



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551

October 1, 2020

Mr. Gabriel Rosenberg
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017

Dear Mr. Rosenberg:

This responds to your letters submitted on behalf of Morgan Stanley, New York, New York, and addressed to the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the “agencies”) dated April 1, 2019, and November 26, 2019. Your letters request, among other things, an exemption from the requirements of section 252.83 of the Board’s QFC Stay Rule¹ for covered QFCs that are “non-U.S., non-linked contracts” and for which the counterparty is not a covered entity or an excluded bank.²

Pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board has established restrictions on the QFCs of U.S. global systemically important bank holding companies (U.S. GSIBs) and the U.S. operations of foreign global systemically important banking organizations (foreign GSIBs). In general, the Board’s QFC Stay Rule requires U.S. GSIBs, companies controlled by a U.S. GSIB (subsidiaries), and the U.S. operations of foreign GSIBs (together, “covered entities”) to amend their derivatives, securities financing transactions, and certain other QFCs (together, “covered QFCs”) in two respects. First, the QFC Stay Rule requires that covered QFCs opt the counterparty into the stay-and-transfer treatment of the Federal Deposit Insurance Act and Title II of the Dodd-Frank Act (U.S. special resolution regimes) to reduce the risk that a

¹ 12 CFR 252.83. The agencies’ respective qualified financial contract stay rules (collectively, the “QFC Stay Rule”) can be found at 12 CFR part 47 (OCC); 12 CFR part 252, subpart I (Board); and 12 CFR part 382 (FDIC).

² The terms “covered entity” and “excluded bank” have the same meaning as in 12 CFR 252.82(b) and 252.81, respectively. The Secretary of the Board, acting under delegated authority, had granted the firm’s request for temporary extensions of time until October 1, 2020, with respect to the contracts that are the subject of this request.

counterparty to a QFC governed by non-U.S. law would challenge the applicability of the U.S. special resolution regimes to the QFC.³ Second, the QFC Stay Rule requires a QFC to prohibit the counterparty from exercising any cross-default rights (i.e., default rights based on the entry into resolution of an affiliate of the covered entity) unless a creditor protection condition permitted under the QFC Stay Rule (e.g., failure to perform under the contract) is met. Among other things, this requirement is intended to facilitate a single-point-of-entry resolution.⁴

As a U.S. GSIB, Morgan Stanley and its subsidiaries are subject to the QFC Stay Rule. Pursuant to section 252.88(d) of the Board's QFC Stay Rule, the Board may exempt by order a covered entity from conforming one or more contracts or types of contract to one or more of the requirements of the rule after considering (1) the potential impact of the exemption on the ability of the covered entity, or affiliates of the covered entity, to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity; (2) the burden the exemption would relieve; and (3) any other factor the Board deems relevant.⁵

In considering this exemption request, a "non-U.S., non-linked contract" is defined as a QFC that meets all of the following criteria: (i) no party to the QFC (other than a foreign subsidiary⁶ of Morgan Stanley) is a covered entity or excluded bank; (ii) the QFC is not guaranteed or otherwise supported⁷ by an affiliate⁸ of that foreign subsidiary that could itself be placed into one of the U.S. special resolution regimes;⁹ (iii) the QFC is not linked¹⁰ to an affiliate of that foreign subsidiary; and (iv) the QFC contains no default rights that could be exercised against any other covered entity or excluded bank that itself could be placed into one of the U.S.

³ 12 CFR 252.83(b). A covered QFC that meets both of the following requirements is not required to be conformed to the provisions of section 252.83(b) of the QFC Stay Rule: (1) the covered QFC states that it is governed by the laws of the United States or a state of the United States; and (2) the QFC counterparty to the covered entity is an individual domiciled in the United States or a company that is incorporated in or organized under the laws of the United States or any state, has its principal place of business located in the United States or any state, or is a U.S. branch or agency. 12 CFR 252.83(a).

⁴ 12 CFR 252.84(b), (f), and (h); see also 12 CFR 252.85(a)–(b).

⁵ 12 CFR 252.88(d).

