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BRIEFING



SEC Grants Relief from the Treasury Securities Clearing Requirements for Certain Non-US and Inter-Affiliate Repos

November 12, 2026

On October 30, 2026, the U.S. Securities and Exchange Commission (the "**SEC**") issued an order (the "**Order**") granting exemptive relief for certain non-US and inter-affiliate repurchase and reverse repurchase ("**repo**") transactions from the mandatory U.S. Treasury securities clearing requirements.[1] The exemptive relief should provide useful flexibility for market participants by permitting qualifying non-US and inter-affiliate repo transactions to remain uncleared, easing the legal, operational and economic burdens that mandatory clearing would otherwise impose. Market participants should continue preparing for the mandatory clearing compliance dates of December 31, 2026, for eligible cash transactions and June 30, 2027, for eligible repo transactions. They should also now consider steps to translate the flexibility provided by the Order into operating and compliance frameworks that map transactions to the available exemptions, verify counterparty exemption eligibility, and incorporate procedures for threshold monitoring and compliance with the other conditions of the available exemptions.

BACKGROUND

In December 2023, the SEC promulgated regulations directing covered clearing agencies that provide central counterparty services for U.S. Treasury securities ("**CCAs**") to establish and enforce rules that require their direct participants to clear "**eligible secondary market transactions**" in U.S. Treasury securities (the "**Treasury Clearing Rules**"). "Eligible secondary market transactions" generally include all repo transactions collateralized by

[1] SEC, *Order Granting Exemptive Relief,* Exchange Act Release No. 34-106789 (Oct. 30, 2026).

U.S. Treasury securities where one counterparty is a direct participant of a CCA and certain cash market transactions in U.S. Treasury securities.[2]

The 2023 Treasury Clearing Rules excluded from the definition of an "eligible secondary market transaction" any repo transactions entered into between a direct CCA participant and an "affiliated counterparty" (the "**Inter-Affiliate Exclusion**"), provided that the affiliated counterparty submits for clearance and settlement all other repo transactions to which the affiliate is a party (the "**outward-facing condition**"). The Inter-Affiliate Exclusion was further limited by the narrow definition of the term "affiliated counterparty," which generally encompassed only US banks, broker-dealers, and futures commission merchants and foreign entities similarly regulated in their home jurisdiction.

The exemptive relief provided by the Order addresses concerns raised by the Securities Industry and Financial Markets Association and the Institute of International Bankers that the Inter-Affiliate Exclusion's limitations would restrict treasury, liquidity, and collateral management transactions between affiliates as well as pose significant legal, operational, and economic challenges for cross-border Treasury securities repos, including for transactions conducted when CCAs are closed.[3] The Order provides: (i) conditional relief for certain qualifying non-US Treasury securities repo transactions; and (ii) a separate exemption for Treasury securities repo transactions between a direct participant and qualifying affiliated counterparties, as summarized below.

EXEMPTION FOR QUALIFYING NON-US REPOS

The Order exempts from the definition of an "eligible secondary market transaction" and, therefore, from the mandatory CCA clearing requirements certain "**Qualifying Non-US Transactions**" that are below specified market value thresholds subject to certain attestation, monitoring and notification requirements.

[2] In particular, "eligible secondary market transactions" also include all outright purchases and sales of U.S. Treasury securities between a direct participant and (1) any counterparty, if the direct participant of the CCA is acting as an "interdealer broker" (*i.e.,* brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions) or (2) a registered broker-dealer, government securities broker or government securities dealer. The exemptive relief provided by the Order does not extend to cash market transactions in U.S. Treasury securities.

[3] *See* Letters from Robert Toomey, Head of Capital Markets, Managing Director/Associate General Counsel, Securities Industry and Financial Markets Association, dated April 10, 2026, July 1, 2026, and September 18, 2026; and Letters from Stephanie Webster, General Counsel, Institute of International Bankers, dated February 27, 2026, April 10, 2026, May 29, 2026, August 4, 2026, August 31, 2026, and October 1, 2026.

What Is a Qualifying Non-U.S. Transaction?

