acting as an agent of a defendant entity.6 It also applies to any existing or newly formed entity in which a shareholder of one of the defendant entities has decisionmaking or trading authority involving Treasury securities. This provision ensures that the defendant entities will be unable to evade the terms of the Final Judgment by conducting Treasury security trading through some other entity. The Final Judgment, however, does not generally bind other participants in the Treasury security markets who merely engage in ordinary principal-to-principal counterparty trades with the defendant entities.

2. Section IV, Prohibited Conduct

a. Subsection A generally prohibits defendant entities from entering into agreements to restrain trade, within the meaning of the antitrust laws, in the purchase, sale or financing of any issue in the cash or financing markets. This subsection is to be construed by reference to the defined terms used therein (e.g., "agreeing"), and by the general purpose of the antitrust laws as set forth in Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Federal case law construing and interpreting the Sherman Act.

b. Subsection B prohibits defendant entities from entering into agreements to purchase or sell an issue, or to refrain from purchasing or selling an issue, through any particular person, subject to limited exceptions, discussed below, contained in Subsections E and F. Subsection B prohibits, for example, a defendant entity from agreeing with another holder of an issue to coordinate its purchases or sales of the issue by acquiring the issue only through particular primary dealers, or by agreeing to spread out their coordinated purchases among different dealers to conceal the size of their purchases and holdings. The defendant entities acquired their positions in April Notes largely from separate dealers, indicating possible coordination of their acquisition strategies.

c. Subsection C prohibits defendant entities from agreeing with another holder of an issue to withhold such other holder's position from the cash or financing markets for any period of time. This subsection, for example,

prohibits a defendant entity from agreeing that another holder of an issue will withhold the other holder's position from the cash or financing markets. The Department has alleged that a central component of the conspiracy charged in this case were agreements between SMC and Caxton to withhold their positions from the cash and financing markets in order to effectuate the squeeze of the April Notes. The Department has identified only one circustance—prevention of "front-running"—in which one holder of an issue agrees with another, competing holder, to withhold the other holder's position in the same issue from the markets could possibly have a procompetitive purpose. With the exception of preventing front-running, which is the subject of a limited exception, discussed below, contained in subsection F, this subsection contains an outright prohibition on a defendant entity agreeing that another holder will restrict supply of an issue by withholding the other holder's position from the cash or financing markets.

d. Subsection D similarly prohibits the defendant entities from agreeing with another holder of an issue to withhold the *defendant entity's* position in the issue for the purpose of maintaining or increasing the value of the other holder's position in the cash or financing markets for any period of time. The limited purpose contained within this subsection makes clear that a defendant entity may continue to decide when and whether to trade or finance its own position.7 If, however, the purpose of a defendant entity's withholding of a position is to attempt to maintain or increase the value of the other holder's position in the markets, that is prohibited. The Department has identified no legitimate pro-competitive reason to agree to restrict supply by withholding one's own position in an issue for the purpose of benefitting another, ordinarily competing, holder of the same issue.

e. *Subsection E* makes clear subsection B is not intended to prohibit customary practices in trading positions in Treasury securities. Specifically, this subsection makes clear that nothing in the proposed Final Judgment is

intended to prohibit normal principalto-principal counterparty agreements to purchase or sell a position in an issue.

f. Subsection F is an exception to subsections B and C that permits a defendant entity to request (and obtain an agreement) that another holder, such as a primary dealer, will not trade its position while also endeavoring to transact a trade with or on behalf of a defendant entity. This exception is intended to permit a defendant entity to obtain commitments from primary dealers or other counterparties that they will not engage in "front running" 8 or other self-dealing actions to the detriment of the defendant entity while the counterparty is effectuating the purchase, sale or financing of a position on behalf of the defendant entity. This provision is necessary because, in the ordinary course, non-dealer traders such as the defendant entities must transact trades through persons such as primary dealers, who may also be competing holders of the same issue. Merely requesting that the counterparty to a transaction not engage in self-dealing while also acting on behalf of a defendant entity should not, by itself, be harmful to competition.

3. Section V, Compliance Provisions

Section V of the proposed Final Judgment requires the defendant entities to institute antitrust compliance programs. Each defendant entity must appoint an antitrust compliance officer, who will be responsible for monitoring the activities of all persons with responsibility for trading or financing Treasury securities. The antitrust compliance officer will also establish an antitrust compliance program, including specific obligations described in this section, designed to provide reasonable assurance that the defendant entity will comply with the Final Judgment and the antitrust laws. The antitrust compliance officer will certify to the Court and the Assistant Attorney General in charge of the Antitrust Division within forty-five days after entry of the Final Judgment that the defendant entity has taken specified steps require by this section.

⁶ The complaint filed by the Department alleges that various persons, not identified in the complaint, were co-conspirators along with the defendant entities. These "others," defined as being within the collective category of "conspirators" in section I of this Competitive Impact Statement, above, include certain persons who acted directly as agents of one or the other of the defendant entities in the trading and financing of the April Notes

⁷Because of the current structure of trading and financing of Treasury securities, investment funds such as the defendant entities must ordinarily enter into agreements with counterparties to trade or finance their positions, including perhaps agreements restricting the timing or form of sales or financing. Thus, if the defendant entities are to retain control over the manner in which they trade or finance their positions, they must remain free to enter into agreements with others that literally might involve "withholding" their positions for some period of time.

^{8 &}quot;Front running" occurs when a person, such as a dealer or broker who has advance knowledge of another trader's intended actions in the market, uses that advance knowledge to trade on his own behalf ahead of the other trader. Thus, for example, if a dealer were to learn that a defendant entity intended to make substantial purchases of an issue through the dealer, so that the price of the issue in the cash market would likely rise, the dealer could use this advance knowledge to purchase the issue before the price begins to rise, and then to sell the issue at the inflated price. Defendant entities are not prohibited from obtaining commitments that a dealer will not trade against them in this fashion before committing to trade through the dealer.