Response to ANPR

Seven comment letters were received in response to the ANPR. The letters were submitted by two trade organizations, one primary dealer, a Federal Reserve Bank, a bank regulatory agency, a commercial bank and an insurance company.[9] While all comments are summarized below, each letter did not necessarily address all aspects of the ANPR.

Six commenters were largely supportive of a large position reporting system provided that such a reporting system would not be overly burdensome for market participants. However, one commenter opposed the concept of large position reporting entirely. This party believed that ''the current auction reporting rules have already addressed adequately the prior problems with market manipulation,'' and that an unintended consequence of large position rules could be fewer participants in the government securities market, which, in turn, would result in higher borrowing costs.

*On-Demand vs. Automatic Reporting*

Five commenters supported an on-demand reporting system which would be triggered by specific requests from the Treasury for large position information on a particular Treasury security. One respondent, however, favored an automatic, regular reporting system triggered whenever a reporting entity's holdings in a security reached a certain threshold.

The primary reason expressed by those commenters favoring an on-demand reporting system was that this approach would be significantly less burdensome and costly than an automatic reporting system. Many commenters noted that an automatic reporting method would impose more complex systems development requirements and greater operational costs due to the need for daily monitoring of positions across multiple securities. In addition, automatic reporting could create a disincentive to buy and hold large positions that exceed a fixed reporting threshold. Finally, on-demand reporting was viewed by several respondents as being better able to address price distortions and provide more useful information since the request for large position information would be targeted to specific market situations and security issues.

The respondent favoring an automatic reporting system argued that on-demand reporting ''would be difficult and costly to communicate to all relevant parties.'' The commenter also felt that on-demand requests might trigger unwanted market reactions, while a regular reporting system ''would provide more consistent monitoring of the market and would be less confusing to the market over time.''

*Definition of Reporting Entity*

Six commenters were in agreement that the definition of ''reporting entity'' should conform with the definition of ''bidder'' as defined in the uniform

[7] Uniform Offering Circular for the Sale and Issue of Treasury Bills, Notes and Bonds, 31 CFR Chapter II, Subchapter B, Part 356.

[8] 5 U.S.C. 552(b)(3)(B).

[9] Public Securities Association, Investment Company Institute, Chemical Securities Inc., the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve System, Chemical Bank, and CNA Insurance Companies, respectively.

offering circular.[10] The aggregation rule with regard to affiliates, for example, is a concept with which many market participants are already familiar and provides an appropriate model for a large position reporting rule. Similarly, the commenters supported a process, similar to the ''separate bidder'' process provided for in the uniform offering circular, by which separately managed entities within a corporate or partnership structure can request that Treasury recognize them as separate reporting entities.

*Definition of ''Control''*

There was similar concurrence on the definition of ''control.'' Nearly all parties that addressed this issue expressed the view that control should be evidenced by either proprietary ownership or investment discretion over a Treasury security. The commenters were in similar agreement that the concept of ''control'' should not be extended to merely beneficial ownership or custodians. Specifically, the commenters held that entities acting as custodians should not be required to report positions in Treasury securities over which they have no investment discretion.

*Definition of ''Large'' Position*

The commenters generally felt that the large position threshold should be large enough to both detect concentrations of control and avoid overly burdensome, frequent reporting by market participants. Opinions were fairly evenly divided on whether a securities position should be defined as ''large'' based on a percentage of the total outstanding issue size or a specific dollar amount.

Those preferring a percentage standard commented that this method is a better indicator of concentration of control than a straight dollar standard, given the large range of issue sizes among various maturities. Suggested percentages ranged from 10 percent to 25 percent of a particular issue. One commenter felt that, if an automatic reporting system is implemented, the percentage should be consistent with the Treasury's auction rules, i.e., ''large'' should be defined as 35 percent of the securities awarded in an auction.

Those favoring a fixed-dollar threshold did so on the basis of clarity, ease of administration, and, consequently, improved compliance. Suggested dollar thresholds ranged from $2 billion, to correspond to the net long position reporting threshold for auctions,[11] to $4–5 billion. Some commenters also expressed the view that the threshold should be larger under an automatic reporting system than under an on-demand system to minimize the compliance burden associated with automatic reporting. One commenter said that there is no need to define ''large position'' in advance under an on-demand reporting system (the large position threshold would be specified in the Treasury notice requesting large position reports), and there may be no ''one-size-fits-all'' threshold.

*Definition of ''Recently-Issued''*

The scope of Treasury's large position reporting authority is limited to recently-issued and to-be-issued Treasury securities. Discretion to define the term ''recently-issued'' was given to the Treasury. Although the commenters differed somewhat on the specifics of the preferred meaning of ''recently-issued,'' all agreed that it should include the ''on-the-run'' [12] (most-recently issued) security of a particular type. Opinions were fairly evenly divided on whether ''recently-issued'' also should include only the most recent ''off-the-run'' issue or the two most recent ''off-the-run'' issues. One commenter said that there is no need to define ''recently-issued'' under an on-demand reporting system.

*Types of Securities Covered*

Based largely upon the presumption that Treasury note and bond issues are more likely to be ''on special'' [13] (in short supply) than bills, two commenters said that bills should be excluded from large position reporting. One such commenter also cited the complexity, burdens and costs ''associated with implementing systems to track positions on weekly-issued securities * * *.'' One commenter, however, said that all types of Treasury securities (bills, notes and bonds) should be eligible for reporting, ''since any type of Treasury security could be the subject of a concentration of control.'' Another commenter took a more neutral position, saying that excluding bills may be appropriate, ''but a good case will need to be made that short interest is always small relative to the net supply, or that supply conditions and price movements preclude sustained and possibly injurious squeezes.''

*Components of a Position*

The four commenters addressing this issue agreed as a starting point that net long settled cash positions should be included in a ''large position.''

Two commenters said that the definition of ''large position'' should be consistent with the definition of ''net long position'' in the uniform offering circular.[14] Both felt that financing transactions (repos, securities borrowed, etc.) should be excluded from the large position calculation since it is too difficult to apply the concept of control to securities used in such transactions. Calculating a net financing position is particularly difficult, according to one of the commenters. Examples provided included the problems of differentiating deliver-out from hold-in-custody and tri-party repurchase agreements, and of separating overnight repos from term repos, particularly those with mandatory substitution provisions. Both of these commenters, however, could support a requirement to report financing transactions on a gross basis if Treasury believes financings need to be included.

The other two commenters felt that financing transactions should be included in the definition of a reportable position to encompass a wider range of transactions from which an entity can exert immediate control over a Treasury security. Both advocated reporting such transactions on a gross basis. One commenter noted that a position that might look flat on a net basis may in fact be exposed if fails become a problem. Moreover, the commenter contended, matched-book and tri-party repo activity might result in a small net position, and yet be used as a tool to achieve a short squeeze.

*Recordkeeping Requirements*

The issue of what records should be kept by reporting entities was largely unaddressed except that the commenters felt that these records, and their associated retention periods, should closely correspond to records already required to be maintained by reporting entities under existing securities and banking laws. Most respondents stated that reporting entities should not be required to keep records in electronic form, since such a

[10] 31 CFR 356.2 and Appendix A.

[11] 31 CFR 356.13(a).

[12] A Treasury security is considered to be ''on-the-run'' when it is the newest security issue of its maturity (e.g., in October the two-year note issued September 30 would be ''on-the-run'' while the two-year note issued August 31 would be ''off-the-run''). An on-the-run security is normally the most liquid issue for that maturity.

[13] When securities are ''on special,'' market participants desiring to borrow the particular security must accept an interest rate significantly lower than the prevailing repo rate for unspecified collateral. Conversely, the owners of the securities can finance their position at exceptionally low interest rates.

[14] 31 CFR 356.13(b).

requirement could be burdensome for entities that do not have systems for electronic recordkeeping.

III. Section-by-Section Analysis of Proposed Regulations

*A. Section 400.1. Scope of Regulations*

A new paragraph is proposed to be added to Part 400 to describe the statutory basis for the large position rules. The paragraph also states that the large position rules are located in Part 420.

*B. Part 420. Large Position Reporting*

1. Section 420.1

Applicability. This section sets out the scope of the large position recordkeeping and reporting rules by identifying the types of Treasury securities covered and by defining the universe of entities potentially affected. Section 420.1 reflects the Department's initial determination that all marketable Treasury securities—bills, notes and bonds—should be included within the scope of the rules. However, arguments have been made that features and characteristics of the bill market, such as the frequency of issues (i.e., weekly) and reopenings, the size of bill auctions and the availability of several instruments that are close substitutes for bills (e.g., various money market instruments), make it more difficult to accumulate concentrations of ownership of Treasury bills. Comments are specifically requested on whether Treasury bills should be included in the large position recordkeeping and reporting rules.

