of their ownership interest. Since a purpose of large position reporting is to understand better any pricing anomalies for a particular Treasury security issue in a timely fashion, defining control based on beneficial ownership would not be particularly useful because a reporting entity could have difficulty assembling the information needed to file a large position report and would be potentially unaware of the reasons why the security involved was purchased.

Likewise, custody (without investment discretion) does not provide a good basis for determining control. A definition based on custody would most certainly involve multiple reporting of the same security position since each tier in the custody chain would be required to report. This approach would diminish the value of any large position reports received. Also, because under these circumstances the custodian would not be a party to the investment decision, reporting on the positions held in safekeeping would shed very little light on the objectives of the investor.

Therefore, Treasury has decided to define control as the authority to exercise investment discretion. This definition is supported in six of the seven comment letters. Investment discretion can be exercised by the beneficial owner, a custodian or an investment adviser. The party responsible for making investment decisions, regardless of where it is in the tiered system, is the most relevant reporting entity for large position reporting since the actions and objectives of the decision maker are what we are trying to determine. A single party exercising investment discretion for multiple beneficial owners could control a potentially large amount of Treasury securities without any single beneficial owner having a reportable position. Additionally, such investment advisers could possibly distribute custody of the securities in a manner that would keep any individual custodian below the reporting threshold. However, using the exercise of investment discretion as a measure of control, an investment adviser's aggregate positions would be reportable regardless of the number of beneficial owners or custodians involved and would be treated separately from any positions over which the beneficial owners had retained investment discretion. Finally, a definition of control based on investment discretion is consistent with the treatment of investment advisers under the uniform offering circular.[18]

[18] Treasury intends to clarify this treatment in a proposed rule in the near future.

Following this definition, an investor would only be responsible for reporting its proprietary holdings if it retained investment discretion over the positions. This approach would avoid double reporting of these positions. Additionally, a custodian would only have responsibility for reporting on any large positions for which it had investment discretion. A custodian would not have any obligation to report on positions for which it maintained securities solely in a safekeeping capacity.

''Reporting Entity''—This term is defined to be consistent with the definition of a bidder in the uniform offering circular.[19] This concept provides for the treatment of all affiliated entities as a single entity for purposes of determining the quantity of Treasury securities controlled. Additionally, the definition permits specific affiliates to be treated separately or ''carved-out'' from the reporting entity based on stated principles of separateness.

Applying this approach, a ''reporting entity'' will aggregate each of the positions in a specific Treasury security that is held by itself and all affiliates that control positions, and will report a single position to the FRBNY. Any affiliate that exercises independent investment discretion, and whose position information is not available to other affiliates, will be permitted to report separately from the overall entity provided it has requested such a ''carve-out'' and received written recognition from the Treasury. Merely establishing ''Chinese walls'' or similar procedures is not sufficient. If an entity has already received such written recognition under the uniform offering circular, it will not have to reapply for the purposes of large position reporting.

Defining the term ''reporting entity'' based on the bidder concept from the auction rules has the advantage of relying on an existing body of regulations, thus minimizing confusion and the need for market participants to learn new rules. The bidder definition is well known to most large participants in the Treasury market (from their auction participation) and has functioned effectively since March 1993 when the rules were implemented. This approach was also endorsed in four comment letters.

This definition also introduces a new term, ''aggregating entity,'' which is defined separately. An aggregating entity is a single legal entity (e.g., a parent company or affiliate within a reporting entity) that may control elements of a large position. If an aggregating entity has no affiliates, then it is also a reporting entity. Each component of a reporting entity is individually an aggregating entity.

[19] *See supra* note 10.

''Reportable Position''[20]—The scope of the definition of reportable position directly affects the complexity of calculating such a position and the amount of time needed to file a large position report. The definition of a reportable position should be broad enough to encompass the most significant ways that an investor may control a Treasury security issue, balanced against the difficulty and cost of compiling the information. Additionally, because of the complexity in defining this term, it is useful to base the definition, to the maximum extent feasible, on concepts familiar to market participants.

For participants in the Treasury securities market, a familiar concept is that of ''net long position'' in the uniform offering circular.[21] The uniform offering circular definition includes the par amount of: (1) Immediate (cash) positions; (2) when-issued positions for to-be-issued and reopened issues; (3) forward settling positions; (4) positions in futures contracts requiring delivery of the specific security; and (5) STRIPS (Separate Trading of Registered Interest and Principal of Securities) principal components of the specific security. This is an appropriate place to begin development of a reportable position because it is not only familiar to many market participants but also includes the most common elements of control in the cash market. The combination of these five elements is defined as the net trading position—the first component of a reportable position.

The Department is requesting that commenters specifically address the treatment of forward positions. While forward positions are a component of the net long position defined in the uniform offering circular, there may be reasons to exclude them from the definition of reportable position because forward positions may be less effective in controlling a security or may act to conceal settled positions. For example, the proposed large position rules permit a reporting entity to reduce the size of its settled position by the amount of a

[20] A reportable position for the purposes of the large position rules differs from a reportable position for purposes of the uniform offering circular. In the uniform offering circular, a reportable net long position is a position that has met the necessary criteria to be reported on a tender. In the context of the large position rules, a reportable position defines the components of a potential large position.

[21] See supra note 14.