

“Commission” and by adding in its place “National Futures Association”;

b. By amending paragraph (c)(3) by removing “Commission” and adding in its place “National Futures Association”;

c. By amending paragraph (d)(1) by removing “Commission” and adding in its place “National Futures Association”;

d. By removing paragraph (f)(3); and

e. Redesignating paragraph (f)(4) as (f)(3).

3. Section 4.7 is amended as follows:

a. By amending paragraph (b)(3)(i) by removing “the Commission and”;

b. By amending paragraph (d)(1)(viii) by removing “in duplicate with the Commission at the address specified in § 4.2 and”;

c. By amending paragraph (d)(1)(ix) by removing every instance of “Commission” and adding in its place “National Futures Association”;

d. By revising paragraph (d)(2); and

e. By amending paragraph (d)(3) by removing “Commission” and adding in its place “National Futures Association”.

The revisions read as follows:

§ 4.7 Exemption from certain Part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(d) * * *

(2) The notice will be effective upon receipt by the National Futures Association with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the National Futures Association receives the notice an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the National Futures Association and that in such case an exemption may be denied by the Commission or the National Futures Association or made subject to such conditions as the Commission or the National Futures Association may impose.

* * * * *

§ 4.12 [Amended]

4. Section 4.12 is amended as follows:

a. By amending the introductory text of paragraph (b)(3) by removing “Commission” and adding in its place “National Futures Association”;

b. By removing paragraph (b)(3)(vii);

c. By redesignating paragraph (b)(3)(viii) as (b)(3)(vii) and by amending paragraph (b)(3)(vii) as redesignated by removing “A copy also must be” and adding in its place “Be”;

d. By amending paragraph (b)(5)(ii) by removing “Commission” and adding in its place “National Futures Association”.

§ 4.13 [Amended]

5. Section 4.13 is amended as follows:

a. By removing paragraph (b)(1)(iv)(A); and

b. By redesignating paragraph (b)(1)(iv)(B) as (b)(1)(iv)(A).

6. Section 4.14 is amended as follows:

a. By amending paragraph (a)(8)(iii) by removing “Commission” and adding in its place “National Futures Association”;

b. By removing paragraph (a)(8)(v)(C); and

c. By redesignating paragraph (a)(8)(v)(D) as (a)(8)(v)(C) and by amending paragraph (a)(8)(v)(C) as redesignated by removing “A copy also must be filed” and adding in its place “Filed”.

§ 4.22 [Amended]

7. Section 4.22 is amended as follows:

a. By amending the introductory text of paragraph (c) by removing “two copies of the Report with the Commission” and adding in its place “a copy of the Report with the National Futures Association” and by removing “Commission” and adding in its place “National Futures Association”;

b. By amending paragraph (f)(1) by removing every instance of “Commission” and adding in its place “National Futures Association”; and

c. By amending paragraph (f)(2)(i) by removing “and the Commission”.

8. Section 4.26 is amended by revising paragraph (d) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

* * * * *

(d) Except as provided by § 4.8 and paragraph (d)(3) of this section:

(1) The commodity pool operator must file with the National Futures

Association one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to

a prospective participant in the pool; and

(2) The commodity pool operator must file with the National Futures Association one copy of the subsequent amendments to the Disclosure

Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

(3) With respect to pools that are not offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*), a commodity pool operator must:

(i) File with the Commission one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(ii) File with the Commission one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

§ 4.36 [Amended]

9. Section 4.36(d) is amended by removing every instance of “Commission” and adding in its place “National Futures Association”.