On its face, part 420 applies to any type of entity, foreign or domestic, that might control a large position in a specific Treasury security. This broad construct of potential application is consistent with the statutory purpose: ''Large position reporting also would be useful in assuring that regulators can monitor the positions of major market participants other than government securities brokers or dealers under certain circumstances. In particular, it will provide assurance that the government can compel disclosure of position information when necessary from all large market participants, including a group of relatively unregulated entities called 'hedge funds.' '' [15] As described in the preamble discussion of sections 420.3 and 420.4, the number of entities that may actually be affected by large position rules is significantly narrowed when the minimum size for a large position is applied.

We believe it is appropriate to exclude certain entities from the application of the rules based on the existing availability of position information on these organizations and/or concerns about the confidentiality of this information. Accordingly, paragraphs (b) and (c) of section 420.1 provide exemptions from part 420 to the holdings of foreign central banks, foreign governments, international monetary authorities and Federal Reserve Banks (FRBs). The exemptions for the foreign entities are limited to their respective positions maintained at the FRBNY. The exemptions are also consistent with the position expressed by the Senate and House during consideration of the legislation.[16]

One commenter, responding to the ANPR, expressed concern about granting exemptions specifically to these foreign entities. However, the Department believes the proposed approach is appropriate since the exemptions are limited in their scope by applying only to the portion of the organization's position that is maintained at the FRBNY. Any positions held by the exempt entities at locations other than the FRBNY are not exempted and will be subject to the large position recordkeeping and reporting rules. The proposed exemption for those Treasury securities that FRBs hold and control for their own accounts is also based on the Department's access to this information.

The Department recognizes that on rare occasions it may be necessary to request large position information on Treasury securities that are not within the parameters of the proposed definition of recently-issued (paragraph 420.2(g)) but that are within the scope of the intent of the statute. For example, in August 1991, Treasury might have sought large position information on the April 1991 two-year note, given that the security was still ''on special'' in the repurchase agreement market and there was a significant concentration of ownership. While this security, at that time, would have been outside the scope of the currently proposed definition, the Department believes it is necessary to reserve the right to collect large position information in such circumstances. Accordingly, we have included within the rule a reservation to request information on additional Treasury security issues consistent with the purposes of the GSAA.

2. Section 420.2

Definitions. This section provides for the definitions of terms that are integral to the large position rules. Unless otherwise defined in this section, terms used in part 420 have the same meanings provided in section 400.3.

''Control''—The concept of control revolves around three elements: beneficial ownership, possession (custody) and investment discretion. The beneficial owner is the party with the actual ownership interest in the Treasury security. The beneficial owner may or may not always be aware of its ownership position in a given security if it does not manage its own investments and it may not have possession of the Treasury securities even if it makes its own investment decisions (especially likely with book-entry Treasury securities). Possession or custody is evidenced by an organization's ability to service the securities directly (e.g., transfer the securities, receive interest and principal payments). The beneficial owner may perform this function for its own holdings, but the mechanics of book-entry Treasury securities require that a depositary institution act in this capacity on behalf of others at some level in the custody chain for all Treasury securities. Additionally, book-entry Treasury securities may involve more than one custodian in the holding of a specific security entitlement.[17] Investment discretion is the authority to make and execute decisions about the purchase, sale and retention of securities. In the institutional market for Treasury securities, which is of critical importance in developing large position reporting rules, the granting of investment discretion to an investment adviser to manage all or some portion of an entity's portfolio is common.

It is our view that, for the purposes of large position reporting, the most important criterion in the definition of control is that of investment discretion. While beneficial owners receive the economic benefit of holding a Treasury security, frequently, they do not make the decision to purchase/sell/retain the Treasury security and, as mentioned, may not, on a day to day basis, be aware

[15] H.R. Rep. 103–255, September 23, 1993, at pg. 25.

[16] 139 Cong. Rec. H–10967 (daily ed. November 22, 1993) Statement of Chairman Dingell on S. 422.

[17] The Federal Reserve Banks maintain book-entry security accounts for depository institutions and other entities such as government and international agencies and certain foreign central banks. In their book-entry accounts at the Federal Reserve, the depository institutions may maintain their own security holdings and holdings for customers, which may include other depository institutions, dealers, brokers, institutional investors and individuals. In turn, the depository institution's customers may maintain accounts for their customers. This creates a tiered chain of custodial relationships.

of their ownership interest. Since a purpose of large position reporting is to understand better any pricing anomalies for a particular Treasury security issue in a timely fashion, defining control based on beneficial ownership would not be particularly useful because a reporting entity could have difficulty assembling the information needed to file a large position report and would be potentially unaware of the reasons why the security involved was purchased.

Likewise, custody (without investment discretion) does not provide a good basis for determining control. A definition based on custody would most certainly involve multiple reporting of the same security position since each tier in the custody chain would be required to report. This approach would diminish the value of any large position reports received. Also, because under these circumstances the custodian would not be a party to the investment decision, reporting on the positions held in safekeeping would shed very little light on the objectives of the investor.

Therefore, Treasury has decided to define control as the authority to exercise investment discretion. This definition is supported in six of the seven comment letters. Investment discretion can be exercised by the beneficial owner, a custodian or an investment adviser. The party responsible for making investment decisions, regardless of where it is in the tiered system, is the most relevant reporting entity for large position reporting since the actions and objectives of the decision maker are what we are trying to determine. A single party exercising investment discretion for multiple beneficial owners could control a potentially large amount of Treasury securities without any single beneficial owner having a reportable position. Additionally, such investment advisers could possibly distribute custody of the securities in a manner that would keep any individual custodian below the reporting threshold. However, using the exercise of investment discretion as a measure of control, an investment adviser's aggregate positions would be reportable regardless of the number of beneficial owners or custodians involved and would be treated separately from any positions over which the beneficial owners had retained investment discretion. Finally, a definition of control based on investment discretion is consistent with the treatment of investment advisers under the uniform offering circular.[18]

Following this definition, an investor would only be responsible for reporting its proprietary holdings if it retained investment discretion over the positions. This approach would avoid double reporting of these positions. Additionally, a custodian would only have responsibility for reporting on any large positions for which it had investment discretion. A custodian would not have any obligation to report on positions for which it maintained securities solely in a safekeeping capacity.

''Reporting Entity''—This term is defined to be consistent with the definition of a bidder in the uniform offering circular.[19] This concept provides for the treatment of all affiliated entities as a single entity for purposes of determining the quantity of Treasury securities controlled. Additionally, the definition permits specific affiliates to be treated separately or ''carved-out'' from the reporting entity based on stated principles of separateness.

Applying this approach, a ''reporting entity'' will aggregate each of the positions in a specific Treasury security that is held by itself and all affiliates that control positions, and will report a single position to the FRBNY. Any affiliate that exercises independent investment discretion, and whose position information is not available to other affiliates, will be permitted to report separately from the overall entity provided it has requested such a ''carve-out'' and received written recognition from the Treasury. Merely establishing ''Chinese walls'' or similar procedures is not sufficient. If an entity has already received such written recognition under the uniform offering circular, it will not have to reapply for the purposes of large position reporting.

Defining the term ''reporting entity'' based on the bidder concept from the auction rules has the advantage of relying on an existing body of regulations, thus minimizing confusion and the need for market participants to learn new rules. The bidder definition is well known to most large participants in the Treasury market (from their auction participation) and has functioned effectively since March 1993 when the rules were implemented. This approach was also endorsed in four comment letters.

This definition also introduces a new term, ''aggregating entity,'' which is defined separately. An aggregating entity is a single legal entity (e.g., a parent company or affiliate within a reporting entity) that may control elements of a large position. If an aggregating entity has no affiliates, then it is also a reporting entity. Each component of a reporting entity is individually an aggregating entity.

''Reportable Position''[20]—The scope of the definition of reportable position directly affects the complexity of calculating such a position and the amount of time needed to file a large position report. The definition of a reportable position should be broad enough to encompass the most significant ways that an investor may control a Treasury security issue, balanced against the difficulty and cost of compiling the information. Additionally, because of the complexity in defining this term, it is useful to base the definition, to the maximum extent feasible, on concepts familiar to market participants.

