COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 22, and 30

RIN 3038–AF24

Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations governing the types of investments that futures commission merchants (''FCMs'') and derivatives clearing organizations may make with funds held for the benefit of customers trading futures, foreign futures, and cleared swap transactions. The Commission is also specifying market risk capital charges that an FCM would be required to take on the revised permitted investments in computing the firm's adjusted net capital. The proposed amendments would also amend regulations that require each FCM to report to the Commission and to the firm's designated self-regulatory organization the name, location, and amount of customer funds held by each depository, including any investments of customer funds held by the depository. Lastly, the Commission is proposing to revise its regulations to eliminate the requirement that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the FCM to treat the funds held in the accounts as customer segregated fund accounts.

DATES: Comments must be received on or before January 17, 2024.

ADDRESSES: You may submit comments, identified by RIN 3038–AF24, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

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I. Introduction

A. Background and Statutory Authority

1. Segregation of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations

A primary objective of the Commodity Exchange Act (''Act'')[2] and Commission regulations is the establishment of a framework to safeguard funds of customers engaging in CFTC-regulated derivative transactions. A core component of the framework is the requirement for a futures commission merchant (''FCM'') or a derivatives clearing organization (''DCO'') to treat customer funds as belonging to the customers and not as the property of the FCM or DCO, and for the FCM or DCO to segregate customer funds from its own funds by holding the funds in specially designated customer accounts maintained at banks, trust companies, FCMs, or DCOs, as applicable. The segregation of customer funds from an FCM's or DCO's own funds is intended to ensure that customer funds are used

[1] 17 CFR 145.9. Commission Regulations referred to herein are found at 17 CFR Chapter I, and are accessible on the Commission's website: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] 7 U.S.C. 1 *et seq.*

only to support customer trading and transactions, and to facilitate the return of the funds to customers in the event of the insolvency of the FCM or DCO.

Customer funds are classified into one of three distinct regulatory frameworks that are based on the derivatives markets on which the customers are transacting. Specifically, customer funds are classified as either: (i) ''futures customer funds;'' (ii) ''Cleared Swaps Customer Collateral;'' or (iii) ''30.7 customer funds.'' [3] The term ''futures customer funds'' is defined by Regulation 1.3 to mean, in relevant part, all money, securities, and property received by an FCM or a DCO from, for, or on behalf of ''futures customers'' [4] to margin, guarantee, or secure futures and options on futures transactions traded on a CFTC-designated contract market, and all money accruing to futures customers as a result of trading futures and options on futures. Section 4d(a)(2) of the Act requires an FCM to treat and deal with futures customer funds received to margin, guarantee, or secure trades or contracts of any futures customer, or accruing to a futures customer as the result of such trades or contracts, as belonging to the futures customer.[5] Section 4d(a)(2) further provides that an FCM may not commingle futures customer funds of a futures customer with the FCM's own funds, provided, however, that the FCM may commingle the futures customer funds of two or more futures customers and deposit the funds with any bank, trust company, DCO, or other FCM.[6]

Section 4d(b) of the Act addresses the duties imposed on DCOs and other depositories receiving futures customer funds from FCMs pursuant to Section 4d(a)(2) of the Act.[7] Section 4d(b) provides that it is unlawful for any person, including a DCO, that has received futures customer funds to hold, dispose of, or use the funds as belonging to the depositing FCM or any person other than the futures customers of the FCM.[8] The Commission adopted Regulations 1.20 through 1.30, and Regulations 1.32 and 1.49, to implement the segregation requirements for futures customer funds mandated by Sections 4d(a)(2) and 4d(b) of the Act.[9]

The term ''Cleared Swaps Customer Collateral'' is defined by Regulations 1.3 and 22.1 [10] to mean, in relevant part, all money, securities, or other property received by an FCM or a DCO from, for, or on behalf of, a ''Cleared Swaps Customer'' to margin, guarantee, or secure ''Cleared Swap'' positions.[11] Section 4d(f)(2)(A) of the Act requires an FCM to treat Cleared Swaps Customer Collateral received from a Cleared Swaps Customer, or accruing to a Cleared Swaps Customer as a result of Cleared Swap positions, as belonging to the Cleared Swaps Customer.[12] Section 4d(f)(2)(B) of the Act provides that an FCM may not commingle Cleared Swaps Customer Collateral of a Cleared Swaps Customer with the FCM's own funds,[13] provided, however, that the FCM may commingle Cleared Swaps Customer Collateral of two or more Cleared Swap Customers and deposit the funds in any bank, trust company, DCO, or other FCM.[14] Section 4d(f)(6) of the Act provides that it is unlawful for any person, including a DCO and any depository institution, that has received Cleared Swaps Customer Collateral to hold, dispose of, or use the Cleared Swaps Customer Collateral as belonging to the depositing FCM or any person other than the Cleared Swaps Customer of the FCM.[15] The Commission adopted Regulations 22.2 through 22.13, and Regulations 22.15 through 22.17, to implement the segregation requirements for Cleared Swaps Customer Collateral mandated by Section 4d(f) of the Act.[16]

The term ''30.7 customer funds'' is defined by Regulation 30.1 to mean any money, securities, or other property received by an FCM from, for, or on behalf of a U.S. person or foreign-domiciled person (a ''30.7 customer'') [17] to margin, guarantee, or secure futures or options on futures positions executed on foreign boards of trade (''foreign futures'').[18] Section 4(b)(2)(A) of the Act authorizes the Commission to adopt regulations imposing requirements on FCMs regarding the safeguarding of 30.7 customer funds deposited by 30.7 customers for trading on foreign boards of trade.[19] The Commission adopted Regulation 30.7 pursuant to Section 4(b)(2)(A) of the Act.[20] Regulation 30.7(e)(2) requires an FCM to segregate 30.7 customer funds from the FCM's own funds, and Regulation 30.7(b) provides that an FCM may hold 30.7 customer funds with designated depositories, including banks, trust companies, DCOs, foreign brokers, and clearing organizations of foreign boards of trade.[21]

Throughout this release, the terms ''futures customer funds,'' ''Cleared Swaps Customer Collateral,'' and ''30.7 customer funds'' are collectively referred to as ''Customer Funds,'' unless otherwise stated.

2. Authority for Futures Commission Merchants and Derivatives Clearing Organizations To Invest Customer Funds

Section 4d(a)(2) of the Act authorizes FCMs to invest futures customer funds in: (i) obligations of the U.S.; (ii) obligations fully guaranteed as to principal and interest by the U.S.; and (iii) general obligations of any State or of any political subdivision of a State.[22] Regulation 1.25 was initially adopted to implement Section 4d(a)(2), and authorized FCMs and DCOs to invest futures customer funds in the instruments set forth in Section 4d(a)(2) of the Act (the ''Permitted Investments'').[23]

The Commission, in 2000, expanded the Permitted Investments beyond the investments specifically stated in Section 4d(a)(2) of the Act to include certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interests in money market funds.[24] In addition, the Commission

[3] *See generally,* 17 CFR 1.20 (segregation framework for futures customer funds); 17 CFR 22.2 and 22.3 (segregation framework for Cleared Swaps Customer Collateral); and 17 CFR 30.7 (segregation framework for 30.7 customer funds).

[4] The term ''futures customer'' is defined by Regulation 1.3 to mean, in relevant part, any person who uses an FCM as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or any option on such contract. 17 CFR 1.3.

[5] 7 U.S.C. 6d(a)(2).

[6] *Id.*

[7] 7 U.S.C. 6d(b).

[8] *Id.*

[9] 17 CFR 1.20 through 17 CFR 1.30, 17 CFR 1.32, and 17 CFR 1.49.

[10] 17 CFR 22.1.

[11] The term ''Cleared Swaps Customer'' is defined by Regulation 22.1 to mean, in relevant part, any customer entering into a Cleared Swap. The term ''Cleared Swap'' is defined to mean any swap that is, directly or indirectly, submitted to and cleared by a DCO registered with the Commission. *See* 7 U.S.C. 1a(7) and 17 CFR 22.1.

[12] 7 U.S.C. 6d(f)(2)(A).

[13] 7 U.S.C. 6d(f)(2)(B).

[14] 7 U.S.C. 6d(f)(3)(A)(i).

[15] 7 U.S.C. 6d(f)(6).

[16] 17 CFR 22.2 through 17 CFR 22.13, 17 CFR 22.15 through 17 CFR 22.17.

[17] The term ''30.7 customer'' is defined by Regulation 30.1 to mean any person located in the U.S., its territories or possessions, as well as any foreign-domiciled person, who trades in foreign futures or foreign options. 17 CFR 30.1.

[18] 17 CFR 30.1.

[19] 7 U.S.C. 6(b)(2)(A).

[20] 17 CFR 30.7.

[21] 17 CFR 30.7(b) and 17 CFR 30.7(e)(2).

[22] 7 U.S.C. 6d(a)(2).

[23] *See Title 17—Commodity and Securities Exchanges,* 33 FR 14454 (Sept. 26, 1968), amending Regulation 1.25 and providing that FCMs and clearing organizations may invest customer funds in obligations of the U.S., in general obligations of any State or of any political subdivision of any State, or in obligations fully guaranteed as to principal and interest by the U.S.