"Qualifying Non-US Transactions" are uncleared eligible secondary market transactions that are repo transactions between:

- a "**Non-US Client**," which is an entity that is *not*: (i) a U.S. person; (ii) a direct participant of a CCA; (iii) a U.S. branch of a non-US person; or (iv) a non-US person whose obligations under the transaction are guaranteed by a US person; and
- an entity that is any of the following:
  - a "**Non-U.S. Participant**," meaning a direct participant of a CCA that is not: (i) a US person; (ii) a US branch of a non-US person; or (iii) a non-US person whose obligations under the transaction are guaranteed by a US person; or
  - an affiliated counterparty of a direct participant of a CCA, where the affiliated counterparty is not: (i) a US person; (ii) a U.S. branch of a non-US person; or (iii) a non-US person whose obligations under the transaction are guaranteed by a US person; or
  - a foreign branch of a direct participant of a CCA that is a US person.

The Order incorporates the definitions of "US person" and "foreign branch" promulgated by the SEC in the context of its rules governing cross-border security-based swap dealing activity.[4] Notably, under the applicable US person definition, a fund organized outside the United States may nevertheless be a US person if its principal place of business is in the United States. Also, a "foreign branch" is a branch of a US bank located abroad, operating for valid business reasons and conducting banking business subject to substantive local regulation – because CCA participants include non-bank entities, not every non-US office of a direct participant would be a "foreign branch" under the applicable definition. Accordingly, a firm should not rely on place of incorporation alone when assessing whether repo transactions qualify for this exemption and the firm's compliance and operating procedures for reliance on this exemption should take into account the scope of the relevant definitions.

What Are the Thresholds?

The market value[5] of Qualifying Non-US Transactions that are exempt must be below either of the following two thresholds:

- **Firm-Specific Percentage Threshold**: The market value of the firm's Qualifying Non-US Transactions, divided by the sum of (i) the market value of all of the firm's cleared repo transactions, excluding repo transactions between a direct participant and an affiliated counterparty,

4 *See* 17 C.F.R. § 240.3a71-3.

5 For purposes of the Order, "market value" means the principal amount of the opening leg of a repo transaction.

and (ii) the market value of the firm's Qualifying Non-US Transactions, must be less than the applicable percentage cap. The cleared-repo component includes cleared repos that are not themselves eligible secondary market transactions, but excludes uncleared repos. The percentage cap declines as follows: 25% from June 30, 2027 through June 30, 2028; 20% from July 1, 2028 through June 30, 2029; 15% from July 1, 2029 through June 30, 2030; and 10% after June 30, 2030.

- **Fixed Dollar Threshold**: The market value of the firm's Qualifying Non-US Transactions must be less than $5 billion.

Both thresholds are calculated using a rolling daily average over the immediately preceding three quarters, with each quarter weighted equally. For these calculations, a "firm" comprises a direct participant and its affiliates, including other direct participants within the same affiliate group. Affiliate status is determined under the Order's consolidation-based definition, which recognizes US generally accepted accounting principles, International Financial Reporting Standards or similar standards.

Thus, the exemption is a group-wide, capped exemption for Qualifying Non-US Transactions, which may accommodate certain cross-border U.S. Treasury securities repos, but it is not a general exemption for offshore trading activity.

What Are the Attestation, Monitoring and Notification Requirements?

A direct participant relying on the Qualifying Non-US Transactions exemption must attest to each CCA of which it is a direct participant that it is monitoring and complying with the thresholds above. If a direct participant fails to comply with the thresholds, it must immediately notify each relevant CCA and provide either a plan for returning to compliance or notice that it will stop relying on the relief. Each CCA may then determine appropriate action under its own rules.

The Order does not provide a uniform grace period, an automatic waiver, or an express right to continue exempt trading merely because a remediation plan has been delivered. The industry's proposed exceedance buffers and SEC-waiver process were not included in the final conditions.