For participants in the Treasury securities market, a familiar concept is that of ''net long position'' in the uniform offering circular.[21] The uniform offering circular definition includes the par amount of: (1) Immediate (cash) positions; (2) when-issued positions for to-be-issued and reopened issues; (3) forward settling positions; (4) positions in futures contracts requiring delivery of the specific security; and (5) STRIPS (Separate Trading of Registered Interest and Principal of Securities) principal components of the specific security. This is an appropriate place to begin development of a reportable position because it is not only familiar to many market participants but also includes the most common elements of control in the cash market. The combination of these five elements is defined as the net trading position—the first component of a reportable position.

The Department is requesting that commenters specifically address the treatment of forward positions. While forward positions are a component of the net long position defined in the uniform offering circular, there may be reasons to exclude them from the definition of reportable position because forward positions may be less effective in controlling a security or may act to conceal settled positions. For example, the proposed large position rules permit a reporting entity to reduce the size of its settled position by the amount of a

[18] Treasury intends to clarify this treatment in a proposed rule in the near future.

[19] *See supra* note 10.

[20] A reportable position for the purposes of the large position rules differs from a reportable position for purposes of the uniform offering circular. In the uniform offering circular, a reportable net long position is a position that has met the necessary criteria to be reported on a tender. In the context of the large position rules, a reportable position defines the components of a potential large position.

[21] See supra note 14.

short forward settling position. Should this treatment be permitted? Treasury especially welcomes the views of market participants on this subject.

Options and certain futures contracts (i.e., cash-settled or those requiring delivery of securities other than the specific security that is the focus of large position reporting) continue to be excluded because they do not provide the holder with either immediate control or an effective way to manipulate the price of a specific security. For options, an entity would only gain control of the security at the time the position is exercised, at which time the security would become a component of a reportable position. Large positions in the excluded futures contracts are already reported to the Commodity Futures Trading Commission.[22] Thus, this information will be available to the Department and other regulatory agencies, if needed, without imposing additional reporting requirements.

Financing transactions are proposed to be included in a reportable position because of the important influence they have on the available supply of a Treasury security. The legislative history behind the large position reporting authority supports the inclusion of financings, especially repurchase agreements.[23] The approach for including financing transactions is addressed below in the definition of a gross financing position. The gross financing position is the second component of a reportable position.

Finally, the Department believes that a third component—''fails''—should be included in the definition of reportable position. An investor's net fails position (fails to receive less fails to deliver) indicates ownership rights to a security without the cost of financing. All fail positions should be included without differentiating between types of counterparties (i.e., broker-dealers, customers). A large ''fail-to-receive'' position may exacerbate, or benefit from, a squeeze by maintaining high demand for a specific security. In analyzing existing market discontinuities, the knowledge of the existence of any large net fail-to-receive positions could help determine the cause and potential resolution of a tight supply condition.

Commenters are also requested to address the treatment of fails. Specifically, the Department is interested in receiving comments on whether the proposed treatment of fails positions is more appropriate than excluding fails from the determination of a large position and instead requiring submitters of large position reports to disclose information about fails as a memorandum entry. Since a position that remains unsettled after its scheduled settlement date is not included in the computation of a net trading position, including fails may act to artificially increase the size of the reported position. This result is apparent if fails-to-deliver were to be a positive addition to a reportable position since a past settlement date short trade, unlike a short forward position, would not reduce the size of an entity's reportable position. Additionally, commenters are asked to consider whether fails should be treated differently from forwards given their similarities.

The sum of the net trading position, gross financing position and the net fails position is a reporting entity's total reportable position.

''Gross Financing Position''—To achieve the statutory intent, financing transactions should be included in a reportable position. The more difficult question is how to include them. Within the generic construct of financing transactions, there are multiple types of transactions including: repurchase and reverse repurchase agreements, securities borrowed and loaned, securities pledged and received in pledge, and any other form of credit collateralized by Treasury securities.

Since the intent of large position reporting is to obtain information about the control of Treasury security positions, an effective approach for incorporating financing transactions is to include them on a gross basis (no netting) in the reportable position of the entity that has received the securities. Under this approach, the seller/lender of the securities would not include the financing transaction in its calculation of the gross financing position since it would already have reflected the positions that provided it with control of the securities (i.e., cash positions, reverse repos) in the calculation. Reporting in this manner would provide regulators with information about the broader universe of market participants that had possible control of the Treasury security, regardless of how they might have subsequently financed or transferred it.

No differentiation is made in the computation between the types of financing transactions (e.g., repos, securities lending) since, despite different legal frameworks, they are generally equally effective ways of obtaining control. The first part of the gross financing position computation also does not differentiate between types of repos (e.g., overnight, term). As an example, a security that has been received through a reverse repo and contemporaneously repoed out to a third party will be included at the gross par amount of the reverse in the entity's long position. Gross reporting yields this result even though the security was no longer in the possession of the reporting entity since it had been contemporaneously repoed out. The proposed approach will result in the potential for multiple entities including a position for the same specific Treasury security in their respective computations and reportable positions. However, the resultant double counting is not considered to be a problem because it provides additional information about entities that have various legal claims to the security and that may potentially benefit from any possible market disruptions.

An optional exclusion is proposed that will permit a reporting entity to voluntarily exclude from the computation of its gross financing position certain securities received through financing transactions. This exclusion would apply to situations in which the securities received were subject to a right of substitution on behalf of the delivering counterparty, tri-party custodial relationships, or custody of the securities being retained by the party granting the legal interest in the securities (hold-in-custody). These Treasury securities would be eligible for exclusion based on a presumption that the receiving organization did not have effective control of the securities despite having ''received'' them. The exclusion is optional because its use, while benefiting the entity taking advantage of it, does not diminish the usefulness of the resultant large position reports. If it were made mandatory, many potential reporting entities might find it too costly and burdensome to differentiate information on financings at this level of detail. If the amount excluded is large enough to cause the reporting entity to fall below the reporting threshold, then a report should not be filed.

The gross financing position is then combined with the other two components of a reportable position to determine the total reportable position held by a reporting entity. For purposes of the calculation, all positions would be valued at the par amount of the securities involved.

''Large Position Threshold''—The large position threshold is the dollar amount of a reportable position at or above which the requirement to file a large position report is triggered. Since

[22] 17 CFR Parts 15 to 18.

[23] *See supra* note 15 at pg. 44.

the large position rules take an ''on-demand'' approach to reporting, the specific large position threshold for any given Treasury security issue may vary. However, since the threshold would not be known in advance, we believe that it will be beneficial to provide some certainty to market participants by setting a minimum dollar amount (''floor'')—$2 billion—below which reports would not be requested. Establishing a floor should minimize compliance costs. For example, many entities, based on this level of the floor, may decide that no modifications would be needed to their computer systems or trading strategies since the rule would not apply to them (i.e., the firms would not expect their positions ever to reach the floor amount). Of the six commenters who addressed this issue, three endorsed a variable threshold method (one respondent actually supported a fixed percentage method, which would lead to a variable dollar level since it would be based on the amount issued of a specific security).

''Recently-Issued''—Despite the determination that any large position reporting would be done on an on-demand basis, the Department believes that it is useful to set out a general description of which Treasury securities would be within the scope of the rule. For convenience, the definition of recently-issued includes when-issued securities from the time of announcement of the issue. Thus, when-issued securities would be considered the most recent issue of a security type. In response to the commenters and in consideration of the Treasury securities that could be of most interest to regulators, we have proposed that as a regular matter, recently-issued would be limited to the three most recent issues of a Treasury security (bill, note or bond) if issued quarterly or more frequently and the two most recent issues if issued less frequently. Currently, this latter condition exists only for the 30-year bond. The definition of recently-issued for this security, which is currently issued semi-annually, was limited to the two most recent issues because a three-most-recent definition would have, on a regular basis, encompassed a time period of nearly a year and a half. As discussed earlier, the Department intends to reserve the right to broaden the scope of this definition, on a limited exception basis, consistent with the purposes of the GSAA.

3. Section 420.3

Reporting. The provisions of this section require large position reports to be filed by the designated filing entity of any reporting entity that has a reportable position that equals or exceeds the large position threshold in a particular Treasury security issue as specified by the Department. This section also specifies the method by which Treasury will provide notice to the marketplace requesting large position reports, the specific information that must be provided on the large position reports, where they must be filed and the time frame for their submission. This section also permits either the Treasury or the FRBNY, acting as the Treasury's agent, to request additional information from a reporting entity if either organization, after analyzing the large position reports, requires further data to gain a more complete understanding of the extent and nature of the concentration of positions in a particular Treasury security. A sample reporting format for large position information is illustrated in Appendix B to the rule.