Issued in Washington, DC, on December 11, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02-31685 Filed 12-17-02; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1505-AA88

Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (“Treasury,” “We,” or “Us”) is

issuing in final form an amendment to the reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are issued under the Government Securities Act Amendments of 1993 ("GSAA"). The purpose of the rules is to provide Treasury with information to better understand the causes of market shortages in certain Treasury securities. With the exception of one minor clarification, we are adopting the changes as proposed. We believe the changes made to the rules by this amendment will improve the information available to Treasury. Specifically, the amendment modifies the report to require separate reporting of certain components of the "net trading position" and the "gross financing position." The amendment revises the current "memorandum" item to require that the par amount of securities delivered through repurchase agreements be separated by maturity classification. In addition, it adds a new memorandum item to the large position report to require that the gross par amount of "fails to deliver" be reported. Finally, the amendment also modifies the definition of "gross financing position" to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.

EFFECTIVE DATE: This amendment is effective January 17, 2003.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamarena (Executive Director), Lee Grandy (Associate Director), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691-3632 or e-mail us at govsecreg@bpd.treas.gov.

SUPPLEMENTARY INFORMATION: We re-examined the "large position rules"¹ and on July 31, 2002, published proposed amendments to the rules that would improve the information

available to Treasury to better understand the causes of market shortages in certain Treasury securities.² In this notice, we first provide background on the rules and why we are changing them. Next we discuss the public comments we received in response to the proposed rulemaking, and then we describe the final amendments. As explained below, we are adopting the proposed changes with one minor clarification.

I. Background

A. Statutory Authority

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990-1991, Congress included in the GSAA³ a provision granting Treasury new authority to prescribe rules requiring any person or entity holding, maintaining, or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and, when requested by Treasury, to file reports of such large positions. The provision was intended to improve the information available to Treasury, the Federal Reserve Bank of New York (as Treasury's agent), and the Securities and Exchange Commission (referred to as "regulators" in this document) regarding very large positions in Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

B. Reporting and Recordkeeping Requirements

The rules provide for an "on-demand" reporting system rather than a regular, ongoing system of reporting.⁴ Large position reports must be filed with the Federal Reserve Bank of New York ("FRBNY") in response to a notice from us requesting large position information on a specific issue of a Treasury security by entities with positions that equal or exceed the reporting threshold specified in the notice (currently not less than \$2 billion). The notice is in the form of a press release we issue and subsequently publish in the **Federal Register**. We also provide the press release to major news and financial publications and wire services for dissemination. An electronic mailing list for notification of calls for large position reports that was implemented in 1998 is also available at Public Debt's website at the address

provided earlier in this rule. This provides market participants with information about calls for large position reports in the most timely and efficient manner. The reports must be received by the FRBNY before noon Eastern time on the fourth business day after the issuance of the Treasury press release calling for large position information.

A "reportable position" is the sum of the net trading position, the gross financing position and the net fails position in a specified issue of a Treasury security collectively controlled by a reporting entity.⁵ All positions are required to be reported at par value on a trade date basis.

The recordkeeping requirements provide that any person or entity controlling at least a \$2 billion position in a specific Treasury security must maintain and preserve certain records that enable the entity to compile, aggregate and report large position information.⁶

C. Who Is Subject to the Rules

Treasury's large position recordkeeping and reporting rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, such as: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities.⁷ The broad application of the rule to include both foreign and domestic entities is consistent with the statutory purpose of the GSAA.⁸

We reiterate that large positions are not inherently harmful, and that there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because its position is large enough to be subject to Treasury's rules.

D. Proposed Rulemaking

Since the rules became effective in 1997, we have conducted annual calls for reports to test the accuracy and reliability of large position reporting systems. These tests have given us

⁵ 17 CFR 420.2(h).

⁶ 17 CFR 420.4

⁷ The rules provide a total exemption for foreign central banks, foreign governments and international monetary authorities (e.g., the World Bank) (collectively, foreign official organizations). Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.

⁸ H.R. Rep. No. 103-255 (September 23, 1993).

¹ The rules were issued on September 12, 1996 (61 FR 48338) and were effective on March 31, 1997. They established a new part 420 of the regulations issued by Treasury in 17 CFR, Chapter IV, Subchapter A, providing recordkeeping and reporting requirements related to very large positions in certain Treasury securities.

