

December 18, 2024

Via Electronic Mail: Chair@sec.gov

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Treasury Clearing Mandate Inter-Affiliate Exception; Exemption Request

Dear Chair Gensler:

MFA¹ writes in connection with the Securities and Exchange Commission's ("**Commission**") rulemaking requiring mandatory clearing of certain U.S. Treasury securities transactions (the "**Treasury Clearing Rules**").² As detailed below, we respectfully request that the Commission grant targeted exemptive relief with respect to the inter-affiliate exception to the clearing mandate for U.S. Treasury security repurchase and reverse repurchase ("**repo**") transactions between a Private Fund³ and its Captive Clearing Sub (as defined below).

¹ Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over \$3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

² *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*, SEC Release No. 34-99149 (Dec. 13, 2023), 89 Fed. Reg. 2,714 (Jan. 16, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-27860.pdf>.

³ As used in this request, a "Private Fund" is an issuer that would be an investment company, as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act.

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BACKGROUND

The Treasury Clearing Rules require certain U.S. Treasury security transactions to be cleared through a covered clearing agency.⁴ The Treasury Clearing Rules exclude from the “eligible secondary market transaction” definition (*i.e.*, those transactions that are subject to the clearing mandate) repo transactions between a direct participant of a covered clearing agency and an affiliated counterparty, subject to certain conditions (the “**inter-affiliate exception**”).⁵ Specifically, those conditions require that:

- (1) the direct participant’s affiliated counterparty must submit all of its “other” U.S. Treasury security repo transactions for clearance and settlement (the “**outward-facing trade clearing condition**”);⁶
- (2) the direct participant’s affiliated counterparty must hold, directly or indirectly, a majority ownership interest in the direct participant, or the direct participant, directly or indirectly, must hold a majority ownership interest in the counterparty, or a third party, directly or indirectly, must hold a majority ownership interest in both the direct participant and the counterparty (the “**common majority ownership condition**”);⁷
- (3) the counterparty, direct participant, or their common majority owner must report its financial statements on a consolidated basis under U.S. GAAP or IFRS, and such consolidated financial statements must include the financial results of the majority-owned party or of both majority-owned parties (the “**accounting consolidation condition**”);⁸ and
- (4) the direct participant’s affiliated counterparty must be either a bank, broker-dealer (“**BD**”), futures commission merchant (“**FCM**”), or an entity regulated as bank, BD, or FCM in its home jurisdiction (the “**bank/BD/FCM condition**”).⁹

⁴ 17 CFR 240.17ad-22(e)(18)(iv)(A).

⁵ 17 CFR 240.17ad-22(a)(“eligible secondary market transaction”)(vi).

⁶ *Id.*

⁷ 17 CFR 240.17ad-22(a)(“affiliated counterparty”)(ii).

⁸ 17 CFR 240.17ad-22(a)(“affiliated counterparty”)(iii)

⁹ 17 CFR 240.17ad-22(a)(“affiliated counterparty”)(i). For purposes of this condition, “bank” has the meaning provided in 15 U.S.C. 78c(6), “broker-dealer” has the meaning provided in 15 U.S.C. 78c(5), and “futures commission merchant” has the meaning provided in 7 U.S.C. 1a(28).

In adopting the inter-affiliate exception, the Commission recognized that “inter-affiliate transactions represent an important tool to transfer liquidity and risk within an affiliated group.”¹⁰ The Commission also noted that its approach to the inter-affiliate exception “is consistent with the [Commodity Futures Trading Commission’s (“CFTC”)] treatment of [inter-affiliate transactions] in the swaps market.”¹¹ In this regard, the CFTC’s swaps clearing inter-affiliate exemption likewise includes an analogous outward-facing trade clearing condition, common majority ownership condition, and accounting consolidation condition; however, the CFTC did not adopt a bank/BD/FCM condition limiting affiliates eligible to use the inter-affiliate exemption to certain regulatory categories.¹²

PRIVATE FUND USE OF INTER-AFFILIATE REPO TRANSACTIONS

Inter-affiliate repo transactions are an essential avenue for Private Funds to access central clearing, an increasingly important objective in light of the Treasury Clearing Rules’ clearing mandate.¹³ Private Funds have sought to access central clearing by, for example, entering into a bilateral repo transaction with a subsidiary that is a direct participant of the Fixed Income Clearing Corporation (“FICC”) or another covered clearing agency¹⁴ (as either a BD or FCM) (the “**Captive Clearing Sub**”) that then enters into a cleared repo transaction with a third party. Notably, the Captive Clearing Sub is a subsidiary of the Private Fund. Because Private Funds cannot typically become FICC direct participants (*i.e.*, Netting Members) under FICC’s Government Securities Division Rules, this structure is necessary for Private Funds to access FICC without using a third-party Netting Member.