*Analysis of Alternative Reporting Methods*

The method of reporting large positions is a central issue in the development of large position rules, since the method selected will significantly affect the compliance burdens of, and costs incurred by, the entities subject to the large position regulations.

The Department evaluated two distinct approaches for reporting large position information: an ''automatic'' or regular reporting method and an ''on-demand'' reporting method. Under an automatic, regular reporting process, large position reports would be required to be filed whenever a reporting entity equalled or exceeded the large position threshold stated in the rules for any covered Treasury security. Depending upon the particular method used in a regular reporting system, reports could either be required on a one-time basis or they could continue to be required each day the entity exceeded the large position threshold and would cease only when its positions in the Treasury security fell below the threshold level. In contrast, in an on-demand reporting system, reports would be triggered by a notice from the Treasury requesting large position information on a specific issue of a Treasury security from those reporting entities whose positions at that time equalled or exceeded the large position threshold specified in the notice.

In evaluating the method of reporting that should be employed, the Department took into consideration the events that gave rise to Congress' grant of authority to prescribe large position reporting rules as well as the purposes and objectives of the statutory authority underlying such rules. The main focus of our analysis involved selecting the approach that best balanced the purposes of the statute and any new regulatory burdens that would be created. (Readers are referred to the ANPR for a more detailed discussion of these issues and other background information pertaining to large position reporting.)[24]

The primary purpose of any large position reporting system is to enable the Treasury and the other regulators to understand better the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities. Large position reports are also intended to provide regulators with information on concentrations of control for market surveillance purposes and for enforcement of the securities laws, as well as to enable Treasury policy makers to make better decisions concerning any possible government actions that might be taken in response to apparent price anomalies. A critical factor in evaluating the two alternative large position reporting methods was the extent to which they would meet the overriding legislative and policy objective of strengthening the ability of the regulatory agencies to deter possible manipulation of the Treasury securities market.

*On-Demand Reporting System*

The requirements outlined in paragraph 420.3(a) reflect the Department's decision to propose an on-demand reporting system for large position information. Reports would be required in response to a specific request, issued by the Treasury, for large position information.

An on-demand reporting approach will enable the Department to target large position reporting to a specific issue of a Treasury security in response to particular circumstances or unusual market activity. This would ensure the availability of information for market surveillance and enforcement purposes in those specific instances where it is most needed, thus satisfying the primary objective of this regulatory authority, while obviating the need to collect information on securities that are not of interest. In contrast, under a regular reporting system, reports would be required when the large position threshold had been exceeded; therefore, reports would be filed even in situations where there were no price distortions, anomalies or evidence of possible

[24] *See supra* note 5.

market manipulation. This would result in unnecessary costs for, and burdens on, both market participants and the government. In addition, a regular reporting method could increase the possibility that investors would take deliberate actions to reduce their holdings of Treasury securities to avoid exceeding the ''large'' position reporting threshold. This could result in decreased market participation, reduced liquidity and increased borrowing costs.

An on-demand reporting system would avoid the need to set a uniform large position threshold that would apply to some or all Treasury issues as would be required under an automatic reporting approach. The Treasury would have the flexibility and latitude to establish a tailor-made large position threshold each time it requests large position reports. This permits a large position threshold to be based on the latest supply of, and market conditions for, a specific Treasury security, which can vary considerably.

On-demand reporting should be less onerous and costly for market participants. Any modifications to existing computer systems to compile, summarize, compare and report the positions would be less complex than for the required continual review of multiple securities positions under a regular reporting method. Under a regular reporting approach, firms would need to modify existing computer systems or develop entirely new systems to continuously collect, monitor and report positions in when-issued and recently-issued Treasury securities. Since reports would need to be filed whenever positions equalled or exceeded the large position threshold, the systems would have to be designed to compute the overall positions in a large number of separate Treasury security issues (approximately 23 separate CUSIPs [25] based on the definition of recently-issued in paragraph 420.2(g)) and then compare the amount of the positions to the large position threshold on a daily basis to determine if reports would have to be produced. There would be an even greater burden on those entities that would manually compile this information.

Recognition of the costs that would be imposed on market participants has been a critical consideration in our attempt to develop large position rules that strike a balance between regulatory oversight and market efficiency. We believe that an on-demand reporting system significantly minimizes the regulatory costs and burdens on market participants compared to those that would be incurred if the Treasury were to require regular reporting.

In analyzing the different reporting models, the Treasury also took into consideration the fact that a large segment of market participants who are likely to be subject to Treasury's large position reporting rules—the 37 primary dealers—already submit regular position reports to the FRBNY on a voluntary basis for on-the-run Treasury notes and bonds. By adopting an on-demand reporting system, we have attempted to minimize, as much as possible, any duplicate reporting by these entities.

*Triggering Event: Treasury Request for Information*

The provisions of paragraph 420.3(a) propose that the requirement to report large position information would be triggered by a notice issued by the Treasury specifically requesting such information. The notice would identify the specific Treasury security issue to be reported, the applicable large position threshold (in no case less than $2 billion) for that issue and the date or dates [26] as of which the large position information must be reported.

The notice requesting large position reports would be communicated by issuing a press release and subsequently publishing the notice in the Federal Register. Given the relatively short reporting deadline in the proposed rules, this two-pronged notice approach satisfies the dual objectives of operational efficiency and legal sufficiency. A Treasury press release has the advantage of achieving wide, timely distribution of the notice without a significant time lag. Although this approach relies on third-party services over which the Treasury has no control, it is reasonable to expect that the major news and financial publications and the various electronic financial wire services (e.g., Telerate, Reuters, Bloomberg, Knight-Ridder) would disseminate the Treasury notice as quickly as their respective technological capabilities allow. The electronic financial wire services and news publications can also be relied upon to accurately present the Treasury's request for large position information. We believe that any market participant, including a foreign entity, that may control a large position in a Treasury security is likely to subscribe, or have access, to one or more of the electronic financial wire services. Thus, the likelihood that the Treasury notice requesting large position reports would fail to come to the attention of a potential reporting entity is extremely remote.

The press release would include information about how to obtain a sample large position report and the name and telephone number of a Departmental contact person to answer questions about the report.

Since the Federal Register is the designated federal publication for providing official notice, publishing the Treasury notice in that document is legally sufficient for ''constructive notice'' of the request despite lagging the issuance of the press release.

*Designated Filing Entity*

Under paragraph 420.3(b), the designated filing entity is responsible for preparing and submitting the large position reports on behalf of a reporting entity in response to a Treasury notice requesting large position information. The identity of the designated filing entity must be given on any large position report submitted.

Each reporting entity, as defined in paragraph 420.2(i), whose reportable position equals or exceeds the large position threshold, must have one, and only one, designated filing entity. A reporting entity that consists of only one component is the designated filing entity. For those reporting entities that consist of multiple affiliates or aggregating entities, one entity must be selected to be the designated filing entity. That entity is responsible for receiving and compiling the large position information from each of the aggregating entities, computing the reportable position and preparing and filing the large position report.

An official authorized to file reports on behalf of the designated filing entity shall sign the large position report and certification attesting to the accuracy, completeness and reliability of the information being reported. This official must be one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity. The contact person named on the large position report should also be a representative of the designated filing entity but need not be the authorized official.

Further, any designated filing entity is required, under the applicable provision in section 420.4, to make and maintain

[25] The CUSIP number is the unique identifying number assigned to each separate security issue and each separate STRIPS component.

[26] To understand the price and supply dynamics of the security under scrutiny better, the Treasury reserves the right to request that entities submit positions covering a multi-day, historical time frame rather than just one day.

additional records on behalf of the entire reporting entity.[27]

*Information Required on Large Position Reports*

Paragraph 420.3(c), together with Appendix B, sets forth the specific information that must be provided in the large position report. For those reporting entities that have a number of aggregating entities or affiliates, the amount to be reported for each of the positions is the total, combined net amount. All positions are to be reported as of the close of the business/transaction day for the date specified. In those instances where Treasury requests positions covering multiple dates, separate reportable position calculations must be submitted for each date. The rule does not require, nor does the Treasury intend, for firms to calculate their positions as of some specific point during the trading day. However, in order to meet the deadline for reporting, the designated filing entity may need to determine a cut-off time for foreign entities.