[24] *See Rules Relating to Intermediaries of Commodity Interest Transactions,* 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and *Investment of Customer Funds,* 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating the effective date of the final rules from

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authorized an FCM or a DCO to buy the Permitted Investments under agreements to resell the securities (''reverse repurchase agreements'') and to sell the Permitted Investments under agreements to repurchase the securities (''repurchase agreements'').[25] To minimize credit risk, market risk, and liquidity risk, the Commission also imposed conditions that Permitted Investments were required to meet, including a restriction on the dollar-weighted average of the time-to-maturity of securities held in the segregated portfolio, asset-based and issuer-based concentration limits, and prohibitions on certain investments containing embedded derivatives.[26] More generally, Regulation 1.25 requires all Permitted Investments to be ''consistent with the objectives of preserving principal and maintaining liquidity.''[27] The 2000 Permitted Investments Amendment was adopted under the authority of Section 4(c) of the Act.[28] In adopting the amendment, the Commission stated that the expanded list of Permitted Investments would enhance the yield available to FCMs, DCOs, and their customers without compromising the safety of futures customer funds.[29]

Following the 2000 Permitted Investments Amendment, the list of Permitted Investments has undergone several revisions.[30] In its current form, Regulation 1.25 lists seven categories of investments that qualify as Permitted Investments: (i) obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. (''U.S. government securities''); (ii) general obligations of any State or political subdivision of a State (''municipal securities''); (iii) obligations of any U.S. government corporation or enterprise sponsored by the U.S. (''U.S. agency obligations''); (iv) certificates of deposit issued by a bank; (v) commercial paper fully guaranteed by the U.S. under the Temporary Liquidity Guarantee Program (''TLGP'') as administered by the Federal Deposit Insurance Corporation (''FDIC'') (''commercial paper''); (vi) corporate notes and bonds fully guaranteed as to principal and interest by the U.S. under the TLGP (''corporate notes and bonds''); and (vii) interests in money market mutual funds.[31] In addition, Regulation 1.25(a)(2) permits FCMs and DCOs to buy and sell the Permitted Investments under Repurchase Transactions.[32]

Section 4(b)(2)(A) of the Act grants the Commission the plenary authority to adopt rules and regulations regarding an FCM's safeguarding of 30.7 customer funds.[33] Prior to 2011, an FCM was not subject to restrictions on the investments that it could enter into with 30.7 customer funds.[34] In 2011, the Commission extended the requirements of Regulation 1.25 to an FCM's investment of 30.7 customer funds for trading foreign futures positions. Specifically, the Commission amended Regulation 30.7 to provide that to the extent an FCM invested 30.7 customer funds, it must invest such funds subject to, and in compliance with, the terms and conditions of Regulation 1.25.[35] The Commission exercised its plenary authority under Section 4(b) of the Act to adopt Regulation 30.7.

The Commission also extended the requirements of Regulation 1.25 to FCMs and DCOs investing Cleared Swaps Customer Collateral.[36] Regulations 22.2 and 22.3 were adopted in 2012 under the authority of Section 4d(f)(4) of the Act,[37] which provides that Cleared Swaps Customer Collateral may be invested by an FCM or a DCO in: (i) obligations of the U.S.; (ii) general obligations of any State or of any political subdivision of a State; (iii) obligations fully guaranteed as to principal and interest by the U.S.; and, (iv) any other investment that the Commission may by rule or regulation prescribe.[38] Section 4d(f)(4) of the Act further provides that the investments must be made in accordance with the rules and regulations, and subject to any conditions, as the Commission prescribes.[39]

In addition to setting forth the Permitted Investments that FCMs and DCOs may enter into with Customer Funds, Regulation 1.25 also includes several conditions on the investment of Customer Funds. Regulation 1.25(b)(3) contains both asset-based and issuer-based concentration limits applicable to Permitted Investments. The asset-based concentration limit restricts the total amount of Customer Funds that an FCM or a DCO may invest in a particular Permitted Investment to a defined percentage of the total funds held in segregation by the FCM or DCO.[40] The issuer-based concentration limit caps the total amount of Customer Funds that may be invested in instruments offered by, or managed by, a particular issuer to a defined percentage of the total funds held in segregation by the FCM or DCO.[41]

Consistent with the objective of limiting customer risk, Commission regulations also provide that FCMs and DCOs are financially responsible for any losses resulting from Permitted Investments, and are explicitly prohibited from allocating investment losses to customers or clearing FCMs, respectively.[42]

February 12, 2001 to December 28, 2000) (collectively, the ''2000 Permitted Investments Amendment'').

[25] *Id.* Reverse repurchase agreements and repurchase agreements are collectively referred to as ''Repurchase Transactions'' in the Proposal.

[26] 17 CFR 1.25(b).

[27] *Id.*

[28] Section 4(c)(1) of the Act empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to certain exceptions. The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. *See* 7 U.S.C. 6(c). A further discussion of Section 4(c)(1) of the Act is set forth in Section IV of this **Federal Register** release.

[29] *See* 2000 Permitted Investments Amendment at 78007.

[30] *See Investment of Customer Funds and Record of Investments,* 70 FR 28190 (May 17, 2005) (''2005 Permitted Investments Amendment''), and *Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions,* 76 FR 78776 (Dec. 19, 2011) (''2011 Permitted Investments Amendment'').

[31] 17 CFR 1.25(a)(1).

[32] 17 CFR 1.25(a)(2).

[33] 7 U.S.C. 6(b)(2)(A).

[34] 2011 Permitted Investments Amendment at 78777, providing that because Congress did not expressly apply the investment limitations set forth in Section 4d of the Act to 30.7 customer funds, the Commission historically has not subjected such funds to the investment limitations applicable to futures customer funds.

[35] *See* 17 CFR 30.7. The Commission stated that it was appropriate to align the investment standards of Regulation 30.7 with those of Regulation 1.25 as many of the same prudential concerns arise with respect to both futures customer funds and 30.7 customer funds. *See* 2011 Permitted Investment Amendment at 78791.

[36] *See* 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

[37] 7 U.S.C. 6d(f).

[38] *See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Amendments to the Commodity Broker Bankruptcy Provisions,* 77 FR 6336 (Feb. 7, 2012).

[39] *See* 7 U.S.C. 6d(f)(4).

[40] 17 CFR 1.25(b)(3)(i).

[41] 17 CFR 1.25(b)(3)(ii).

[42] Regulation 1.29 provides that FCMs or DCOs, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds, and further provides that no investment losses shall be borne or otherwise allocated to FCM customers or to FCMs clearing customer accounts at DCOs. 17 CFR 1.29(b).

Regulation 22.2(e)(1) provides that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and may not allocate investment losses to Cleared Swaps Customers of the FCM. 17 CFR 22(e)(1).

Regulation 30.7(i) provides that an FCM shall bear sole financial responsibility for any losses resulting from the investment of 30.7 customer funds, and further provides that no investment losses may be allocated to the 30.7 customers of the FCM. 17 CFR 30.7(i).

In addition, Regulation 22.3(d) provides that DCOs may invest Cleared Swaps Customer

The Commission has previously noted the importance of conducting periodic reassessments of Regulation 1.25 ''and, as necessary, revising regulatory policies to strengthen safeguards designed to minimize risk while retaining an appropriate degree of investment flexibility and opportunities for capital efficiency for DCOs and FCMs investing customer segregated funds.'' [43] In furtherance of these objectives and in consideration of the requests for amendments to Regulation 1.25 discussed in Section II below, the Commission is proposing to amend the list of Permitted Investments in Regulation 1.25 to: (i) add two new asset classes (*i.e.,* specified foreign sovereign debt instruments and certain exchange-traded funds (''ETFs'')), subject to certain conditions, (ii) limit the scope of money market funds (''MMFs'') whose interests qualify as Permitted Investments, and (iii) remove corporate notes, corporate bonds, and commercial paper. In connection with the proposed amendments to the list of Permitted Investments, the Commission is further proposing changes to the counterparty and depository requirements of Regulation 1.25(d)(2) and (7) and revisions to the concentration limits for Permitted Investments set forth in Regulation 1.25(b)(3), and is specifying the capital charges that would apply to the proposed new categories of Permitted Investments. Additionally, the Commission is proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for any losses resulting from investments of Cleared Swap Customer Collateral in Permitted Investments, consistent with Regulation 1.29, which addresses financial responsibility for losses resulting from investment of futures customer funds. The proposed amendment reflects the Commission's original intent to permit investments of Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.[44] The Commission is also proposing to replace the London Interbank Offered Rate (''LIBOR'') with the Secured Overnight Financing Rate (''SOFR'') as a permitted benchmark for variable and floating interest rates for securities that qualify as Permitted Investments. Each of the proposed amendments is discussed below.