² 67 FR 49630 (July 31, 2002).

³ Pub. L. No. 103-202, 107 Stat. 2344 (15 U.S.C. 780-5(f))(1993).

⁴ See *supra* note 1.

valuable experience and insight as we consider how to improve the information provided to regulators. This experience, in addition to our ongoing need to take into account the liquidity and efficiency of the Treasury securities market, caused us to re-examine the rules and issue a proposed rulemaking on July 31, 2002.⁹ The modifications that were proposed reflected our continuing need for the ability to obtain useful information, while minimizing the costs and burdens on market participants.

The proposed rulemaking requested public comment on changes to the large position rules that would require:

- Separate reporting of the par amount of each of the five components of the “net trading position;”
- Separate reporting of the total par amount of securities received through reverse repurchase agreements by maturity classification in the “gross financing position” (*i.e.*, either “overnight and open” or “term”);
- Separate reporting in the current memorandum item of the total par amount of securities delivered through repurchase agreements by maturity classification (*i.e.*, either “overnight and open” or “term”);
- Reporting of the amount of “fails to deliver” in a new memorandum item; and
- Elimination of the optional exclusion in the calculation of the “gross financing position” for the amount of securities received through certain financing transactions.¹⁰

II. Comments Received in Response to the Proposed Rulemaking

We received one comment letter in response to the proposed rulemaking, from The Bond Market Association (TBMA).¹¹ Overall, TBMA was supportive of the proposed rule. The commenter noted that more detailed reporting of the net trading and gross financing positions would require many reporting entities to reconfigure their internal systems used to generate large position reports, thus increasing compliance costs. However, TBMA deemed the modifications appropriate because they should improve the depth

of information available to Treasury and other regulators thereby enhancing transparency and enabling regulatory authorities to better understand the causes of market shortages of Treasury securities.”

TBMA suggested that we extend the current three and a half day reporting deadline to a full four business days. The commenter asserted that the broader reporting obligations could be “unduly burdensome” for entities that must consolidate information from global affiliates into a single report. The commenter also suggested that Treasury move the release time for the announcement of calls for large position reports to 8:00 a.m. (EST).

As noted above, TBMA was supportive of requiring more detailed reporting of the gross financing position. However, TBMA urged “Treasury to clarify in the final rule that the specific maturity date for a term repo transaction does not need to be reported.”

TBMA was fully supportive of eliminating the optional exclusion in the calculation of the gross financing position for certain transactions, including where the counterparty retains the right to substitute securities. The commenter stated that, “The proposed change would create a simpler and more unambiguous rule,” that would “reduce compliance costs” and “ensure consistent treatment of overnight reverse repurchase transactions and term repurchase transactions where the counterparty retains a technical right of substitution.”

III. Amendment to the Rule

After considering the one comment letter received, we are adopting the amendment essentially as proposed with a clarification recommended by the commenter. As recommended, we are clarifying in the rule amendment our intention that specific maturity dates for term repurchase agreements and term reverse repurchase agreements not be reported. That means that only the total dollar amount of the outstanding contracts for term repurchase agreements and term reverse repurchase agreements, respectively, are to be reported.

Accordingly, § 420.3(c)(1) and (c)(3), and Appendix B are revised to require that each of the five components in § 420.2(f)(1)–(5) that, together, comprise the “net trading position,” to be reported separately. As we stated in the proposed rulemaking, since entities already are collecting this information to calculate their total net trading position, we believe that the separation of these components should not prove to be very burdensome.

Section 420.3(c)(1) and (c)(3), and Appendix B are revised to require entities to separate the reverse repurchase agreement components by maturity classification (*i.e.*, break out reverse repurchase agreements as either “overnight and open” or “term”) in the reporting of the gross financing position. Similarly, the current memorandum item is revised to require that the total gross par amounts of securities delivered through repurchase agreements be reported by maturity classification. As previously discussed, a clarification has been added that only the total dollar amount of term reverse repurchase agreements and term repurchase agreements, respectively, is to be reported. We believe the separate reporting of these individual components in the large position formula, as well as the separation of reverse repurchase agreements and repurchase agreements by maturity classification, will help us to better understand the reporting entity’s degree of control and economic interest in the particular security.

Section 420.3(c)(2) and Appendix B are revised to add a second memorandum item to the large position information for the gross par amount of “fails to deliver.” This will help us to better understand a reporting entity’s fails situation without increasing the burden on reporting entities since fails to deliver are already factored into the “net fails position” component.

Finally, the definition of “gross financing position” is revised at § 420.2(c) to eliminate in its entirety the optional exclusion for certain securities received through financing transactions. A conforming change is also made to item #2 “Gross Financing Position” in appendix B to part 420 (Sample Large Position Report) to reflect the elimination of the optional exclusion. This means that a reporting entity may no longer elect to reduce its gross financing position by the par amount of the securities 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 agreements. We believe this change will enhance the usefulness of the large position reports to regulators. We agree with the commenter that this change will result in a simpler and more unambiguous rule.

Regarding the commenter’s request that Treasury extend the current three and one-half day reporting deadline to a full four days, and also that Treasury move the release time for the announcement of calls for large position reports to 8 a.m. EST, we have decided

⁹ See *supra* note 2.

¹⁰ Currently, § 420.2(c) provides that a reporting entity may elect to reduce its gross financing position by the par amount of the securities 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 agreements.

¹¹ The proposed rule, and the comment letter, dated September 16, 2002, are available for downloading on the Internet, and for inspection and copying at the Treasury Department Library at the address provided earlier in this final rule.

not to change the current rule. We have given consideration to this comment and are sympathetic to market participants' concerns regarding the time needed for some reporting entities to coordinate with overseas affiliates, aggregate position totals and file a single consolidated large position report. However, to be balanced against these concerns is the need for reports to be filed quickly in order to accomplish the purpose of the rules. If unusual market conditions or a pricing anomaly exist, we believe three and one-half days is a significant amount of time for regulators to wait for the reports that will enable us to make better and more timely decisions to ensure the integrity, liquidity and efficiency of the Treasury market. Also, although we will attempt to release announcements of large position calls in the morning when possible, Treasury must retain the flexibility to announce a call at any time of the day due to market developments and our need to quickly obtain information on market shortages. Market participants with very large positions should be prepared for an announcement of a call for large position reports at any time.

We believe the notification of calls for large position reports e-mail list that has been available at Public Debt's Web site since 1998 has provided a valuable electronic service. Anyone signing up is promptly notified anytime Treasury announces a call for large position reports, with a link provided in the e-mail message to the actual Press Release announcing the call. We understand that market participants, including many affiliates, have found that this enhanced system for dissemination of call announcements has been very useful in providing them with the call information in a more timely and efficient manner.

To allow market participants sufficient time to make necessary preparations for compliance, we are providing for a 30-day delayed effective date from the date of publication in the **Federal Register** of the amendment to the rules.

IV. Special Analysis

The regulations are not a "significant regulatory action" pursuant to Executive Order 12866.

We certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. We continue to believe that small entities will not control positions of \$2 billion or greater in any particular Treasury security. The inapplicability of

these amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The collections of information contained in the final amendments have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.¹² 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.

The collection of information in the final amendments is contained in § 420.3. The rules at § 420.3 continue to require a reporting entity whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security to report the information to FRBNY. We believe few reporting entities would actually have to file reports because the minimum reporting threshold (\$2 billion) remains high. Moreover, we expect that our requests for information will be infrequent. We plan to continue testing the reporting and recordkeeping systems of market participants by requesting large position reports at least annually. The threshold limit will be determined based on market conditions at the time of the call.