The following administrative information must be provided on the large position report:

(a) The name of the reporting entity;

(b) The address of the principal place of business of the reporting entity;

(c) The name and address of the designated filing entity;

(d) The description of the Treasury security being reported, including the CUSIP number;

(e) The date or dates for which the information is being reported (which should be the same date(s) as that (those) stated in the Treasury notice requesting the large position reports);

(f) The date the report was submitted;

(g) The name and telephone number of a contact person of the designated filing entity to whom questions can be directed regarding any information on the report;

(h) The name and title of the person authorized to submit the report (as previously described);

(i) A certification statement attesting to the accuracy, completeness and reliability of the information being submitted; and

(j) The signature of the authorized official specified in (h).

The following large position information must be reported in the exact order as noted:

(a) Line 1, cash/immediate net settled positions;

(b) Line 2, net when-issued positions for to-be-issued and reopened issues;

(c) Line 3, net forward settling positions, including next-day settling positions;

(d) Line 4, net positions in futures contracts that require delivery of the specific security that is the subject of the large position report (but not futures contracts for which the security that is the subject of the large position report is one of several securities that may be delivered and not futures contracts that are cash-settled);

(e) Line 5, net holdings of STRIPS principal components of the specific security that is the subject of the large position report;

(f) Line 6, the gross financing position, which is the sum of the gross par amounts of a security issue received from financing transactions (e.g., reverse repurchase transactions, bonds borrowed, securities received in pledge and collateralized credit extended);

(g) Line 7, net fails position, which is fails to receive less fails to deliver in the specific security issue; and

(h) Line 8, Total Reportable Position, which is the sum of lines 1–7.

All amounts must be reported in millions at par value. See Appendix B for a sample reporting format.

The large position report provides for two memoranda entries. Memorandum Entry #1 is the sum of the gross par amounts of a security issue delivered as part of a financing transaction (e.g., repurchase agreements, securities loaned, securities pledged and collateralized loans). This amount should not be included in the gross financing position (line 6) as noted in item (f) above. Memorandum Entry #1 is required.

Memorandum Entry #2 is to be reported by those entities that take the voluntary exclusion pursuant to paragraph 420.2(c) to reduce the gross financing position reported on line 6. The amount shown is the amount of securities received from financing positions over which the reporting entity does not have effective control due to arrangements such as third-party custodial structures, hold-in-custody relationships or substitution rights. This amount should not be included in the amount reported on line 6.

Lines 1–5 of the large position report are consistent with the items that determine the net long position for auction reporting purposes.[28] As with the auction rules, the amounts to be reported for each of the items on lines 1–5 are the net of any long and short positions, so that the entry can be a positive number (long position), a negative number (short position), which should be shown in parentheses, or zero (flat position). Only securities trades that have actually settled should be included in line 1, cash/immediate net settled positions. Accordingly, auction purchases that have not yet been settled or issued should be included in the total reported on line 2, when-issued positions.

For line 6, Gross Financing Position, netting of these positions is not permitted although certain items may be excluded. (See paragraph 420.2(c).) For reporting entities that take advantage of this limited exclusion, the gross financing position should not include the amount of security issues received from financing positions over which the reporting entity does not exercise control. Rather, the amount associated with the exclusion should be reported in the Memorandum Entry #2.

Line 7, Net Fails Position, can only be reported as a positive number (which indicates fails to receive exceed fails to deliver) or zero (which reflects fails to receive are totally offset by, or are less than, fails to deliver).

*Reporting Format*

Rather than designing and mandating a specific reporting form, the Treasury is proposing to allow the reporting entities to develop their own large position reports, provided the reports contain all of the required information as prescribed in the rules, in the order stated in Appendix B. By permitting the reporting entities to design their own large position report, firms will be able to integrate the report into their existing systems as they see fit and avoid the unnecessary burden of transferring the information from internally generated reports to a Treasury-mandated form. While firms will have a certain amount of latitude and discretion in designing a large position report, the information on the various positions that constitute the total reportable position must be reported in the order shown in paragraph 420.3(c) and in the sample/prototype report in Appendix B. This will facilitate analysis of the data. Failure to include any of the required information, including administrative information, on the large position report will constitute non-compliance with the rule.

*Filing of Large Position Reports: Where, When and How*

Pursuant to paragraph 420.3(d) the large position report must be submitted to the FRBNY. The report must be received before 12:00 noon, Eastern time, on the second business day after

[27] Since designated filing entities are also aggregating entities, they would also be required under §§ 420.4(b) or (c) to maintain records pertaining solely to their own securities transactions.

[28] *See supra* note 14.

the issuance of the Treasury press release requesting large position reports. Given that large position reports would generally be requested by the Department in response to certain market conditions or activity, the proposed rule has a fairly short response time for submission of the reports. The one and one-half day reporting deadline balances the need for timely information with the recognition that some time is required to compile the information. The reporting time frame should not present significant problems since the information would be derived from records required to be maintained by the reporting entities. Additionally, we understand that most large firms engaged in the securities business compile their positions on a daily basis. Finally, since reporting is ''on-demand,'' the filing of a large position report will be an exceptional event not requiring regular preparation.

The Treasury requests comments from market participants on the proposed reporting time frame, specifically concerning any potential obstacles, burdens or other factors that would make meeting the deadline problematic, and the extent of any extra costs that would be incurred.

The rule, in paragraph 420.3(d), also provides that the large position report may be filed in any manner or media (i.e., hard copy, facsimile or other electronic transmission) that is acceptable to the FRBNY. As mentioned earlier, the reporting entities are permitted to produce or generate their own large position reports.

*Follow-Up Inquiries*

The requirement to file a large position report in response to a specific Treasury notice requesting this information is expected to be an occasional event. The requirement is satisfied upon receipt of the report by the FRBNY within the required time frame and in the required format as prescribed in paragraph 420.3. The proposed rule does not impose a continuous reporting requirement. However, the Treasury and the FRBNY staff may contact a designated filing entity after receiving a large position report to discuss any aspect of the report, seek clarification of the information provided or request additional documents or information. The purpose of such inquiries or requests for data would be to understand the concentration of positions better. The Treasury or the FRBNY staff may also request further detail on any position reported, such as breaking out the gross financing position into its component parts or identifying repurchase agreements by their terms or types (e.g., overnight repos, term repos, tri-party repos, hold-in-custody repos). Reporting entities are required to make good faith attempts to respond to inquiries and provide any additional data requested in an expeditious manner.

*Testing of Large Position Reporting Systems*

The Department wishes to underscore the importance of accurate, reliable and timely reporting of large position information by affected market participants. As the agency of the Federal government most concerned with minimizing the interest cost on the public debt, the Treasury believes that the United States is best served by a liquid and efficient market for Treasury securities that is not overburdened with regulation, but, at the same time, is not viewed as being subject to manipulation. In developing these proposed rules, the Treasury has attempted to pursue a modest approach that balances the need for additional regulation with a desire to minimize the burdens on, and costs to, the industry and to preserve the efficiency of the Treasury securities market.

Compliance with these large position rules—the maintenance of reliable records and the accurate and timely reporting of large position information—is essential to preserving and strengthening the integrity of the Treasury securities market. One of the primary concerns with an on-demand reporting system is the increased potential for inaccurate or incomplete information on large positions due to unfamiliarity by market participants with the reporting requirements. Large position information will be extremely important for policymakers at Treasury, in consultation with other regulatory officials, in determining whether, and what course of, action should be taken to alleviate a concentration of control in a particular Treasury security. Thus, it is imperative that market participants fully understand and comply with the large position recordkeeping and reporting requirements.

To ensure that market participants remain knowledgeable about the rules, specifically how to calculate and report a reportable position, the Treasury intends to ''test'' the reporting system by requesting large position reports at least annually, regardless of market conditions for a particular security. The Treasury does not intend to notify market participants that its request for large position reports is merely a test. Commenters are asked to address this proposed treatment of ''test'' reporting. The notice and reporting requirements are proposed to be identical to a call for large position information in which the Department is concerned about price anomalies and concentrated ownership. ''Test'' reporting is consistent with the statutory purpose since the Department believes it is both necessary and appropriate to help ensure that an on-demand program of large position reporting is conducted effectively.

4. Section 420.4

Recordkeeping. Section 15C(f)(2) of the Securities Exchange Act of 1934 authorizes the Secretary to promulgate rules requiring large position holders to make and preserve records related to large position reporting requirements. Section 420.4 sets forth the proposed recordkeeping rules supporting large position reporting under that authority. The proposed recordkeeping rules are divided into two classes: (1) records required for entities that are currently subject to recordkeeping rules of federal securities or federal bank regulators (paragraph 420.4(b)); and (2) records required for all other entities, such as hedge funds, insurance companies, and pension funds (paragraph 420.4(c)).