II. Requests for Amendments to the List of Permitted Investments

The Futures Industry Association (''FIA) and CME Group Inc. (''CME'') (collectively, the ''Petitioners'') submitted a joint petition requesting the Commission to issue an order under Section 4(c) of the Act, or to take such other action as the Commission deems appropriate, to expand investments that FCMs and DCOs may enter into with Customer Funds.[45] The Petitioners request that the Commission take action to permit FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom (''Specified Foreign Sovereign Debt''), subject to the condition that the investment in the foreign sovereign debt is limited to balances owed by FCMs and DCOs to customers and FCM clearing firms, respectively, denominated in the applicable currency of Canada, France, Germany, Japan, or the United Kingdom.[46] The Petitioners further request that the Commission exempt FCMs and DCOs from the provisions of Regulation 1.25(d)(2) to authorize FCMs and DCOs to enter into Repurchase Transactions involving Specified Foreign Sovereign Debt with foreign banks and foreign securities brokers or dealers and to hold Specified Foreign Sovereign Debt in safekeeping accounts at foreign banks.[47]

In support of the request, the Petitioners note that the Commission issued an order in 2018 pursuant to Section 4(c) of the Act providing a limited exemption to Section 4d of the Act and Regulation 1.25 to permit DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in the foreign sovereign debt of France and Germany.[48] The exemption for DCOs to invest in French and German sovereign debt is subject to conditions, including that: (i) investment in French or German sovereign debt is limited to investments made with euro-denominated balances owed to the futures customers and Cleared Swaps Customers of FCM clearing members; (ii) the dollar-weighted average of the remaining time-to-maturity of a DCO's portfolio of investments in each of French and German sovereign debt may not exceed 60 days; and (iii) a DCO may not make a direct investment in any sovereign debt instrument of France or Germany that has a remaining time-to-maturity in excess of 180 calendar days.[49] The 2018 Order also provides that if the two-year credit default spread of the French or German sovereign debt exceeds 45 basis points (''BPS''), the DCO may not make any new direct investments in the relevant sovereign debt using futures customer funds or Cleared Swaps Customer Collateral, and must discontinue investing futures customer funds and Cleared Swaps Customer Collateral in the relevant debt through Repurchase Transactions as soon as practicable under the circumstances.[50]

The 2018 Order also grants an exemption from Regulation 1.25(d)(2) to permit DCOs to enter into Repurchase Transactions involving French or German sovereign debt with foreign banks and foreign securities brokers or dealers as counterparties.[51] A DCO may

Collateral in Permitted Investments set forth in Regulation 1.25. The regulation, however, does not provide that a DCO is responsible for investment losses. The Commission is proposing to amend Regulation 22.3(d) to explicitly provide that a DCO shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral, and may not allocate such losses to Cleared Swaps Customers. *See* Section III.C. below. 17 CFR 22.3(d).

[43] 2011 Permitted Investments Amendment at 78777.

[44] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506 (Nov. 14, 2013) (''2013 Protections of Customer Funds'') at 68556.

[45] *Petition for Order under Section 4(c) of the Commodity Exchange Act,* dated May 24, 2023 (the ''Joint Petition''). On September 22, 2023, the Petitioners submitted updated data in support of the Joint Petition and corrected an inadvertent transposition of data items in the Joint Petition. *Supplement to Petition for Order under Section 4(c) of the Commodity Exchange Act* (''Supplement to Joint Petition''). The Joint Petition and the Supplement to Joint Petition are available on the Commission's website, *https://www.cftc.gov/media/9531/FIA_CMEPetition_Regulation125_052423/download* and *https://www.cftc.gov/media/9536/FIALetterSupplementing_Regulation125_092223/download.*

[46] Joint Petition at p. 4.

[47] Joint Petition at p. 5.

[48] *Order Granting Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations,* 83 FR 35241 (Jul. 25, 2018) (''2018 Order''). The 2018 Order provides an exemption only to DCOs. FCMs are not subject to the 2018 Order, and currently may not invest Customer Funds in any foreign sovereign debt.

[49] Conditions (3)(a), 3(c), and 3(d) of the 2018 Order at 35245.

[50] Condition (3)(b) of the 2018 Order at 35245.

[51] As noted above, Regulation 1.25(d)(2) provides that an FCM or a DCO may enter into Repurchase Transactions only with the following counterparties: (i) a bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934; (ii) a domestic branch of a foreign bank insured by the FDIC; (iii) an SEC-registered securities broker or dealer; or (iv) an SEC-registered government securities broker or dealer. Section 3(a)(6) of the Securities Exchange Act of 1934 defines the term ''bank'' to mean: (i) a banking institution organized under the laws of the U.S. or a Federal savings association; (ii) a member bank of the Federal Reserve System; (iii) any other banking institution or savings association doing business under the laws of any State or the U.S., a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by a State or Federal authority having supervision over banks or savings associations; and (iv) a receiver,

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enter into Repurchase Transactions with a foreign bank or foreign securities broker or dealer provided that the such firm qualifies as a permitted depository under Regulation 1.49(d)(3) and is located in a money center country or in another jurisdiction that has adopted the euro as its currency.[52] The 2018 Order further grants an exemption from the requirement in Regulation 1.25(d)(7) that securities transferred to an FCM or a DCO under reverse repurchase agreements must be held in safekeeping accounts with certain U.S.-domiciled banks, a Federal Reserve Bank, a DCO, or the Depository Trust Company,[53] to permit DCOs to hold French or German sovereign debt received under reverse repurchase agreements in a safekeeping account with foreign banks that qualify as depositories for Customer Funds under Regulation 1.49(d)(3).

The Petitioners further request that FCMs and DCOs be permitted to invest Customer Funds in certain ETFs that invest primarily in short-term U.S. Treasury securities (''U.S. Treasury ETFs'').[54] In support of their request, the Petitioners state that U.S. Treasury ETFs have characteristics that may be consistent with those of other Permitted Investments and may provide FCMs and DCOs with an opportunity to diversify further their investments of customer funds.[55]

The Commission also received a petition from Invesco Capital Management LLC (''Invesco''), which serves as a sponsor of various ETFs, advocating for the addition of U.S. Treasury ETF securities to the list of Permitted Investments.[56] Invesco states that U.S. Treasury ETFs will provide FCMs and DCOs with additional investment choices for customer funds, promote operational efficiencies and offer potentially better investment returns for FCMs, DCOs, and their customers, and facilitate financial market innovation.[57] Invesco further states that permitting investments of U.S. Treasury ETFs would be consistent with, and promote, the public interest goals enumerated in the Act.[58] Invesco further notes that U.S. Treasury ETFs invest in a sub-set of the same high-quality liquid instruments that are Permitted Investments under Regulation 1.25 (*i.e.,* U.S. government securities), and as such, the ETFs offer an indirect, possibly simpler, and more cost-efficient way for FCMs and DCOs to invest Customer Funds in U.S. Treasury securities and obligations fully guaranteed as to principal and interest by the U.S. as the ETFs eliminate the need for FCMs and DCOs to administer investments in individual U.S. government securities.[59]

Finally, the Petitioners also request that the Commission amend its regulations consistent with CFTC Staff Letter 21–02 and CFTC Staff Letter 22–21,[60] to permit FCMs and DCOs to invest Customer Funds in qualifying Permitted Investments that have adjustable rates of interest that correlate closely to SOFR.[61]

III. Proposal

As part of its periodic assessment of Regulation 1.25 and in consideration of the information set forth in the Joint Petition and the Invesco Petition, the Commission is proposing to amend the list of Permitted Investments, subject to certain terms and conditions, as discussed in detail below. In connection with the proposed amendments to the list of Permitted Investments, the Commission is further proposing changes to the counterparty and depository requirements of Regulation 1.25(d)(2) and (7), and revisions to the concentration limits for Permitted Investments set forth in Regulation 1.25(b)(3). Separately, the Commission is specifying capital charges that FCMs would apply to the revised list of Permitted Investments as proposed, and is proposing a clarifying amendment to Regulation 22.3(d) to specify that DCOs bear the financial responsibility for losses resulting from Permitted Investments. The Commission is also proposing to replace LIBOR with SOFR as a permitted benchmark for the interest rate of adjustable rate securities that qualify as Permitted Investments. Lastly, the Commission is proposing to revise its regulations to eliminate the requirement that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the FCM to treat the accounts as customer segregated fund accounts. Collectively, the proposed revisions and amendments are referred to as the ''Proposal.''

A. Investment of Customer Funds

1. Interests in Money Market Funds

Regulation 1.25(a)(1)(vii) currently provides that FCMs and DCOs may invest Customer Funds in interests in MMFs, subject to specified terms and conditions.[62] To qualify as a Permitted Investment, a MMF must: (i) be an investment company that is registered with the SEC under the Investment Company Act of 1940 [63] and hold itself out to investors as a MMF in accordance with SEC Rule 2a–7; [64] (ii) be sponsored by a federally-regulated financial institution, a Section 3(a)(6) bank,[65] an investment adviser registered under the Investment Advisers Act of 1940,[66] or a domestic branch of a foreign bank insured by the FDIC; and (iii) compute the net asset value (''NAV'') of the fund by 9 a.m. of the business day following each business day and make the NAV available to MMF shareholders by that time.[67]

The Commission is proposing to amend Regulation 1.25(a)(1)(vii) to limit the scope of MMFs whose interests qualify as Permitted Investments to ''government money market funds,'' as defined in SEC Rule 2a–7, in response to two sets of amendments that the SEC adopted to its rules governing MMFs

conservator, or other liquidating agent of any institution or firm included in clauses (i), (ii), or (iii) above (''Section 3(a)(6) bank''). 15 U.S.C. 78 *et seq.* Foreign-domiciled banks and foreign securities brokers or dealers are not authorized counterparties for Repurchase Transactions under Regulation 1.25(d)(2).

[52] Regulation 1.49(d)(3) provides that a foreign depository must be a bank or trust company that has in excess of $1 billion in regulatory capital, a registered FCM, or a DCO in order to be a qualified counterparty to Repurchase Transactions.

[53] Specifically, Regulation 1.25(d)(7) provides that securities transferred to an FCM or a DCO under a reverse repurchase agreement must be held in a safekeeping account only with the following depositories: (i) a Section 3(a)(6) bank; (ii) a domestic branch of a foreign bank insured by the FDIC; (iii) a Federal Reserve Bank; (iv) a DCO; or (v) the Depository Trust Company. A foreign-domiciled bank is currently not an authorized depository for securities transferred to an FCM or a DCO under Regulation 1.25(d)(7).