We do not believe that market participants would find the additional "fails to deliver" memorandum item burdensome since they already determine this figure when calculating their "net fails position" on line 3 of the existing large position report. The "fails to deliver" memorandum item is simply a place for reporting entities to record a previously derived number.

We also do not anticipate that the elimination of the voluntary optional exclusion within the "gross financing position" would be a significant inconvenience for market participants. It is unlikely that removing this exclusion from the large position calculation would increase the time burden that entities face when calculating their positions, although it may result in more entities filing large position reports.

We believe the separate reporting of the "net trading position" components would not be very burdensome for market participants since they must already collect this information to calculate their net trading position. We also believe market participants would not find it very burdensome to separate their reporting of reverse repurchase agreements and repurchase agreements by maturity classification. Since the

changes taking effect require more detailed information to be provided by reporting entities that file reports in response to a call for reports by Treasury, we increased the annual reporting burden in our submission to OMB by 40 hours, representing an increase from four to eight hours per large position report submitter.

The collection of information is intended to enable the Treasury and other regulators to better understand the possible causes of market shortages in certain Treasury securities. This information would help ensure that the Treasury securities market remains liquid and efficient.

Estimated total annual reporting burden: 40 hours.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC, 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, NW., Room 315, Washington, DC 20239-0001.

List of Subjects in 17 CFR Part 420

Banks and banking, Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR part 420 is amended as follows:

PART 420—LARGE POSITION REPORTING

1. The authority citation for Part 420 continues to read as follows:

Authority: 15 U.S.C. 78o-5(f).

2. Section 420.2 is amended by revising paragraph (c) to read as follows:

§ 420.2 Definitions.

* * * * *

(c) "Gross financing position" is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase agreement transactions, bonds borrowed, and as collateral for financial derivatives and other securities transactions (*e.g.*, margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase agreement transactions, securities loaned, or securities pledged as

¹² 44 U.S.C. 3507(d).

collateral for financial derivatives and other securities transactions.

* * * * *

3. Section 420.3 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 420.3 Reporting.

* * * * *

(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 in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

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

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(1) Overnight and open, and

(2) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(1) Overnight and open, and

(2) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of "fails to deliver" in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B.

Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short

position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position, which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * *

4. Appendix B to Part 420 Sample Large Position Report, "Formula for Determining a Reportable Position," is revised to read as follows:

Appendix B to Part 420—Sample Large Position Report

FORMULA FOR DETERMINING A REPORTABLE POSITION

[\$ Amounts in millions at par value as of trade date]

Security Being Reported	\$ _____
Date For Which Information is Being Reported	\$ _____
1. Net Trading Position:	
Cash/Immediate Net Settled Positions	\$ _____
Net When-Issued Positions for To-Be-Issued and Reopened Issues	\$ _____
Net Forward Settling Positions Including Next-Day Settling	\$ _____
Net Positions in Futures Contracts Requiring Delivery of the Specific Security	\$ _____
Net Holdings of STRIPS Principal Components of the Specific Security	\$ _____
Total Net Trading Position	\$ _____
2. Gross Financing Position:	
Total of securities received through Reverse Repurchase Agreements	
Overnight and Open	\$ _____
Term	\$ _____
Bonds borrowed, and as collateral for financial derivatives and other financial transactions	\$ _____
Total Gross Financing position	\$ _____
3. Net Fails Position	\$ _____
(Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	
4. Total Reportable Position	= \$ _____
Memorandum 1:	
Report the total gross par amounts of securities delivered through	
Repurchase Agreements	
Overnight and Open	\$ _____
Term	\$ _____
Securities loaned, and as collateral for financial derivatives and other securities transactions	\$ _____

FORMULA FOR DETERMINING A REPORTABLE POSITION—Continued
 [\$ Amounts in millions at par value as of trade date]

Total Memorandum 1	\$ _____
Memorandum 2: Report the gross par amount of fails to deliver. Included in the calculation of line item 3 (Net Fails Position)	\$ _____