Under paragraph 420.4(a)(1), the recordkeeping rules would apply to all aggregating entities that may control components of their respective reporting entity's reportable position as of the effective date of the final large position rules, but only if the aggregating entities' respective reporting entity had a reportable position in any Treasury security equal to or in excess of $2 billion (the minimum large position threshold) at any time during the prior two-year period ending 90 days after publication of the final rule. Thus, all reporting entities (through their respective aggregating entities) will be responsible for determining whether they have controlled a reportable position of at least $2 billion in a Treasury security during the two-year period. For some firms, this will necessitate a thorough review of their records to determine if their reportable positions reached that level.

In addition, under paragraph 420.4(a)(2), in instances where a reporting entity controlled a reportable position of at least $2 billion in a Treasury security during the two-year period, its designated filing entity will be required to submit a letter to the FRBNY certifying that it has in place, or will have in place by the effective date of the final rules, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the requisite records. This

letter must be signed by one of the following officials of the designated filing entity: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent. The letter must be received by the FRBNY within 120 days after publication of the final rule.

The Department believes this requirement would ensure that entities having a history of controlling large Treasury securities positions would have supporting records in place in the event their reportable positions reach an announced large position threshold for a specific issue, thereby triggering the submission of a large position report. These potential large position holders would have several months to develop methods to meet the proposed recordkeeping requirements since there will be a delayed effective date for the rules. Subsequent to the effective date of the rules, aggregating entities within a reporting entity that had not previously had a reportable position in a Treasury security equal to or greater than $2 billion but whose reportable position reaches or exceeds $2 billion would be subject to the large position recordkeeping requirements from that point forward.

Regardless of the date aggregating entities become subject to the recordkeeping rules, their being subject to the rules is based on whether the reportable position of their reporting entity reaches the large position threshold, not on whether the position of the aggregating entity itself reaches that threshold. Thus, an aggregating entity may be subject to the recordkeeping rules even though its own position has been substantially below the threshold.

*Entities Subject to Recordkeeping Rules of Federal Securities or Federal Bank Regulators (Paragraph 420.4(b))*

In developing the proposed recordkeeping rules, the Department sought to strike an appropriate balance between ensuring that large position holders maintain records that document and facilitate the generation of accurate reports and minimizing recordkeeping burdens on large position holders. Accordingly, the Department examined existing securities-related recordkeeping rules of the SEC, the Treasury, and the bank regulatory agencies to determine if the records required under those rules include the type of information necessary to create large position reports.

Specifically, the Department examined the following recordkeeping regulations: SEC recordkeeping regulations applicable to registered broker-dealers, registered investment advisors, and registered investment companies; Treasury recordkeeping rules applicable to registered government securities broker-dealers, financial institutions that have filed or should file notice as government securities broker-dealers, and depository institutions that hold government securities as custodians; and bank regulatory agency recordkeeping rules applicable to banks that conduct securities transactions for customers.[29]

The Department has determined that all of these recordkeeping rules require the affected entities to make and keep records of original entry (i.e., journals, blotters, or similar records) containing itemized records of all of the entities' securities transactions, including information pertaining to the amount and identification of each security or instrument. Records of original entry are basic, detailed records that cover, among other things, all transactions related to the components of a reportable position. Most of the existing regulations of the federal securities and federal bank regulators also require the affected entities to maintain order tickets or memos and various ledgers containing much of the same information required in the records of original entry.[30]

The proposed treatment of depository institutions that exercise investment discretion warrants specific discussion with respect to recordkeeping requirements because such entities are potential reporting entities. Depository institutions that exercise investment discretion are generally subject to the securities recordkeeping requirements of the bank regulatory agencies (12 CFR 12, 12 CFR 208, or 12 CFR 344), regardless of whether or not they exercise investment discretion within their trust departments.

In addition, for those rare cases in which depository institutions exercise investment discretion and act as custodians of government securities outside of their trust departments, the recordkeeping provisions of paragraph 450.4(c) of the GSA regulations also apply.[31] The Department views the information required by the recordkeeping rules of paragraph 450.4(c) as comparable to the basic information required in the records of original entry under the existing rules of the SEC, the Treasury, and the bank regulatory agencies.

The Department believes that reportable positions can be constructed relatively easily from the aforementioned records required by the federal regulatory agencies. As a result, the Department has decided, with respect to large position rules, not to propose any new recordkeeping rules for aggregating entities that are: (1) subject to the existing federal recordkeeping requirements, and (2) not designated filing entities.

However, an aggregating entity that is also a designated filing entity would be required to maintain specific large position-related records in addition to its existing securities-related records. (Each reporting entity would have only one designated filing entity.) First, the designated filing entity would be required to make and maintain copies of all of the large position reports it filed. Also, since the designated filing entity, in some cases, would have to collect and combine information received from other aggregating entities within its reporting entity, the designated filing entity would be required to make and maintain supporting documents or schedules (e.g., worksheets) that are used to compute the reportable position and to prepare large position reports. The designated filing entity would also be required to make and keep a chart showing the organizational entities (e.g., aggregating entities, if applicable) whose data is combined for purposes of calculating a reportable position.

The Department believes that requiring supporting schedules would enhance the ability of the designated filing entity to produce accurate and timely large position reports. Moreover, the retention of supporting schedules and organizational charts would be indispensable in responding to follow-up inquiries from the regulatory agencies and in the course of any in-depth review or reconstruction of a reporting entity's reportable position conducted by the Treasury, the FRBNY, or the SEC.

[29] 17 CFR 240.17a–3, 240.17a–4, and 240.17a–7 (for registered brokers and dealers); 17 CFR 275.204–2 (for registered investment advisers); 17 CFR 270.31a–1, 270.31a–2, and 270.31a–3 (for registered investment companies); 17 CFR 404.2 and 404.3 (for registered government securities brokers and dealers); 17 CFR 404.4 (for noticed financial institutions); 17 CFR 450 (for depository institution custodians that exercise investment discretion); and 12 CFR Part 12, Part 208, or Part 344 (for banks conducting securities transactions for customers), respectively.

[30] Most of the existing recordkeeping rules also require affected entities to maintain position records, which provide a composite listing of the long and short positions in each security for which the broker-dealer or other entity is responsible. However, position records do not include information on positions resulting from certain unsettled and off-balance sheet transactions (e.g., when-issued trades and futures).

[31] Recordkeeping requirements for depository institutions acting solely as custodians were not considered because these entities do not meet the proposed definition of having control under paragraph 420.2(b).

Designated filing entities would be required to retain the additional records for the same period specified in their existing securities-related recordkeeping rules.[32] In instances where recordkeeping rules contain more than one retention period (e.g., SEC Rule 17a-4), paragraph 420.4(b)(4) of the proposed rule specifies that the longest retention period will apply.

*Other Entities (Paragraph 420.4(c))*

Certain entities that have the potential to control large positions, or portions thereof, in Treasury securities within a reporting entity (e.g., hedge funds and insurance companies) are not currently subject to federal requirements to make and preserve securities-related records. To ensure that such entities make and preserve records that document and facilitate the generation of accurate large position reports—while minimizing the burden on these entities—the Department proposes that all aggregating entities (within their respective reporting entities) in this category make and maintain records of original entry (the equivalent of blotters or journals). These documents should be relatively easy for large, sophisticated investors to implement. In fact, it is our understanding that most such investors already produce and maintain such records as part of their on-going business and accounting control systems.

Like the recordkeeping system applicable to entities that are subject to federal securities-related recordkeeping rules, an aggregating entity that is also a designated filing entity would be required to make and maintain the following large position-related records in addition to its records of original entry: copies of all of the large position reports it filed, supporting documents or schedules (e.g., worksheets) used to prepare large position reports, and a chart showing the organizational entities (e.g., aggregating entities, if applicable) whose data is aggregated in order to calculate a reportable position. Such records would have to be preserved by the designated filing entity for at least six years, the first two in an easily accessible place.

5. Section 420.5

Effective Date. Section 420.5 sets out the effective date for both the recordkeeping and reporting provisions of the large position rules. The rule provides for a delayed effective date approximately six months after publication of the final rule. This period of time is provided in order to give affected entities sufficient time to make the necessary preparations for compliance. Only subsection 420.4(a) is not subject to this date but instead contains its own specific dates for compliance.