[54] Joint Petition at pp. 8–9.

[55] *Id.*

[56] Letter from Anna Paglia, Chief Executive Officer, Invesco Capital Management LLC, dated September 28, 2023 (''Invesco Petition''). *See https://www.cftc.gov/media/9541/Invesco_CFTCPetition_Regulation125_092823/download.* Invesco is a registered with the Commission as a commodity pool operator and commodity trading advisor, and is registered with the Securities and Exchange Commission (''SEC'') as an investment adviser.

[57] Invesco Petition at p. 1.

[58] *Id.*

[59] *See* Invesco Petition at p. 2.

[60] CFTC Staff Letter 21–02—*CFTC Regulation 1.25—Investment of Customer Funds—Time-Limited No-Action Position for Investments in Securities with an Adjustable Rate of Interest Benchmarked to the Secured Overnight Financing Rate,* issued January 4, 2021 (''Staff Letter 21–02''); CFTC Staff Letter 22–21—*CFTC Regulation 1.25—Investment of Customer Funds in Securities with an Adjustable Rate of Interest Benchmarked to the Secured Overnight Financing Rate—Extension of Time-Limited No-Action Position Concerning Investments by Futures Commission Merchants and No-Action Position Concerning Investments by Derivatives Clearing* Organizations, issued December 23, 2022 (''Staff Letter 22–21'').

[61] *See* Joint Petition at p. 4.

[62] 17 CFR 1.25(a)(vii).

[63] 15 U.S.C. 80a–1—80a–64.

[64] 17 CFR 270.2a–7.

[65] For a definition of Section 3(a)(6) bank, *see supra* note 51.

[66] 15 U.S.C. 80b–1—80b–21.

[67] 17 CFR 1.25(c).

discussed below.[68] A Government MMF is defined in SEC Rule 2a–7 as a fund that invests 99.5 percent or more of its total assets in cash, ''government securities,'' and/or Repurchase Transactions that are collateralized fully by cash or ''government securities.'' [69] A ''government security'' is defined as ''any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit of any of the foregoing.'' [70] Therefore, a ''government security'' encompasses ''U.S. government securities'' and ''U.S. agency obligations'' as defined under Regulation 1.25(a)(1)(i) and (iii), respectively.[71]

As noted above, the Commission is proposing to amend Regulation 1.25 to limit the scope of MMFs that qualify as Permitted Investments in response to SEC revisions to its MMF rules. In that regard, in 2014, the SEC amended Rule 2a–7 to permit an MMF to impose liquidity fees on participant redemptions or to temporarily suspend participant redemptions if the MMF's investment portfolio triggered certain liquidity thresholds.[72] The 2014 SEC MMF Final Rule was adopted to mitigate the adverse effects on fund liquidity resulting from increased participant redemptions during times of financial stress.[73]

The 2014 SEC MMF Final Rule provides that a MMF that invests less than 30 percent of its total assets in instruments defined as ''weekly liquid assets'' [74] may impose a liquidity fee of up to two percent of the value of any shares redeemed, or may temporarily suspend participants' redemptions for up to 10 business days in a 90-day period, if the MMF's board of directors determines that imposing the liquidity fee or suspending redemptions is in the best interest of the MMF.[75] In addition, if a MMF invests less than 10 percent of its total assets in weekly liquid assets, the MMF must impose a liquidity fee of at least one percent, and not more than two percent, on the value of any shares redeemed, unless the MMF's board of directors determines that the fee is not in the best interest of the MMF.[76] The SEC Redemption Provisions are directly applicable to Prime MMFs, and Government MMFs may voluntarily elect to impose such provisions (''Electing Government MMFs'').[77]

Commission staff subsequently received inquiries from market participants concerning the permissibility of investing Customer Funds in MMF interests under Regulation 1.25 in light of the SEC Redemption Provisions. The Commission's Division of Swap Dealer and Intermediary Oversight (''DSIO''), currently known as the Market Participants Division (''MPD'') issued CFTC Staff Letter 16–68 [78] and the Commission's Division of Clearing and Risk (''DCR'') issued CFTC Staff Letter 16–69 [79] addressing the SEC Redemption Provisions and the investment of Customer Funds in MMFs by FCMs and DCOs, respectively. Staff Letter 16–68 [80] expressed DSIO staff's view that the SEC Redemption Provisions conflict with paragraphs (b)(1) [81] and (c)(5)(i) [82] of Regulation 1.25, as the Redemption Provisions have the effect of potentially reducing the liquidity of Prime MMFs and Electing Government MMFs. Therefore, in connection with the no-action position taken in the staff letter, DSIO indicated that FCMs may no longer invest Customer Funds in such MMFs.[83]

Staff Letter 16–69 set forth DCR staff's interpretation that Regulations 39.15(c) and (e) [84] prohibit a DCO from holding funds belonging to clearing members or their customers in Prime MMFs or Electing Government MMFs. DCR staff stated that the SEC Redemption Provisions were not consistent with Regulation 39.15(c), which requires a DCO to hold funds and assets belonging to clearing members and their customers in a manner that minimizes the risk of loss or of delay in the access by the DCO to such funds and assets. DCR staff further stated that the SEC Redemption Provisions were inconsistent with Regulation 39.15(e), which limits a DCO to investing funds and assets belonging to clearing members and their customer in instruments with minimal credit, market, and liquidity risk. Therefore, FCMs and DCOs have not invested customer funds in Prime MMFs or Electing Government MMFs since the issuance of the aforementioned Staff Letters in 2016.

The SEC has recently adopted additional amendments to its MMF rules, including amendments revising the SEC Redemption Provisions discussed above.[85] The SEC MMF Reforms are intended to address issues observed by the SEC with MMFs in connection with the economic shock from the onset of the COVID–19 pandemic. Specifically, the SEC stated in March 2020, that concerns about the impact of COVID–19 pandemic led

[68] SEC Rule 2a–7 addresses MMFs that primarily invest in securities issued or guaranteed by the U.S. government (''government money market funds'' or ''Government MMFs''), MMFs that primarily invest in short-term corporate debt securities (''Prime MMFs''), and other types of MMFs that are not relevant to this Proposal, such as tax-exempt funds. 17 CFR 270.2a–7.

[69] 17 CFR 270.2a–7(a)(14).

[70] 15 U.S.C. 80a–2(a)(16).

[71] Regulation 1.25(a)(1)(i) and (iii) defines ''U.S. government securities'' as obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. and ''U.S. agency obligations'' as obligations of any U.S. government corporation or enterprise sponsored by the U.S. government, respectively.

[72] *Money Market Fund Reform; Amendments to Form PF,* 79 FR 47736 (Aug. 14, 2014) (''2014 SEC MMF Final Rule''). *See* 17 CFR 270.2a–7(c)(2).

[73] 2014 SEC MMF Final Rule at 47747.

[74] The term ''weekly liquid assets'' is generally defined as: (i) cash; (ii) direct obligations of the U.S. Government; (iii) U.S. Agency securities that are issued at a discount to the principal amount to be repaid at maturity and have a remaining time to maturity of 60 days or less; (iv) securities that mature, or are subject to a demand feature that is exercisable and payable, within 5 business days; or (v) amounts receivable and due unconditionally within 5 business days on pending sales of portfolio securities. 17 CFR 270–2a–7(c)(a)(28).

[75] 17 CFR 270.2a–7(c)(2)(i).

[76] 17 CFR 270.2a–7(c)(2)(ii). (The liquidity fees and suspension of redemptions provisions of SEC Rule 2a–7(c)(2) are referred to as the ''SEC Redemption Provisions'' in this document.)

[77] 17 CFR 270.2a–7(c)(2)(iii).

[78] CFTC Letter No. 16–68, *No-Action Relief with Respect to CFTC Regulation 1.25 Regarding Money Market Funds* (Aug. 8, 2016) (''Staff Letter 16–68''). CFTC Staff Letters are available at the Commission's website, *www.cftc.gov.*

As noted above, Staff Letter 16–68 was issued by DSIO, which was subsequently renamed MPD. For purposes of clarity, the Commission notes that the formal division name change is not reflected in the proposed amendments to existing Commission regulations and appendices discussed in this Proposal, as the Commission plans to address the name change in a separate Commission rulemaking. The new division name, however, appears in the newly introduced proposed appendices H and I to Part 1 and Appendix G to Part 30, as these appendices do not currently exist in Commission's regulations and would not be addressed in the above-referenced separate rulemaking.

[79] CFTC Letter No. 16–69, *Staff Interpretation Regarding CFTC Part 39 In Light Of Revised SEC Rule 2a–7* (Aug. 8, 2016) (''Staff Letter 16–69'').

[80] *See also* CFTC Staff Advisory No. 16–75, *Practical Application of No-Action Letter No. 16–68 Regarding the Investments in Money Market Mutual Funds* (Oct. 18, 2016) (''Staff Letter 16–75'') (discussing the practical applicability and effect of Staff Letter 16–68).

[81] 17 CFR 1.25(b)(1) (providing that investments of customer funds must be highly liquid such that the investments must have the ability to be liquidated and converted into cash within one business day without material discount in value).

[82] 17 CFR 1.25(c)(5)(i) (providing that to qualify as a Permitted Investment an MMF must be legally obligated to pay a fund investor (including an FCM) by the close of business on the day following a redemption request).

[83] Staff Letter 16–68 at p. 2.

[84] 17 CFR 39.15(c) and (e).

[85] *Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers, Technical Amendments to Form N–CSR and Form N–1A,* 88 FR 51404 (Aug. 3, 2023) (''SEC MMF Reforms''). The SEC MMF Reforms have an effective date of October 2, 2023.

investors to reallocate their assets into cash and short-term government securities. Certain Prime MMFs, in particular, experienced significant outflows, contributing to stress on short-term funding markets that resulted in government intervention to enhance the liquidity of such markets.[86] The events of March 2020 led the SEC to re-evaluate certain aspects of the regulatory framework applicable to MMFs. In considering the potential factors that caused the increased redemption activity in March 2020, the SEC noted that, among other concerns, fears about the potential imposition of redemption gates and liquidity fees based on observed declines in some funds' weekly liquid assets appear to have incentivized investors to redeem from certain MMFs.[87] Further, according to the SEC, the presence of a liquidity threshold for consideration of fees and gates appears to have affected fund managers' behavior, encouraging the sale of long-term portfolio assets to maintain weekly liquid assets above the 30 percent threshold. The SEC also cited to evidence suggesting that investors are particularly sensitive to the potential imposition of redemption gates, which fully inhibit the redeemability of MMF shares for the duration of the gate.[88] In the SEC's view, generally supported by commenters' feedback, the gates and liquidity fees associated with predictable weekly liquid asset triggers proved counterproductive in stemming heavy redemptions from certain MMFs.[89] As such, the SEC concluded that MMFs needed better functioning tools for managing through stress while mitigating harm to shareholders.[90]

Accordingly, in an effort to improve the resilience of MMFs and address the issue of preemptive investor redemption behavior, particularly in times of stress, the SEC adopted changes to the fee and gate provisions in SEC Rule 2a–7. The SEC MMF Reforms, among other things, amend the SEC Redemption Provisions by removing a Prime MMF's ability to temporarily suspend participant redemptions and by removing an Electing Government MMF's ability to voluntarily retain authority to suspend participant redemptions. The SEC MMF Reforms will also require Prime MMFs to impose a liquidity fee when the fund experiences net redemptions that exceed 5 percent of the fund's net assets, and will permit Prime MMFs to impose a discretionary liquidity fee if the fund's board of directors determines that a fee is in the best interest of the fund.[91] Government MMFs will not be required to implement the mandatory liquidity fee but, consistent with the current SEC Redemption Provisions, may choose to rely on the ability to impose discretionary liquidity fees.[92] Such fees, however, are no longer tied to the weekly liquid asset threshold.[93]

The SEC's liquidity fee mechanism is designated to address shareholder dilution and the potential for first-mover advantage by allocating liquidity costs to redeeming investors. Although the mechanism may contribute to decreasing outflows from certain MMFs, the Commission preliminarily believes that the potential imposition of a fee will nonetheless have the effect of reducing the liquidity of such funds and will reduce the principal of an FCM's or DCO's investment in MMF shares. Therefore, consistent with the positions taken in Staff Letter 16–68 and Staff Letter 16–69, the Commission is preliminarily of the view that FCMs and DCOs should be allowed to invest Customer Funds only in MMFs that will not be subject to a liquidity fee (*i.e.,* Government MMFs that do not elect to apply a discretionary liquidity fee). Thus, the proposed amendments would remove Prime MMFs and Electing Government MMFs, as participants in such funds may be subject to liquidity fees in certain circumstances. Therefore, the Commission is proposing amendments to Regulation 1.25(a)(1)(vii) that would limit the scope of MMFs whose interests qualify as Permitted Investments to Government MMFs that are not Electing Government MMFs (''Permitted Government MMFs'').[94] To qualify as a Permitted Government MMF, at least 99.5 percent of the fund's investment portfolio must be comprised of cash, government securities (*i.e.,* U.S. Treasury securities, securities fully-guaranteed as to principal and interest by the U.S. Government, and U.S. agency obligations), and/or Repurchase Transactions that are fully collateralized by government securities as set forth in SEC Rule 2a–7. The Commission preliminarily believes that the proposed amendment would ensure that FCMs and DCOs invest Customer Funds in instruments that are consistent with the objectives of Regulation 1.25 of preserving principal and maintaining liquidity of the investments.

The Commission also notes that the proposed amendments to remove from the scope of Permitted Investments the interests in MMFs whose redemptions may be subject to a liquidity fee would prohibit an FCM from depositing proprietary interests in such MMFs into Customer Funds accounts. Regulations 1.23(a)(1), 22.2(e)(3)(i), and 30.7(g)(1) permit FCMs to deposit proprietary cash and unencumbered securities into the accounts of futures customers, Cleared Swaps Customers, and 30.7 customers, respectively, to help ensure that at all times the accounts maintain sufficient funds to cover the amounts due to all customers and prevent the accounts from becoming undersegregated.[95] The securities deposited by FCMs, however, must be Permitted Investments as set forth in Regulation 1.25.[96] Therefore, with respect to MMFs, FCMs would only be permitted to deposit proprietary interest in Permitted Government MMFs in the accounts of futures customers, Cleared Swaps Customers, and 30.7 customers under the Proposal.

To eliminate MMFs whose redemptions may be subject to a liquidity fee from the scope of Permitted Investments under Regulation 1.25, the Commission proposes to revise Regulation 1.25(a)(1)(vii), which would be redesignated Regulation 1.25(a)(1)(v) to accommodate other amendments to Regulation 1.25(a) discussed in this Proposal, by replacing the term ''money

[86] As noted in the SEC MMF Reforms' adopting release, to support the short-term funding markets, on March 18, 2020, the Federal Reserve, with the approval of the Department of the Treasury, established the Money Market Mutual Fund Liquidity Facility. The facility provided loans to financial institutions on advantageous terms to purchase securities from MMFs that were raising liquidity. *See* SEC MMF Reforms at 51408.

[87] SEC MMF Reforms at 51407.

[88] *Id.* at 51409.

[89] *Id.*

[90] *Id.* at 51408.

[91] 17 CFR 270.2a–7(c)(2)(i) and (ii) (as amended by the SEC MMF Reforms). In describing the different types of MMFs, the SEC distinguishes between Prime MMFs, Government MMFs, and tax-exempt (or municipal) MMFs. *See* SEC MMF Reforms at 51406. Tax-exempt MMFs primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from Federal income tax for individual taxpayers. Within the category of Prime and tax-exempt MMFs, the SEC also treats retail and institutional funds separately. The new mandatory liquidity fee framework will apply to institutional Prime and institutional tax-exempt MMFs. Tax-exempt MMFs are not specifically discussed in this Proposal, though the Commission notes that these funds would be subject to the same restrictions as those proposed with respect to Prime MMFs. Retail MMFs are held only by natural persons, and as such, are not discussed in this Proposal either.

[92] 17 CFR 270.2a–7(c)(2)(i)(B) (as amended by the SEC MMF Reforms).

[93] 17 CFR 270.2a–7(c)(2)(i) (as amended by the SEC MMF Reforms).

[94] *See* proposed paragraph (a)(1)(iv) of Regulation 1.25. As discussed in Section III.A, the Commission is proposing to renumber paragraph (a)(1) of Regulation 1.25 to reflect proposed revisions to the list of Permitted Investments. The proposed revisions would result in the renumbering of current paragraph (a)(1)(vii) to paragraph (a)(1)(v) of Regulation 1.25.

[95] 17 CFR 1.23(a)(1), 22.2(e)(3)(i), and 30.7(g)(1).

[96] *Id.*

market mutual fund'' with the term ''government money market funds as defined in § 270.2a–7 of this title, provided that the funds do not elect to be subject to liquidity fees in accordance with § 270.2a–7 of this title (government money market fund).'' The Commission also proposes to make further conforming changes throughout Regulation 1.25 and the Appendix to Regulation 1.25 by replacing all references to ''money market mutual fund'' with ''government money market fund.'' In addition, the Appendix to Regulation 1.25 would be redesignated as Appendix E to Part 1 to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

Request for comment: The Commission seeks comment on all aspects of the Proposal to limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs to address changes to SEC rules governing MMFs as described above, including:

1. Other than concentration limits that are discussed further below, should any other safeguards be considered for Government MMFs whose interests qualify as Permitted Investments under the Proposal to ensure that the credit, liquidity, and market risk of those investments is maintained at an acceptable level, particularly in light of the history of runs in the Prime MMF markets and the potential for contagion?

2. Regulation 1.25(b)(5)(ii) currently provides that an FCM or a DCO may invest Customer Funds in a fund affiliated with that FCM or DCO. Should the Commission revise Regulation 1.25(b)(5)(ii) to prohibit an FCM or a DCO from investing Customer Funds in affiliated funds? Are there other Commission or SEC rules that mitigate any potential conflicts of interest that may arise from an FCM or a DCO investing Customer Funds in affiliated funds?

2. Foreign Sovereign Debt

Regulation 1.25(a)(1) currently permits FCMs and DCOs to invest in the sovereign debt of the U.S. only. Regulation 1.25 previously permitted FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of any country, provided that the investments were limited to balances owed by FCMs or DCOs to customers denominated in the currency of the applicable foreign sovereign debt.[97] The Commission subsequently eliminated all foreign sovereign debt as a Permitted Investment in 2011, citing an interest in both simplifying the regulation and safeguarding Customer Funds in light of economic crises experienced by a number of foreign sovereigns.[98] The Commission, however, also stated that it recognized that the safety of sovereign debt issuances of one country may vary greatly from the sovereign debt issuances of another country, and that investment in certain sovereign debt may be consistent with Regulation 1.25's objective of preserving principal and maintaining liquidity of investments.[99] The Commission further stated that it was amenable to considering requests for Section 4(c) exemptions to permit FCMs and DCOs to invest Customer Funds in foreign sovereign debt. Specifically, the Commission stated that it would consider permitting Customer Funds to be invested in the foreign sovereign debt of a country to the extent that: (i) FCMs or DCOs held balances in segregated accounts owed to customers denominated in that country's currency; and (ii) the foreign sovereign debt serves to preserve principal and maintain liquidity of Customer Funds as required for all other investments of Customer Funds under Regulation 1.25.[100]

As discussed in Section II above, the Commission subsequently issued the 2018 Order pursuant to Section 4(c) of the Act granting DCOs a limited exemption from the provisions of Regulation 1.25(a) to authorize the investment of euro-denominated futures customer funds and Cleared Swaps Customer Collateral in euro-denominated sovereign debt issued by France or Germany subject to specified terms and conditions.[101] The 2018 Order also provides an exemption from Regulation 1.25(d) to permit DCOs to enter into Repurchase Transactions involving French or German sovereign debt with: (i) the European Central Bank; (ii) the Deutsche Bundesbank; (iii) the Banque de France; (iv) a foreign bank located in a country that has adopted the euro as its currency and maintains in excess of $1 billion in regulatory capital; and (v) a foreign dealer located in a country that has adopted the euro as its currency and is subject to regulation by a national financial regulator.[102] The 2018 Order also permits DCOs to hold German or French foreign sovereign debt purchased under reverse repurchase agreements with depositories located in a country that has adopted the euro as its currency and that maintain in excess of $1 billion in regulatory capital, provided that the DCOs separately account for the securities purchased as futures customer funds or Cleared Swaps Customer Collateral, as applicable.[103]

The 2018 Order also contains certain conditions regarding the investment of futures customer funds or Cleared Swaps Customer Collateral in French or German sovereign debt. Specifically, the 2018 Order provides that the dollar-weighted average time-to-maturity of a DCO's portfolio of investments in either French or German sovereign debt may not exceed 60 days.[104] In addition, the 2018 Order provides that a DCO may not make a direct investment in any French or German debt instrument with a remaining time-to-maturity of greater than 180 calendar days.[105]

For the reasons stated below, the Commission is proposing to amend Regulation 1.25 to add Specified Foreign Sovereign Debt to the list of Permitted Investments. The proposed addition of Specified Foreign Sovereign Debt would be subject to certain conditions that are consistent with the criteria specified in the 2011 Permitted Investments Amendment[106] and the conditions specified in the 2018 Order discussed above. The proposed conditions are also consistent with the general objectives set forth in Regulation 1.25 of preserving principal and maintaining liquidity of Permitted Investments.[107]

The proposed amendments would expand the exemptive relief provided in the 2018 Order by adding the debt of Canada, Japan, and the United Kingdom, in addition to that of France and Germany, to the list of Permitted Investments under Regulation 1.25, and by allowing FCMs, in addition to DCOs, to invest in the foreign sovereign debt.[108] FCMs collectively held an aggregate of a U.S. dollar equivalent of $51 billion of Customer Funds denominated in Canadian dollars

[97] Regulation 1.25(a)(1) (2005).

[98] 2011 Permitted Investments Amendment at 78781.

[99] *Id.* at 78782.

[100] *Id.*

[101] 2018 Order at 35244–35245. The 2018 Order does not address 30.7 customer funds.

[102] Condition 3(e) of the 2018 Order at 35245.

[103] Condition 3(f) of the 2018 Order at 35245.

[104] Condition 3(c) of the 2018 Order at 35245.

[105] Condition 3(d) of the 2018 Order at 35245.

[106] *See* 2011 Permitted Investments Amendment at 78782 (stating that the Commission would consider permitting foreign sovereign debt investments to the extent that: (i) the petitioner has balances in segregated accounts owed to customers or clearing member FCMs in that country's currency; and (ii) the sovereign debt serves to preserve principal and maintain liquidity of customer funds as required for all other investments of customer funds under Regulation 1.25).

[107] 17 CFR 1.25(b).

[108] Proposed Regulation 1.25(a)(1)(vi).

(''CAD''), euros (''EUR''), Japanese yen (''JPY''), and Great British pounds (''GBP'') on August 15, 2023. The $51 billion represented approximately 10 percent of the total $490 billion of Customer Funds held by FCMs in segregated accounts on August 15, 2023.[109]

Having considered the Joint Petition and analyzing the instruments' characteristics, the Commission believes that including Specified Foreign Sovereign Debt as a Permitted Investment would be consistent with the overall objectives set forth in Regulation 1.25 of preserving principal and maintaining liquidity of Customer Funds. The Joint Petition states that the Specified Foreign Sovereign Debt has credit and liquidity characteristics that are comparable to the credit and liquidity characteristics of U.S. Treasury securities. Specifically, the Joint Petition states that the credit default swaps of Canada, France, Germany, Japan, and the United Kingdom have relatively narrow spreads similar to the credit default spread of the United States.[110] With respect to liquidity, the Joint Petition states that there were substantial amounts of outstanding marketable Canadian, French, German, Japanese, and United Kingdom debt and provided data on the amount of outstanding debt in instruments with time-to-maturity of two years or less issued by each relevant jurisdiction.[111]

The Commission also analyzed the volatility of the Specified Foreign Sovereign Debt and observed, based on the available data, that the price risk of the relevant foreign sovereign debt is comparable to that of U.S. Treasury securities. Specifically, using one-year sovereign debt instruments yield data for the period September 21, 2018 to September 20, 2023, the Commission notes that the standard deviation of daily yield change for one-year U.S. Treasury bills was 9 BPS, whereas the same measure for Canadian, French, German, Japanese, and United Kingdom one-year debt instruments ranged from 1 to 7 BPS.[112] The Commission also notes that holding high-quality foreign sovereign debt may pose less risk to Customer Funds than the credit risk of commercial banks through unsecured bank demand deposit accounts.[113]

Furthermore, the Commission believes that the proposed amendments would provide FCMs and DCOs with an investment option to manage the potential foreign exchange risk that may arise in their administration and investment of Customer Funds. Specifically, the Commission notes that absent the ability to invest Customer Funds in identically-denominated sovereign debt securities, an FCM or a DCO seeking to invest customer foreign currency deposits would need to convert the currencies to a U.S. dollar-denominated asset, which would introduce potential foreign currency fluctuation risk to the FCMs and DCOs.[114]

Based on these considerations, the Commission proposes to expand the list of Permitted Investments to include Specified Foreign Sovereign Debt. To ensure that investments in Specified Foreign Sovereign Debt remain consistent with Regulation 1.25's general objectives of preserving principal and maintaining liquidity, and with the criteria specified in the 2011 Permitted Investments Amendment for adding foreign sovereign debt as a Permitted Investment, the Commission is proposing to permit the investment of Customer Funds in such debt subject to specified conditions, which are discussed below.

First, under the Proposal, an FCM or a DCO would be permitted to invest in the foreign sovereign debt of only Canada, France, Germany, Japan, and the United Kingdom.[115] The five jurisdictions are among the seven largest economies in the International Monetary Fund's classification of advanced economies.[116] Each country is also a member of the Group of 7 (''G7''), which represents the world's largest industrial democracies, and qualifies as a ''money center country'' as the term is defined in Regulation 1.49(a)(1).[117] Additionally, the currencies of the five jurisdictions represent a material portion of the total amount of non-U.S. dollar-denominated obligations that FCMs owe to customers, and amount to approximately 10 percent of the total Customer Funds held by FCMs and DCOs.[118]

Second, an FCM or a DCO would be permitted to invest in the Specified Foreign Sovereign Debt of a country only to the extent that the FCM or a DCO has balances in accounts owed to customers denominated in the country's currency.[119] Prior to the 2011 Permitted Investments Amendment, when Regulation 1.25 permitted the investment of Customer Funds in foreign sovereign debt, the regulation

[109] The $490 billion represents the U.S. dollar equivalent of the total value of margin assets held by FCMs for futures customers, Cleared Swaps Customers, and 30.7 customers as reported to CME as of August 15, 2023. The breakdown by currency was as follows: CAD 14 billion; EUR 18 billion; GBP 3 billion; and JPY 16 billion. Some of these funds may have been posted by the FCMs to DCOs as margin collateral.

[110] *See* Joint Petition at pp. 6–7.

[111] *See* Appendix A to Joint Petition and Supplement to Joint Petition at p. 1 (indicating that the outstanding debt in instruments with time-to-maturity of two years or less issued by Canada, France, Germany, Japan, and the United Kingdom, based on information available on Bloomberg as of July 11, 2023, was equal to the USD equivalence of $447 billion, $594 billion, $557 billion, $2.6 trillion, and $534 billion, respectively). *See also* Bank of International Settlements' Debt Securities Statistics (including data as of the end of 2021), available here: *https://www.bis.org/statistics/secstats.htm?m=2615* and 2021 Survey on Liquidity in Government Bond Secondary Markets, Organization for Economic Co-operation and Development, available here: *https://www.oecd-ilibrary.org/sites/b2d85ea7-en/1/4/2/index.html?itemId=/content/publication/b2d85ea7-en&_csp_=e3b7b0a57d02c41c597306342c85c8b6&itemIGO=oecd&itemContentType=book* (confirming that Specified Foreign Sovereign Debt instruments presented good liquidity characteristics in 2021).