⁶ For purposes of this definition, "foreign subsidiary" means a company subject to the Board's QFC Stay Rule that (i) is not incorporated in or organized under the laws of the United States or any state; (ii) does not have its principal place of business located in the United States, including any state; and (iii) is not a U.S. branch or U.S. agency. The terms "state," "U.S. branch," and "U.S. agency" have the same meanings as in 12 CFR 252.2.

⁷ "Support" has the same meaning as in 12 CFR 380.12(b)(3).

⁸ "Affiliate" has the same meaning as in 12 CFR 252.2.

⁹ "U.S. special resolution regimes" has the same meaning as in 12 CFR 252.81.

¹⁰ "Linked" has the same meaning as in 12 CFR 380.12(b)(1). The term "specified financial condition clause" referenced in this definition has the same meaning as in 12 CFR 380.12(b)(2).

special resolution regimes. The Board has considered the exemption request for non-U.S., non-linked contracts under the framework set out in section 252.88(d) of the QFC Stay Rule.

First, the requested exemption is unlikely to affect the ability of the firm to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the firm. The QFC Stay Rule generally requires that QFCs governed by foreign law or entered into with a foreign counterparty include the counterparty's agreement to be subject to the applicable stay-and-transfer provisions of the U.S. special resolution regimes, in an effort to reduce the risk that such counterparty would challenge those provisions. However, a foreign subsidiary of a U.S. GSIB could not be placed directly into a proceeding under one of the U.S. special resolution regimes, and U.S. law would not prevent the exercise of default rights in non-U.S., non-linked contracts against the foreign subsidiary of a U.S. GSIB. Therefore, exempting QFCs that would not be subject to the stay-and-transfer treatment of the U.S. special resolution regimes would not appear to impact the ability of a U.S. GSIB to be resolved in an orderly manner. Further, the vast majority of QFCs entered into between material entities of the U.S. GSIBs (including foreign subsidiaries) already have been conformed to the rule's requirements through adherence to the universal protocol and will continue to be subject to the rule's requirements.¹¹

Second, the requested exemption would relieve significant burden. You have represented that there are a significant number of unconformed non-U.S., non-linked contracts and that conforming these contracts to the requirements of the Board's QFC Stay Rule would entail significant time and expense. Specifically, you have represented that the firm would experience considerable burden in educating counterparties regarding the requirements of the rule, negotiating amendments to the relevant contracts, and executing and reviewing such amendments.

For these reasons, the requested exemption would not appear to have a significant impact on the ability of the firm to be resolved in an orderly manner and would relieve significant burden. Accordingly, the Board has granted Morgan Stanley an exemption for non-U.S., non-linked contracts that meet the criteria described on pages two and three of this letter from the requirements of 12 CFR 252.83.¹²

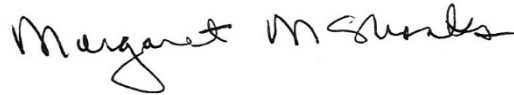
This action may be revised or revoked, based on changes to applicable regulations or other relevant factors. This action is based on all the facts of record, including the information discussed above, and the representations in your submissions and supplemental information. Any material change in those facts or representations could affect this approval and should be communicated promptly to Board staff.

¹¹ 12 CFR 252.85(a). "Universal protocol" is defined at 12 CFR 252.85(a)(3)(i). The conformed QFCs between U.S. GSIB entities represent over 95 percent of the notional value of derivatives of the firms and a significant portion of other QFCs, including those most concerning from an interconnectedness perspective.

¹² In considering this request, Board staff consulted with staff of the OCC and FDIC in an effort to maintain consistent interpretations under the QFC Stay Rule.

Please contact Lucy Chang at (202) 475-6331 or Evan Hechtman at (202) 263-4810, both of the Board's Legal Division, or Lesley Chao at (202) 974-7063 or Rebecca Alper at (202) 475-6321, both of the Board's Division of Supervision and Regulation, if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Margaret McCloskey Shanks". The signature is written in a cursive style with a large, looping initial "M".

Margaret McCloskey Shanks
Deputy Secretary of the Board

cc: Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation