November 3, 2023

Vanessa A. Countryman,
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
***Sent via email* to rule-comments@sec.gov, File Number S7-12-22**

Re: ***Notice of Proposed Rulemaking: Further Definition of "As a Part of a Regular Business" in the Definition of "Dealer" and "Government Securities Dealer" (File No. S7-12-22)***

Dear Ms. Countryman,

We, the undersigned public pension funds, are writing to seek confirmation that the above-referenced Securities and Exchange Commission (the "SEC") release,[1] under which the SEC proposes new rules that would further define the phrase "as a part of regular business" as used in the statutory definitions of "dealer" and "government securities dealer" under Sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), would not apply to a governmental plan, including public pensions, nor to state administrators managing state funds or to city administrators managing the city pension funds.[2] We believe this to be the case because the role, obligations, and activities of public pension funds as asset owners investing for a long-term purpose are incompatible with the concept of "dealer" under the Exchange Act,[3] and imposing such obligations would impose unnecessary regulatory burdens on public pensions and compromise the ability of public pensions to fulfill their fiduciary duty to their members. The same rationale should apply to exclude state administrators managing state funds from consideration as dealers in carrying out their treasury functions on behalf of the state, and similarly, the same rationale should apply to exclude city administrators managing city pension funds (such as comptroller acting as investment adviser to city pension funds) from consideration as dealers in carrying out their investment advisory functions with respect to the city pension plans.

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[1] *Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer*, Securities Exchange Act Release No. 94,524 (Mar. 28, 2022), 87 Fed. Reg. 23,054 (Apr. 18, 2022) ("Proposal").

[2] For this purpose, governmental plan may be defined as in Section 144A(a)(1)(D) of the Securities Act of 1933, Section 3(32) or ERISA, or Section 414(d) of the Internal Revenue Code, each including public pensions.

[3] *See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934*, Exchange Act Release No. 46,745 (Oct. 30, 2002), 67 Fed. Reg. 67,496, 67,498–500 (Nov. 5, 2002).

Background on Public Pension Funds, State Fund Administrators, and City Funds' Administrators

Public pension funds exist to provide retirement security to public servants who dedicate their careers to public service. We have a fiduciary duty to prudently invest the hard-earned retirement contributions of our members to generate returns to pay their pensions and benefits. Similarly, state fund administrators are charged with investing and managing the funds of the state so that the state has sufficient liquidity to perform its government functions in caring for its citizens. They are also subject to significant oversight, including statutory restrictions on the types of investments they can make, and may be charged with managing several different pools of state funds. As a result, state fund administrators may need to engage in levels of trading activity that could exceed the quantitative threshold for dealer registration, either due to their trading activity for each individual pool or in the aggregate, because they could be deemed to be trading for such state administrator's "own account," have control over the various pools of state funds, or both. Similarly, city administrators of city pension funds (such as comptroller acting as investment adviser to city pension funds) are charged with, and delegated with, authority to invest and manage the funds of the city pension plans in accordance with their fiduciary duties to the city pension plans to maximize the returns to pay the pensions and benefits of the members of the city pension plans. Similar to state fund administrators, city administrators of city pension plans are also subject to certain statutory restrictions on the types of investments they can make, and may engage in levels of trading activity that could exceed the quantitative threshold for dealer registration. Our investment activities are fundamentally different from dealers who buy and sell securities as a service to customers.

As asset owners, public pension funds invest with a long-term horizon across a diversified portfolio of asset classes, including government securities, to meet our target returns within appropriate parameters for risk and liquidity management. State fund administrators are charged with making short term investments in high quality instruments such as government securities. Similarly, city administrators of city pension plans may engage in making certain short-term investments. Such activities require routine trading to construct, rebalance, and prudently manage our portfolios in a manner consistent with our fiduciary duty.[4] Significantly, we do not engage in trading to provide liquidity or dealer services to the marketplace. [5]We do not interact directly with exchanges or clearing agencies, as we are customers of broker-dealers who execute transactions on our behalf. We invest retirement assets on behalf of our beneficiaries or city pension plans' beneficiaries and pools of state funds on behalf of the state, not outside customers. Further, public pension funds, state fund

[4] Automatically classifying public pension funds, state fund administrators or city funds' administrators as government securities dealers because of innate portfolio trading needs would inappropriately expand the dealer definition beyond its original purpose.
[5] Securities Exchange Act of 1934, § 3(a)(5)(A).

administrators, and city funds' administrators are already subject to comprehensive state regulation and reporting, including strict fiduciary mandates in most states. [6]

Requiring public pension funds, state fund administrators managing pools of state funds and city administrators managing city pension funds to register as broker-dealers or as government securities dealers would impose severe implementation challenges operationally and financially with little to no meaningful improvement to market integrity or regulatory oversight.[7] Many pension funds, state fund administrators, and city funds' administrators are legally prohibited from conducting dealer activities under their governing documents, investment policies, and state statute.[8] Fundamental changes to our organizations, relationships, and operations could be necessary to attempt to comply, potentially requiring state legislative action. Further, the costs of establishing and maintaining broker-dealer registration and regulation could be substantial, unnecessarily redirecting funds from the retirement system, the city, or the state. Dealer regulation also restricts certain investment activities, which could harm returns.[9]

Conclusion

Providing a definitive statement that the Proposal explicitly excludes governmental plans, including public pensions, state fund administrators managing pools of state funds, and city administrators managing city pension funds (such as comptroller acting as investment adviser to city pension funds), would clarify the SEC's intention regarding this class of asset owners and eliminate any ambiguity or second-guessing as it pertains to such pensions, state fund administrators, or city funds' administrators, that might fall within the four-corners of the Proposal based on either quantitative or qualitative factors.

Sincerely,

Jase R. Auby
Chief Investment Officer
Teacher Retirement System of Texas

Marcie Frost
Chief Executive Officer

[6] *E.g.*, Public pensions have comprehensive reports that must be submitted to Governors, Legislative and other oversight committees, state auditors, Boards, and other parties.
[7] They would have to register with the SEC and join the Financial Industry Regulatory Authority, implement complex compliance programs, meet minimum net capital requirements, and pay various registration, membership, and transaction fees.
[8] National Assoc. of State Ret. Admin., Public Fund Survey (Oct. 2022), https://www.nasra.org/publicfundsurvey.
[9] Rather than risk classification as dealers, public pension funds may curtail or modify certain investing activities like trading Treasury futures, which is essential for managing duration risk. This chilling effect could compromise the ability to construct portfolios in the best interest of public pension beneficiaries.

California Public Employees' Retirement System

Anastasia Titarchuk
Chief Investment Officer and Deputy Comptroller for Pension Investment & Cash Management
New York State Common Retirement Fund

Steven Meier
Chief Investment Officer and Deputy Comptroller for Asset Management
Office of the Comptroller of the City of New York