[112] The Commission reviewed yield data available through Bloomberg, a proprietary financial data provider, for 1-year sovereign debt instruments issued by Canada, France, Germany, Japan, the United Kingdom, and the U.S.

[113] The Commission discussed the preferability from a risk management perspective of investing foreign currency in high quality foreign sovereign debt relative to the credit risk posed by unsecured demand deposit accounts at commercial banks in issuing the 2018 Order permitting DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in French and German sovereign debt. *See* 2018 Order at 35245–35246.

[114] To reach this conclusion, the Commission considered, among other factors, the daily volatility of exchange rates of the relevant currency pairs. Specifically, based on data from the Federal Reserve Bank of St. Louis' FRED database, the Commission notes that for the period from September 2018 to September 2023, the standard deviation of the daily percentage change of exchange rate between the relevant currency pairs was 0.45 percent for the CAD/USD pair, 0.46 percent for the EUR/USD pair, 0.61 percent for the GBP/USD pair, and 0.55 percent for the JPY/USD pair, indicating a currency fluctuation that is an additional risk factor with respect to the return on investment of customer foreign currency deposits in U.S. dollar-denominated assets. The Commission also recognized foreign currency fluctuation risk in the 2000 Permitted Investments Amendment, which added foreign sovereign debt to the list of Permitted Investments for the first time. *See* 2000 Permitted Investments Amendment at 78003.

[115] Proposed Regulation 1.25(a)(1)(vii).

[116] *See* Statistical Appendix to the World Economic Outlook, April 2023, International Monetary Fund, available here: *https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023.*

[117] 17 CFR 1.49(a). In the absence of customer instructions to the contrary, Regulation 1.49(c) limits permissible locations of depositories of Customer Funds to the U.S., the country of origin of the currency, and a ''money center country.'' The concept of ''money center country'' is defined to mean Canada, France, Italy, Germany, Japan, and the United Kingdom, and is intended to correspond, together with the U.S., to the list of G7 countries. *See Denomination of Customer Funds and Location of Depositories,* 68 FR 5551 (Feb. 4, 2003) at 5546.

[118] Based on data contained in the Segregation Investment Detail Reports filed by FCMs with the Commission as of August 15, 2023. The reports contain detailed listings of the Permitted Investments held by each FCM. *See* 17 CFR 1.32(f), 17 CFR 22.2(g)(5), and 17 CFR 30.7(l)(5).

[119] Proposed Regulation 1.25(a)(1)(vii)(A) and (B).

included a similar restriction.[120] As noted above, the Commission explained that an FCM or a DCO seeking to invest deposits of foreign currencies, absent the ability to invest in identically-denominated sovereign debt securities, would need to convert the foreign currencies to a U.S. dollar-denominated asset, which would increase the FCM's or DCO's exposure to foreign currency fluctuation risk.[121] The Commission believes the restriction is appropriate as it balances the need to ensure the safety of Customer Funds with the Commission's desire to provide a degree of investment flexibility to FCMs and DCOs.[122]

Third, the Commission is proposing to permit FCMs and DCOs to invest in Specified Foreign Sovereign Debt provided that the two-year credit default spread of the issuing sovereign is 45 BPS or less.[123] This condition is consistent with the 45 BPS two-year credit default spread limit specified by the Commission in the 2018 Order permitting DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in French and German sovereign debt.[124] The Commission set the cap of 45 BPS in the 2018 Order based on a historical analysis of the two-year credit default spread of the U.S. (''U.S. Spread'').[125] Forty-five BPS was, at the time, approximately two standard deviations above the mean U.S. Spread over the preceding eight years.[126]

The Commission observed that over that eight-year period of July 3, 2009 to July 3, 2017, the U.S. Spread was 45 BPS or less approximately 95 percent of the time and exceeded 45 BPS approximately 5 percent of the time. During the same period, the two-year German spread exceeded 45 BPS approximately 6 percent of the time and the two-year French spread exceeded 45 BPS approximately 25 percent of the time, with all exceedances occurring between July 2009 and September 2012, in the aftermath of the 2008 financial crisis and the European sovereign debt crisis.[127]

During the more recent period of September 21, 2018 to September 20, 2023, the U.S. Spread had a mean of approximately 16.4 BPS,[128] which was lower than the mean spread of 26.5 BPS for the July 3, 2009 to July 3, 2017 period. In that same time period, the two-year credit default swap spread of the sovereigns issuing the Specified Foreign Sovereign Debt did not exceed 45 BPS. Based on these more recent U.S. Spread and Foreign Sovereign Debt data, the Commission preliminarily believes that the cap of 45 BPS established in the 2018 Order continues to be set at an appropriate level.[129]

Under the Proposal, if the credit default spread of a subject country were to exceed the 45 BPS cap, FCMs and DCOs would not be permitted to make new investments in the country's Specified Foreign Sovereign Debt.[130] In addition, if the credit default spread exceeded the 45 BPS cap, FCMs and DCOs would be required to discontinue investing Customer Funds in that sovereign's debt through Repurchase Transactions as soon as practicable under the circumstances.[131] The FCMs or DCOs would not, however, be required to immediately divest their current investments in Specified Foreign Sovereign Debt, given the risks associated with selling assets into a potentially volatile market or having to immediately locate depositories for funds that had been invested in a Repurchase Transaction with limited notice. The prohibition on new investments would reduce the exposure to Customer Funds by avoiding the risk of default on the Specified Foreign Sovereign Debt. In situations where the 45 BPS cap is exceeded, the Commission preliminarily believes that it would be more appropriate for FCMs and DCOs to hold Customer Funds denominated in foreign currency in cash or invest the foreign currency in U.S. dollar-denominated Permitted Investments instead of Specified Foreign Sovereign Debt. In addition, the length to maturity condition discussed immediately below would mitigate price risks to the Customer Funds that might arise from a country's two-year credit default spread exceeding the 45 BPS limit.

Fourth, the Commission is proposing to limit the time-to-maturity of investments in Specified Foreign Sovereign Debt. Specifically, under the Proposal, an FCM or a DCO would be required to ensure that the dollar-weighted average time-to-maturity of its portfolio of investments in the Specified Foreign Sovereign Debt, as the average is computed under Rule 2a–7 under the Investment Company Act of 1940 (''SEC Rule 2a–7'') [132] on a country-by-country basis, does not exceed 60 calendar days.[133] Consistent with the position taken in the 2018 Order,[134] if the portfolio includes Specified Foreign Sovereign Debt instruments that have been acquired under a reverse repurchase agreement, the FCM or DCO would be permitted to use the maturity

[120] *See* 2000 Permitted Investments Amendment at 65 FR 78010, which provided in paragraph (a)(1)(vii) of Regulation 1.25 that an FCM or a DCO could invest in debt of a foreign sovereign subject to certain conditions, including that the FCM or DCO had balances owed to customers denominated in that country's currency.

[121] *Id.* at 78003.

[122] As discussed *supra,* prior to 2011, the Commission permitted an FCM or a DCO to invest Customer Funds in foreign sovereign debt subject to the condition that the FCM or DCO held balances owed to customers denominated in the currency of the foreign country. In the wake of the 2008 financial crisis, the Commission eliminated foreign sovereign debt from the list of permitted investments noting at the time that ''in many cases, the potential volatility of foreign sovereign debt in the current economic environment and the varying degrees of financial stability of different issuers make foreign sovereign debt inappropriate for hedging foreign currency risk.'' 2011 Permitted Investments Amendment at 78781. Yet it recognized that ''the safety of sovereign debt issuances of one country may vary greatly from those of another, and that investment in certain sovereign debt might be consistent with the objectives of preserving principal and maintaining liquidity, as required by Regulation 1.25.'' *Id.* at 78782. For the reasons discussed above, the Commission is proposing to reinstate certain foreign sovereign debt consistent with the Commission's expressed statement in the 2011 Permitted Investments Amendment that it would consider permitting such investments provided that the investments: (i) are limited to balances owed to customers denominated in the currency of the applicable foreign sovereign, and (ii) serve to preserve the principal and maintain the liquidity of Customer Funds. *See id.* at 78782. The Proposal is also consistent with the Commission's approach in the 2018 Order of permitting DCOs to invest in the sovereign debt of France and Germany to the extent such foreign sovereign debt satisfies specific criteria demonstrating consistency with the credit, liquidity, and volatility of short-term U.S. Treasury securities.

[123] Proposed Regulation 1.25(f)(3).

[124] Condition 3(b) of the 2018 Order at 35245.

[125] *See* 2018 Order at 35243.

[126] In 2018, the Commission reviewed the daily U.S. Spread from July 3, 2009 to July 3, 2017. Over that time period, the U.S. Spread had a mean of approximately 26.5 BPS and a standard deviation of approximately 9.72 BPS. Forty-five BPS were approximately two standard deviations above the 26.5 mean.

[127] *See* 2018 Order at 35243.

[128] Based on an assessment conducted by CFTC staff on September 20, 2023.