Despite the costs of forming and maintaining a Captive Clearing Sub and becoming a FICC Netting Member or other direct participant of a covered clearing agency, this structure provides the Private Fund and the overall market with certain benefits, including: (1) increased clearing capacity by enabling customers to access to FICC without going through an unaffiliated third-party Netting Member or other direct participant of a covered clearing agency; (2) increased overall repo capacity by using inter-

¹⁰ 89 Fed. Reg. at 2,737.

¹¹ *Id.* at 2,738. See also 17 C.F.R. 50.52.

¹² See 17 C.F.R. 50.52(a).

¹³ See, e.g., Chair Gary Gensler, *Statement on Final Rules Regarding Treasury Clearing* (Dec. 13, 2023), available at <https://www.sec.gov/newsroom/speeches-statements/gensler-statement-treasury-clearing-121323> (“The final rules also [] require clearinghouses to have policies and procedures designed to ensure they facilitate access to clearing services . . . [to] help promote greater access to clearing and settlement services in the Treasury markets.”).

¹⁴ This request focuses on FICC because FICC is currently the only clearing agency providing central counterparty clearing services for U.S. Treasury securities; however, we expect the same structures to be relevant in connection with other clearing agencies after they commence providing such services.

affiliate trades to net down within the affiliated group the number of repo transactions needed to be executed with third parties; and (3) reduced costs of clearing by allowing the Private Fund to take advantage of the existing CME Group-FICC cross-margining arrangement (“**CME-FICC cross-margining program**”).¹⁵

RATIONALE FOR RELIEF

Based on discussions with our members, we understand that the bank/BD/FCM condition eliminates the practical availability of the inter-affiliate exception for Private Funds, which could not otherwise directly access FICC on a cost-effective basis without relying on the inter-affiliate exception to transact with their Captive Clearing Subs. Granting relief from the bank/BD/FCM condition to enable Private Funds to continue to access FICC directly through Captive Clearing Subs, instead of through unaffiliated third-party Netting Members, would accordingly have several benefits as detailed above.

Because the relief would leave intact the outward-facing trade clearing condition, the common majority ownership condition and the accounting consolidation condition of the inter-affiliate exception, the requested relief would be consistent with the rationale for the inter-affiliate exception as articulated by the Commission: “Th[e] [inter-affiliate] exclusion is appropriate to ensure that affiliated groups can continue to use inter-affiliate repo transactions to transfer liquidity or risk, while also conditioning that ability on the affiliated counterparty’s submission of its eligible secondary market repo transactions for clearance and settlement.”¹⁶ Granting the relief would also result in the inter-affiliate exception more closely tracking the CFTC’s analogous clearing exemption, thus advancing the important goal of regulatory harmonization. The relief is, therefore, narrowly and appropriately tailored to ensure consistency with the Commission’s goals in promulgating the Treasury Clearing Rules. For these reasons, we believe that granting the relief would be in the public interest and consistent with the protection of investors.¹⁷

RELIEF REQUEST AND CONDITIONS

Pursuant to Section 36 of the Securities Exchange Act of 1934,¹⁸ we request that the Commission provide exemptive relief from the bank/BD/FCM condition to the inter-affiliate exception of the Treasury

¹⁵ See, e.g., CME Group-FICC Enhanced Cross-Margining Arrangement (Sept. 2023), *available at* <https://www.cmegroup.com/trading/interest-rates/files/ficc-cme-cross-margining-deck-sept-2023.pdf>.

¹⁶ 89 Fed. Reg. at 2,737.

¹⁷ 15 U.S.C. 78mm(a)(1).

¹⁸ 15 U.S.C. 78mm.

Clearing Rules¹⁹ in connection with a transaction between a Private Fund and its Captive Clearing Sub, subject to the conditions that:

- (1) the Captive Clearing Sub is directly or indirectly wholly-owned by one or more Private Funds;
- (2) the Private Funds are managed by a common investment adviser or affiliated group of investment advisers; and
- (3) the Private Funds and the Captive Clearing Sub satisfy any other applicable conditions to the inter-affiliate exception, including the outward-facing trade clearing condition, to the extent it would otherwise apply.

* * *

We appreciate the opportunity to provide this exemption request and we would be pleased to meet with you, the rest of the Commission or its staff to discuss. Consistent with Exchange Act Rule 0-12, we are simultaneously submitting this request electronically to the Office of the Secretary. If you have questions or comments, please do not hesitate to contact Matthew Daigler or the undersigned at (202) 730-2600.

Very truly yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel and Head of Global Regulatory Affairs
MFA

cc: The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
Mr. David Saltiel, Acting Director, Division of Trading and Markets

¹⁹ 17 CFR 240.17ad-22(a)(“affiliated counterparty”)(i).