Dated: December 6, 2002.
Brian C. Roseboro,
Assistant Secretary for Financial Markets.
 [FR Doc. 02-31837 Filed 12-17-02; 8:45 am]
BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9027]

RIN 1545-AX89

Levy Restrictions During Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to restrictions on levy during the period that an installment agreement is proposed or in effect. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

EFFECTIVE DATE: These regulations are effective December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6331 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6331 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105-206 (112 Stat. 685, 764). New section 6331(k) codifies the IRS practice of withholding collection during consideration of a taxpayer's offer to compromise and extends that practice to proposed installment agreements. These regulations deal principally with the effect of subsection 6331(k) when an installment agreement has been proposed and is pending, is in effect, or has been rejected or terminated. On April 17, 2002, a notice

of proposed rulemaking (REG-104762-00; 67 FR 18839) reflecting these changes was published in the **Federal Register**. No written comments on the proposed regulations were received. No public hearing was scheduled or held.

Explanation of Provisions

The regulations provide that, subject to certain exceptions, the IRS may not levy to collect a liability while a taxpayer's proposal to enter into an installment agreement for payment of that liability is pending, for 30 days after rejection of such a proposal, while an installment agreement is in effect, for 30 days after termination of an installment agreement by the IRS, and during a timely filed appeal of a rejection or termination by the IRS. A proposed installment agreement is considered pending when it is accepted for processing by the IRS and remains pending until the IRS accepts or rejects it or the taxpayer withdraws the proposal. The final regulations clarify that the IRS may not accept a proposed installment agreement for processing if jurisdiction over the tax liability at issue has been transferred to the Department of Justice for prosecution or defense. If a proposed installment agreement does not contain sufficient information for the IRS to determine whether the proposal should be accepted, the IRS will request the additional necessary information from the taxpayer and provide a reasonable time period for the taxpayer to respond. The IRS may reject the proposed installment agreement if the requested information is not provided.

Collection by levy is not prohibited if the taxpayer waives the restriction on levy in writing, if the IRS determines that collection of the tax liability is in jeopardy, or if the IRS determines that the proposed installment agreement was submitted solely to delay collection. The exception for proposals submitted solely to delay collection is based on the legislative history accompanying RRA 1998, which explained that Congress did not intend that levy would be prohibited if the IRS determined that an offer to compromise was submitted solely to delay collection. H.R. Conf. Rep. No. 509, 105th Cong., 2d Sess. 288 (1998). Because the legislative history indicates that Congress intended the

same restrictions on levy with respect to offers in compromise be applicable to installment agreements, these regulations adopt the same rule with respect to proposed installment agreements.

The regulations provide that the IRS may take actions other than levy to protect the interests of the United States with respect to collection of the liability to which an installment agreement or proposed installment agreement relates. Those actions include, but are not limited to: crediting an overpayment against the liability pursuant to section 6402, filing or refiling notices of Federal tax lien, and taking action to collect from persons liable for the tax but not named in the installment agreement.

The proposed regulations provided that the IRS cannot institute a court proceeding against the taxpayer named in the installment agreement to collect the tax covered by the installment agreement. In the final regulations, this provision has been clarified. It now states that the IRS may not refer a case to the Department of Justice to collect an unpaid tax through a judicial proceeding while levy is prohibited by these regulations. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed. Such proceedings may involve taxes for which more than one person may be jointly and severally liable for the same tax, or may involve persons liable for related liabilities, such as a trust fund recovery penalty under section 6672 or a personal liability for excise tax under section 4103.

While an installment agreement allows the IRS to accept the payment of tax in installments, the agreement does not conclusively establish the taxpayer's liability. A taxpayer therefore is not prohibited from seeking a refund of taxes paid pursuant to an installment agreement. Allowing the IRS to join the taxpayer in a proceeding where the liability for the tax may be established or disputed will protect the Government from having to litigate the same tax in