IV. Special Analysis

The proposed rules reflect the Treasury's interest in meeting regulators' informational needs while minimizing the costs and burdens on market participants. The rules propose to adopt an on-demand reporting system, which will significantly minimize operational and compliance costs for market participants compared with the costs that would have been incurred if a regular reporting system were required. Further, in an effort to avoid imposing new requirements, the proposed regulations adopt, for the most part, existing federal recordkeeping requirements for the largest segment of market participants that would be subject to the rules. The proposal requires limited records to be maintained by those entities that are not currently subject to federal rules to make and preserve securities-related records. Additionally, the establishment of a minimum floor of $2 billion for the large position threshold will also greatly reduce the number of market participants potentially subject to the proposed rules. Therefore, based on the very limited impact of the proposal, it is the Department's view that the proposed regulations are not a ''significant regulatory action'' for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act,[33] it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities since the proposal establishes a minimum large position threshold of $2 billion. This assures market participants that the Treasury would not request large position reports for positions below that minimum amount. The Department does not believe that small entities will control positions of $2 billion or greater in any Treasury security. Accordingly, the inapplicability of the proposed regulations to small firms indicates that there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget for review and approval.[34] In accordance with this requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C. 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collection of information in this proposed regulation is contained in proposed §§ 420.3 and 420.4. The proposed reporting requirements in § 420.3 would require the designated filing entity of any market participant, whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security, to report information to FRBNY. Although the Treasury cannot be certain of the number of market participants that would have large reportable positions for a specific issue on which information is requested, we believe that very few entities would likely have to file reports because the proposed minimum reporting threshold is $2 billion. Further, Treasury expects that its requests for information will be relatively infrequent, and estimates that there will only be an average of five reports filed in response to any particular request.

The proposed recordkeeping requirements in § 420.4 require any aggregating entity to make and preserve certain records as of the effective date, but only if it has, during a specified period, controlled a portion of its reporting entity's reportable position in any Treasury security when that reportable position is equal to or in excess of the $2 billion minimum large position threshold specified in § 420.2(d). For each reporting entity subject to the recordkeeping rules as of the effective date, the designated filing entity will be required to submit a letter, on a one-time basis, certifying that it has in place, or will have in place, a recordkeeping system capable of making, verifying the accuracy of, and preserving the requisite records. As mentioned above, while Treasury expects that very few entities would likely control positions in excess of the stated threshold that would require reporting, a larger group of entities will

[32] *See supra* note 29.

[33] 5 U.S.C. 601, *et seq.*

[34] 44 U.S.C. 3507(d).

be required to submit the one-time letter.

For aggregating entities currently subject to, and in compliance with, recordkeeping rules of federal securities or federal bank regulators, and subject to the large position recordkeeping rules, there are no additional recordkeeping requirements, with one exception. If the aggregating entity is the designated filing entity for its reporting entity, then it is required to make and maintain copies of any large position reports filed; supporting documents or schedules used to compute data for such large position reports, including any information received from aggregating entities within the reporting entity; and an organizational chart showing the entities that are aggregated in developing a reportable position.

Those aggregating entities that must comply with the proposed rules but are not subject to paragraph 420.4(b) must make and preserve journals, blotters or other records of original entry containing an itemized record of all transactions that fall within the definition of a reportable position. This provision accounts for the greatest percentage of estimated recordkeeping burden hours. However, this requirement is significantly less than the full range of books and records requirements currently applicable to entities subject to federal securities-related recordkeeping requirements. If the aggregating entity is also a designated filing entity, the requirements for a designated filing entity are also applicable.

The collection of information is intended to enable the Treasury and other regulators to understand better the possible reasons for any apparent significant price distortions and the possible causes of market shortages in certain Treasury securities. The collection of information will help ensure that the Treasury securities market remains liquid and efficient, and is not viewed as subject to manipulation. The proposed rules apply to all market participants controlling large positions, as defined in the rules. Per paragraph 420.3(c), it is a mandatory requirement that reporting entities with reportable positions that equal or exceed the specified threshold in a Treasury notice respond through their designated filing entities by filing a report in the required format and within the specified reporting time frame.

In developing the proposed rules, we have consulted with affected entities and regulatory agencies, and expect that this process will continue through the development of a final rule. As previously mentioned, Treasury published an ANPR[35] which requested comments on a number of specific issues, including the approach and structure for a large position recordkeeping and reporting system. The estimated reporting and recordkeeping burden hours are based on a review of tenders submitted in Treasury auctions, position reports that primary dealers already complete and voluntarily submit to FRBNY, recordkeeping requirements that are already in place for federally-regulated participants in the government securities market and discussions with the industry and other regulators.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of functions of the Treasury, including the practical utility of the information; (2) the accuracy of the Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting and recordkeeping burden: 4,940 hours.

Estimated annual number of recordkeepers: 100.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

List of Subjects

*17 CFR Part 400*

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

*17 CFR Part 420*

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Chapter IV, subchapter A is proposed to be amended as follows:

## PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for part 400 is revised to read as follows:

Authority: 15 U.S.C. 78*o*–5.

2. In § 400.1, paragraph (e) is added as follows:

[35] *See supra* note 5.

**§ 400.1 Scope of regulations.**

* * * * *

(e) Section 104 of the Government Securities Act Amendments of 1993 (Pub. L. 103–202, 107 Stat. 2344) amended Section 15C of the Act (15 U.S.C. 78*o*–5) by adding a new subsection (f), authorizing the Secretary of the Treasury to adopt rules to require specified persons holding, maintaining or controlling a large position in to-be-issued or recently-issued Treasury securities to report such a position and make and keep records related to such a position. Part 420 of this subchapter contains the rules governing large position reporting.

* * * * *

3. Part 420 is added to read as follows:

## PART 420—LARGE POSITION REPORTING

Sec.
420.1 Applicability.
420.2 Definitions.
420.3 Reporting.
420.4 Recordkeeping.
420.5 Effective Date.

Appendix A to Part 420—Separate Reporting Entity

Appendix B to Part 420—Sample Large Position Report

Authority: 15 U.S.C. 78*o*–5(f).

**§ 420.1 Applicability.**

(a) This part, including the Appendices, is applicable to all persons that participate in the government securities market, including, but not limited to, government securities brokers and dealers, depository institutions, registered investment companies, registered investment advisers, pension funds, hedge funds and insurance companies, that may control a reportable position in a recently-issued Treasury bill, note or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, foreign central banks, foreign governments and international monetary authorities are exempt from this part for the portion of any reportable position they control that is held at the Federal Reserve Bank of New York.

(c) Notwithstanding paragraph (a) of this section, Federal Reserve Banks are exempt from this part for the portion of any reportable position they control for their own account.

(d) Notwithstanding the definition of recently-issued, the Department reserves the right to collect large position information on Treasury security issues that are older than those specified, provided that such action is consistent

with the purposes of the Act (15 U.S.C 78*o*–5(f)).

**§ 420.2 Definitions.**

For the purposes of this part:

(a) ''Aggregating entity'' means a single entity (e.g., a parent company or affiliate) that is combined with other entities, as specified in paragraph (i) of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

(b) ''Control'' means having the authority to exercise investment discretion over the purchase, sale, retention or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

(c) ''Gross financing position'' is the sum of the gross par amounts of a security issue received from financing transactions, including, but not limited to, reverse repurchase transactions, bonds borrowed, securities received in pledge, and collateralized credit extended. In calculating the gross financing position, a reporting entity may not net its positions against repurchase transactions, securities loaned, securities pledged or other deliveries of the security issue. However, a reporting entity may elect to reduce its gross financing position by the par amount of the security received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody reverse repurchase agreements.

(d) ''Large position threshold'' means, with respect to a reportable position, the dollar par amount such position must equal or exceed in order for a reporting entity to be required to submit a large position report. The large position threshold will be announced by the Department and may vary with each notice of request to report large position information and with each specified Treasury security. However, under no circumstances will a large position threshold be less than $2 billion.

(e) ''Net fails position'' is the net par amount of ''fails to receive'' less ''fails to deliver'' in the same security. The net fails position, as reported, may not be less than zero.

(f) ''Net trading position'' is the net sum of the following respective positions in the specific security issue:

(1) Cash/immediate net settled positions;

(2) Net when-issued positions;

(3) Net forward positions, including next-day settling;

(4) Net futures contract positions that require delivery of the specific security; and

(5) Net holdings of STRIPS principal components of the security.