EXPANDED RELIEF FOR INTER-AFFILIATE REPOS

The Order provides a separate exemption from the definition of an eligible secondary market transaction for Treasury securities repos between a direct participant of a CCA and any entity that satisfies the majority-ownership and consolidated-financial-reporting prongs of the affiliated counterparty definition, provided that the entity is not an "investment company" as defined in Section 3 of the Investment Company Act of 1940 (the "**Investment**

Company Act").[6] The market value thresholds and attestation requirements applicable to the Qualifying Non-US Transactions exemption do not apply to this separate exemption.

This relief extends beyond the categories of banks, brokers, dealers, futures commission merchants and their foreign equivalents covered by the original "affiliated counterparty" definition, thereby accommodating a broader range of inter-affiliate transactions used for treasury, liquidity and collateral management purposes. Also, repos qualifying for this separate exemption are not subject to the Inter-Affiliate Exclusion's outward-facing condition. The Order does not supersede the separate June 2026 private-fund relief.[7]

PRACTICAL IMPLICATIONS

The exemptive relief provided by the Order should allow for meaningful flexibility but will require firms to make important choices about which transactions will remain bilateral, how Qualifying Non-US Transactions exemption capacity will be allocated across a group, and what clearing arrangements will be available if that capacity contracts. Firms considering reliance on the exemptions should develop operational and compliance procedures and controls, particularly for the Qualifying Non-US Transactions exemption. Among other things, firms should consider developing procedures for:

- Mapping transactions to the appropriate exemption, including distinguishing inter-affiliate repos from Qualifying Non-US Transactions.
- Validating counterparty classifications, including US-person status, branch arrangements, guarantees, ownership, consolidation and investment-company status.
- Establishing group-wide data and monitoring processes that capture opening-leg principal amounts for Qualifying Non-US Transactions.
- Modelling the declining percentage caps for the Firm-Specific Percentage Threshold and planning any additional clearing, client onboarding or operational changes as necessary.
- Assigning governance responsibilities for attestations, immediate notifications, and related contingency arrangements.

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6 The investment-company limitation applies regardless of whether the entity is registered or required to be registered under the Investment Company Act.

7 The Order expressly preserves the SEC's June 18, 2026 relief for specified private funds using wholly owned captive clearing subsidiaries. That separate relief remains subject to its own ownership, adviser and other applicable inter-affiliate conditions. *See* SEC, Order Granting Conditional Exemptive Relief, Pursuant to Sections 17A and 36(a) of the Securities Exchange Act of 1934, From the Definition of an "Eligible Secondary Market Transaction" in Rule 17ad–22(a), SEC Release No. 34-105736 (June 18, 2026).

Firms intending to rely on the exemptions under the Order, or on other exemptive reliefs relating to Treasury clearing, should incorporate procedures for satisfying and monitoring the conditions of each applicable exemption into their broader Treasury clearing implementation and control framework.[8]

[8] On November 4, 2026, the SEC also issued an order granting exemptive relief to permit SEC-registered broker-dealers to include a debit in their customer reserve account computation pursuant to Rule 15c3-3 for margin collateral that the broker-dealer has delivered to a CCA on *a net, omnibus basis* to meet a margin requirement resulting from the broker-dealer customers' U.S. Treasury securities positions. *See* SEC, Order Under Section 36 of the Securities Exchange Act of 1934, Exchange Act Release No. 34-106821 (Nov. 4, 2026). SEC-registered broker-dealers are required to maintain a reserve of cash or qualified securities in an account at a third-party bank that is at least equal in value to the net cash owed to customers determined by a computation pursuant to a formula set forth in Rule 15c3-3a. Under the pre-existing Note H framework, SEC-registered broker-dealers could only include a debit in their customer reserve account computation for margin collateral amounts calculated by a CCA for each customer of the broker-dealer on a gross, customer-by-customer basis. The exemptive relief addresses operational complexities and challenges of the gross, customer-by-customer margin and delivery requirements and allows broker-dealers to take into account for reserve computation purposes customer margin collateral where a CCA has calculated the required customer margin on either a net, omnibus basis or a gross, customer-by-customer basis, and the broker-dealer has delivered the required customer margin collateral on a net, omnibus basis. The relief is subject to the order's conditions and the remaining applicable requirements of Note H to Rule 15c3-3a.



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