Morgan Stanley

November 15, 2023

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, File Number S7–23–22

Dear Ms. Countryman:

Morgan Stanley appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "**Commission**") on its notice of proposed rulemaking to amend the standards applicable to covered clearing agencies ("**CCAs**") for U.S. Treasury securities ("**USTs**") to require that CCAs have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency (each, a "**CCA Member**") submit for clearance and settlement eligible secondary market cash and repo transactions in USTs to which it is a counterparty (the "**Proposal**").[1]

The adoption of a requirement that certain CCA Members' transactions in USTs be mandatorily subject to clearance and settlement by CCAs (the "**Clearing Mandate**") would constitute a major structural change in UST markets. As intermediaries in these markets, CCA Members must consider the risk management and commercial implications arising from any such Clearing Mandate. CCA Members' ability to facilitate large-scale increases in UST client clearing volumes in response to any Clearing Mandate is dependent on, among other considerations, harmonization of relevant regulatory standards across the cleared and uncleared UST markets, including the ability to absorb clearing-related infrastructure costs.

Our comments in this letter are focused on the scope of CCA Members' transactions in USTs that should be subject to the Clearing Mandate. Comment letters submitted by trade associations and market participants have highlighted a range of fact patterns where the Clearing Mandate may be unwarranted.[2] We are submitting this letter to underscore some of these examples and to raise other fact patterns for the Commission's consideration.

- Affiliate transactions: We believe that the Clearing Mandate should not apply to transactions in USTs executed between a CCA Member and its affiliates. CCA Members provide a range of market risk management, collateral management, asset-liability management, and funding and liquidity services to their affiliates, including affiliated

[1] 87 Fed. Reg. 64,610 (Oct. 25, 2022).
[2] See, e.g., the comment letters submitted by the Managed Funds Association, Dec. 21, 2022, pp. 15-21; the Securities Industry and Financial Markets Association and Institute of International Bankers, Dec. 22, 2022, pp. 20-23; and the Investment Company Institute, Dec. 23, 2022, pp. 8-12, 22-23.

U.S. broker-dealers registered with the Commission ("**U.S. B-Ds**"). Imposing the Clearing Mandate on CCA Members' transactions in USTs with affiliates would be potentially disruptive and is, in our view, unnecessary to advance the Commission's stated policy objectives.

- Secured funding transactions where the funding counterparty has no rehypothecation rights: The Proposal cites the Commission's policy concerns with market participants' use of transactions in USTs to generate leverage as a rationale in support of the Clearing Mandate.[3] Many secured funding (repo or reverse repo) transactions, however, involve segregation of USTs at custodians or otherwise prohibit the funding counterparty from rehypothecating USTs. This category of transactions in USTs does not appear to raise concerns that would warrant imposition of the Clearing Mandate and excluding such transactions from the Clearing Mandate would support UST markets' depth and liquidity.

- Transactions in USTs involving U.S. B-Ds' reuse of customer property in accordance with Exchange Act Rule 15c3-3: Exchange Act Rule 15c3-3 ("**Rule 15c3-3**") permits a U.S. B-D to reuse customer property, including customer-owned USTs, in limited, defined circumstances to support related customer activities. The Proposal recognizes the interplay of Rule 15c3-3 with the Clearing Mandate by proposing to recognize a new debit item where a U.S. B-D provides collateral to a CCA in connection with clearing a customer's transactions in USTs. We believe that the Commission should further harmonize the interplay of Rule 15c3-3 and the Clearing Mandate by clarifying that a U.S. B-D's rehypothecation of customer-owned USTs in transactions governed by and executed in accordance with Rule 15c3-3 standards would not be subject to the Clearing Mandate. In addition to the extensive existing supervision and regulation of Rule 15c3-3-compliant transactions, such transactions involve U.S. B-Ds acting in a principal capacity for funding, collateral management or related purposes rather than U.S. B-Ds facilitating customer transactions in their own USTs.

- Commercial end user transactions: It is our view that non-financial commercial end users (such as corporations and municipalities) should be exempt from the Clearing Mandate, since these types of entities typically transact in UST repo transactions for funding and liquidity management purposes. The increased costs arising from the Clearing Mandate may outweigh the willingness of these types of entities to continue to use USTs for funding and liquidity management purposes, thus eliminating an effective corporate management tool without advancing the Commission's stated policy objectives.

- Collateral posting transactions: Market participants post USTs as collateral to secure transactions in a wide range of asset classes, including cleared and uncleared swaps and listed futures. In some cases, cash posted as collateral may be converted to USTs through repo transactions, in order for market participants to earn a higher rate of interest on the collateral posted to secure these transactions. In addition, certain types of collateral postings are effected through title transfer mechanisms (for example, ISDA Master

[3] 87 Fed. Reg. at 64,624.

Agreement Credit Support Annexes for variation margin postings under U.K. law are often via title transfer). The Proposal does not discuss whether the Commission intended for the Clearing Mandate to apply to these types of collateral arrangements. We believe that any final rulemaking should clarify that the Clearing Mandate does not apply to UST transactions in which a market participant posts USTs to a custodian or counterparty as collateral.

Respectfully submitted,

Sebastian Crapanzano
Managing Director

cc: Gary Gensler, Chairman, U.S. Securities and Exchange Commission
Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
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