(g) ''Recently-issued'' means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security (e.g., in early April, the January, February, and March 2-year notes).

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the reopened security is reissued by the Department (or scheduled to be reissued for when-issued securities).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(h) ''Reportable position'' is the sum of the net trading positions, gross financing positions and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.

(i) ''Reporting entity'' means any corporation, partnership, person or other entity and its affiliates. For the purposes of this definition, an affiliate is any: entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in Appendix A, one or more aggregating entities, either separately or together with one or more other aggregating entities, may be recognized as a separate reporting entity. Any entity that previously has received recognition from the Treasury as a separate bidder in Treasury auctions pursuant to Appendix A of 31 CFR Part 356 is also recognized as a separate reporting entity without further action.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of, Treasury securities are considered, collectively, to be one reporting entity.

**§ 420.3 Reporting.**

(a) A reporting entity is subject to the reporting requirements of this section only when its reportable position equals or exceeds the large position threshold specified by the Department for a specific Treasury security issue. The Department shall provide notice of such threshold by issuance of a press release and subsequent publication of the notice in the Federal Register. Such notice will identify the Treasury security issue to be reported; the date or dates (as of close of business) for which the large position information must be reported; and the applicable large position threshold for that issue. It is the responsibility of a reporting entity to take reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by the Department and for maintaining the additional records prescribed in the applicable paragraph of § 420.4.

(c) (1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position, as follows:

(i) net trading position comprising:

(A) cash/immediate net settled positions,

(B) net when-issued positions,

(C) net forward positions, including next-day settling,

(D) net futures contracts that require delivery of the specific security, and

(E) net holdings of STRIPS principal components of the security;

(ii) gross financing position; and

(iii) net fails position.

(2) The large position report should include the following two additional items as memoranda:

(i) A total that includes the amounts of securities delivered through repurchase agreements, securities loaned, securities pledged, and collateralized loans and other securities deliveries. This total should not be reflected in the gross financing position; and

(ii) If the reporting entity has elected to exercise the option available in

§ 420.2(c) to reduce the amount of the gross financing position by the par amount of securities received but over which the reporting entity did not have effective control, the amount not included. The total amount of reduction should be deducted from the gross financing position prior to determining the reportable position.

(3) An illustration of a sample report is contained in Appendix B. Each of the net trading position elements shall be netted and reported as the applicable positive or negative number (or zero). The gross financing position and net fails position should each be reported as a single entry. If the amount of the net fails position is zero or less, report zero. All of these items should be reported in the order specified above. All position amounts and their components should be reported at par in millions of dollars.

(4) All balances must be reported as of the close of business of the reporting date(s) specified in the notice.

(5) Each submitted report must include the following administrative information in addition to the reportable position: the name of the reporting entity, the address of the principal place of business, the name and address of the designated filing entity, the Treasury security that is being reported, the CUSIP number, the report date or dates for which information is being reported, the date the report was submitted, the name and telephone number of the person to contact regarding information reported, and the name and position of the authorized individual submitting this report. The report must also be signed by the authorized individual, who must be one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity. The designated filing entity must also include in its report, immediately preceding the signature, a statement of certification as follows:

> The reporting entity submitting this report and the person(s) by whom it is executed hereby certify that all information contained in the report is accurate and complete and that the reporting entity is in compliance with the requirements of 17 CFR Part 420.

(6) The report must be filed before noon Eastern time on the second business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) will be considered filed when received by the Federal Reserve Bank of New York. The report may be filed in any manner acceptable to the Federal Reserve Bank of New York.

(e) A reporting entity that has filed a report pursuant to paragraph (c) shall, at the request of the Department or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

**§ 420.4 Recordkeeping.**

(a)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity must make and maintain records pursuant to this part as of its effective date, but only if the aggregating entity has controlled a portion of its reporting entity's reportable position in any Treasury security when such reportable position of the reporting entity has equaled or exceeded the minimum large position threshold specified in § 420.2(d) (i.e., $2 billion) during the prior two-year period ending [90 days after publication of the final rule]. Subsequent to the effective date, an aggregating entity that controls a portion of its reporting entity's reportable position in a recently-issued Treasury security, when such reportable position of the reporting entity equals or exceeds the minimum large position threshold, shall be responsible for making and maintaining the records prescribed in this part.

(2) In the case of a reporting entity whose reportable position in any Treasury security has equaled or exceeded the minimum large position threshold during the prior two-year period ending [90 days after publication of the final rule], each such reporting entity's designated filing entity shall submit a letter to the Federal Reserve Bank of New York certifying that it has in place, or will have in place by the effective date, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section.

(3) The letter specified in paragraph (a)(2) of this section must be signed by one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity and must be received by the Federal Reserve Bank of New York no later than [120 days after publication of the final rule].

(b) Records to be made and preserved by entities that are subject to the recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions. As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment advisor, or registered investment company with the applicable recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that if such entity is also the designated filing entity it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1)-(3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) Records to be made and kept by other entities. (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that fall within the definition of a reportable position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: the type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition it shall make and preserve the following records:

(i) copies of all large position reports filed pursuant to this part;

(ii) supporting documents or schedules used to compute data for the large position reports filed pursuant to this part; and

(iii) a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position.

(3) With respect to the records required by paragraphs (c) (1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an

index that states the location of the records, and such index must be easily accessible at all times.

**§ 420.5 Effective Date.**

The provisions of this part, except for § 420.4(a), shall be first effective on [180 days from the date of publication of the final rule. If the date does not fall on the last day of the month, then move the date to the end of the month.].

Appendix A to Part 420—Separate Reporting Entity

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent or subsidiary) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from the Department pursuant to the procedures outlined in § 400.2(c) of this title. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

''[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

''(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to acquire in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

''(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

''The above-named entity agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid.''

Any entity that previously has received recognition as a separate bidder in Treasury auctions from the Department pursuant to 31 CFR Part 356 is also recognized as a separate reporting entity without further action.

Appendix B to Part 420—Sample Large Position Report.

## Formula for Determining a Reportable Position

[$ Amounts in millions at par value]

| | |
|---|---|
| Date For Which Information Is Being Reported: _____ | |
| 1. Cash/Immediate Net Settled Positions | $____ |
| 2. Net When-Issued Positions for To-Be-Issued and Reopened Issues | +$____ |
| 3. Net Forward Settling Positions Including Next Day Settling | +$____ |
| 4. Net Positions in Futures Contracts Requiring Delivery of the Specific Security | +$____ |
| 5. Net STRIPS Principal Components of the Specific Security | +$____ |
| 6. Gross Financing Position (Includes total of securities received through reverse repos, bonds borrowed, securities received in pledge, collateralized credit extended.) | +$____ |
| 7. Net Fails Position (Fails to Receive less Fails to Deliver. If equal to or less than 0, report 0.) | +$____ |
| 8. Total Reportable Position | =$____ |

## Formula for Determining a Reportable Position—Continued

[$ Amounts in millions at par value]

| | |
|---|---|
| Memorandum #1: Report one total which includes the gross par amounts of securities delivered through repurchase agreements, securities loaned, securities pledged, and collateralized loans. Not included in item #6 (Gross Financing Position) as reported above. | $____ |
| Memorandum #2: If the optional exclusion was taken to reduce the amount of the Gross Financing Position by the amount of securities received but that the reporting entity did not have effective control over (e.g., third party custodial structures, hold-in-custody relationships, counterparty retained contractual right to substitute), indicate the total amount of reduction here. Deduct from item #6 (Gross Financing Position). | $____ |

Administrative Information To Be Provided in the Report

Name of Reporting Entity:

Address of Principal Place of Business:

Name and Address of the Designated Filing Entity:

Treasury Security Reported on:

CUSIP Number:

Date or Dates for Which Information Is Being Reported:

Date Report Submitted:

Name and Telephone Number of Person to Contact Regarding Information Reported:

Name and Position of Authorized Individual Submitting this Report (Chief Financial Officer, Chief Operating Officer, Chief Executive Officer, or Managing Partner or Equivalent of Designated Filing Entity):

Statement of Certification: ''The reporting entity submitting this report and the person(s) by whom it is executed hereby certify that all information contained in the report is accurate and complete and that the reporting entity is in compliance with the requirements of 17 CFR Part 420.''

Signature of Authorized Person Named Above:

* * * * *

Date:

Darcy Bradbury,

*Deputy Assistant Secretary (Federal Finance).*

[FR Doc. 95–30766 Filed 12–14–95; 1:59 pm]

BILLING CODE 4810–39–W