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).