[129] Using the daily U.S. Spread data from July 3, 2009 to July 3, 2017 and assuming the two-year credit default spread follows a normal distribution, the Commission estimated that there was less than 2.5 percent likelihood that the U.S. credit default spread would exceed 45 BPS over a two-year period. In addition, the Commission's estimate, based on the daily U.S. Spread data from September 21, 2018 to September 20, 2023, indicates that there is less than 1 percent likelihood, under both normal and empirical distributions, that the two-year credit default swap spread of the sovereigns issuing Specified Foreign Sovereign Debt would exceed 45 BPS. Therefore, the Commission preliminarily believes that 45 BPS represents an appropriate threshold for countries whose debt may qualify as a Permitted Investment under Regulation 1.25.

[130] Proposed Regulation 1.25(f)(3)(i).

[131] Proposed Regulation 1.25(f)(3)(ii).

[132] 17 CFR 270.2a–7.

[133] Proposed Regulation 1.25(f)(1). Under the Proposal, the dollar-weighted average of the time-to-maturity would be computed pursuant to SEC Rule 2a–7 (17 CFR 270.2a–7), consistent with the general time-to-maturity provision in Regulation 1.25(b)(4)(i).

[134] 2018 Order at 35244.

of the reverse repurchase agreement to compute the dollar-weighted average time-to-maturity of the portfolio.[135] This approach takes into account the expected resale of the instruments, which would be scheduled to occur within one business day or on demand as required by Regulation 1.25(d)(6).[136] Conversely, if the FCM or DCO sells Specified Foreign Sovereign Debt instruments under a repurchase agreement, the FCM or DCO would be required to include the instruments in the calculation of the dollar-weighted average based on the remaining time-to-maturity of each instrument sold, to account for the expected repurchase of such instruments.[137] In addition, an FCM or a DCO would not be permitted to make direct investments in any Specified Foreign Sovereign Debt instrument that had a remaining maturity greater than 180 calendar days.[138]

Arguing that these restrictions, which are analogous to the restrictions in the 2018 Order, would be too limiting, the Petitioners requested that the Commission revise the regulations to provide a six-month dollar-weighted average time-to-maturity for the portfolio of foreign sovereign debt, and a maximum two-year remaining time-to-maturity for each foreign sovereign debt instrument.[139] The Commission, however, notes that the proposed restrictions are intended to ensure that an FCM's or DCO's portfolio of Specified Foreign Sovereign Debt is comprised of sovereign debt instruments that mature within a relatively short period of time. The short time-to-maturity requirement is expected to assist FCMs and DCOs in managing and mitigating potential market and/or credit risk by providing FCMs and DCOs with the option of holding the debt instruments to maturity during periods of market stress and price volatility rather than selling the debt instruments at potentially significant discounts. This option may be particularly valuable in periods of significant interest rate movements, which could exacerbate market risk in sovereign debt markets. In that regard, the Commission preliminarily views the relatively short time-to-maturity as an essential risk-managing feature in the context of investments in Specified Foreign Sovereign Debt and preliminarily believes that the 60-day dollar-weighted average time-to-maturity restriction and the 180-day remaining maturity restriction are more appropriate than the six months and two years respective limits requested in the Joint Petition.

The Commission also believes that the proposed time-to-maturity requirements would not be as limiting as asserted in the Joint Petition given that the new issuance supply of the Specified Foreign Sovereign Debt meeting the proposed restrictions appears adequate to satisfy the demand for the investment of Customer Funds in the relevant instruments.[140] In addition, the use of the maturity of reverse repurchase agreements in the calculation of the dollar-weighted average of the portfolio of investments in Specified Foreign Sovereign Debt would reduce the average time-to-maturity of the portfolio as a whole. As noted in the request for comment below, the Commission is explicitly seeking comment on its preliminary analysis.

The Commission is also proposing to amend Regulation 1.25(b)(4)(i), which provides that except for investments in MMFs, the dollar-weighted average time-to-maturity of an FCM's or a DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a–7, may not exceed 24 months. The proposed amendment would revise Regulation 1.25(b)(4)(i) to exclude Specified Foreign Sovereign Debt from the calculation of the dollar-weighted average time-to-maturity of the portfolio.[141] The Commission is proposing this amendment as Specified Foreign Sovereign Debt would be subject to its own dollar-weighted average time-to-maturity limit of 60 calendar days, which is substantially shorter than the two-year dollar-weighted average time-to-maturity requirement for the overall portfolio required by Regulation 1.25(b)(4)(i).

To allow Regulation 1.25(a)(2) to effectively incorporate Specified Foreign Sovereign Debt as a Permitted Investment that FCMs and DCOs would be able to buy or sell pursuant to Repurchase Transactions, the Commission also proposes to expand the permissible counterparties and depositories under Regulation 1.25(d)(2) and (7) to include certain foreign entities. Regulation 1.25(d)(2) limits counterparties with which an FCM or a DCO may enter into a Repurchase Transaction to a Section 3(a)(6) [142] bank, a domestic branch of a foreign bank insured by the FDIC, a securities broker or dealer, or a government securities dealer registered with the SEC or which has filed a notice pursuant to Section 15C(a) of the Government Securities Act of 1986.[143] Regulation 1.25(d)(7) further requires an FCM and a DCO to hold the securities transferred to the FCM or DCO under a reverse repurchase agreement, in a safekeeping account held with a bank as referred to in Regulation 1.25(d)(2), a Federal Reserve Bank, a DCO, or the Depository Trust Company.

As a practical matter, absent amendment to these counterparty and depository provisions, an FCMs' and DCOs' ability to buy and sell Specified Foreign Sovereign Debt pursuant to Repurchase Transactions would be restricted given that participants in the foreign sovereign debt Repurchase Transactions market are predominantly non-U.S. entities. The Commission therefore proposes to add foreign banks and foreign brokers or dealers meeting certain requirements, as well as the European Central Bank and the central banks of Canada, France, Germany, Japan, and the United Kingdom, to the list of permitted counterparties.[144] To be deemed a permitted counterparty, a foreign bank would have to qualify as a depository under Regulation 1.49(d)(3)

[135] Consistent with SEC Rule 2a–7(i)(6), the reverse repurchase agreement would be deemed to have a maturity equal to the period remaining until the date on which the resale of the underlying instruments is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the resale of the instruments. *See* proposed Regulation 1.25(f)(1).

[136] 17 CFR 1.25(d)(6).

[137] Proposed Regulation 1.25(f)(1).

[138] Proposed Regulation 1.25(f)(2).

[139] Joint Petition at pp. 5–6 (asserting that the new issuance supply of the Specified Foreign Sovereign Debt meeting the restrictions is limited and would be thinly traded/quoted).

[140] Data made available by the Bank of Canada, l'Agence France Trésor (the French Finance Agency), the Bundesrepublik Deutschland Finanzagentur (the German Finance Agency), the Japan Ministry of Finance, and the United Kingdom Debt Management Office indicate that the five jurisdictions issue a sizable amount of debt securities with time-to-maturity of less than 180 days on a frequent basis. Specifically, in July 2023, Canada auctioned approximately USD 22 billion, France auctioned approximately USD 18 billion, Germany auctioned approximately USD 10 billion, Japan auctioned approximately USD 15 billion, and the United Kingdom auctioned approximately USD 34 billion in debt instruments with time-to-maturity of six months or less (*see* Canadian Treasury bills auction results at *https://www.bankofcanada.ca/markets/government-securities-auctions/calls-for-tenders-and-results/regular-treasury-bills/;* French BTF auction history at *https://www.aft.gouv.fr/en/dernieres-adjudications*); German Bubills issuance results at *https://www.deutsche-finanzagentur.de/en/federal-securities/issuances/issuance-results* (refer to reopening of 12-month Bubills with residual maturities between three and six months); Japanese T-bills auction results at *https://www.mof.go.jp/english/policy/jgbs/auction/past_auction_results/index.html;* and United Kingdom Treasury Bill tender results at *https://www.dmo.gov.uk/data/treasury-bills/tender-results/*).

[141] Proposed revised Regulation 1.25(b)(4)(i).

[142] For a definition of Section 3(a)(6) bank, *see supra* note 51.

[143] Public Law 99–571, 100 Stat. 3208 (Oct. 28, 1986).

[144] Proposed Regulation 1.25(d)(2).

by holding regulatory capital in excess of $1 billion, and would also have to be located in a money center country as defined in Regulation 1.49(a)(1) (*i.e.,* Canada, France, Italy, Germany, Japan, and the United Kingdom) or in another jurisdiction that has adopted the currency of the permitted foreign sovereign debt. Similarly, a foreign broker or dealer would have to be located in a money center country and be regulated by a foreign financial regulator. The proposed provisions are designed to ensure that the counterparties would be regulated entities comparable to those counterparties already permitted under Regulation 1.25(d)(2), and are consistent with the counterparty conditions set forth in the 2018 Order.[145]

With respect to permitted depositories, the Commission proposes to permit Specified Foreign Sovereign Debt instruments transferred to an FCM or a DCO under a reverse repurchase agreement to be held with a foreign bank that qualifies as a permitted depository under Regulation 1.49.[146] The proposed provision is designed to ensure that any additional depositories would be comparable to those already permitted under Regulation 1.25(d)(7), and subject to the conditions for depositories in the 2018 Order.[147] The Commission notes that mandating the safekeeping of foreign securities purchased through reverse repurchase agreements with a U.S. custodian as required under the current regulation may be inefficient or impractical.

Request for Comment. The Commission seeks comment on all aspects of the Proposal relating to the expansion of the list of Permitted Investments to include Specified Foreign Sovereign Debt, including:

3. Under the Proposal, the list of Permitted Investments set forth in Regulation 1.25(a) would be expanded to include sovereign debt issued by Canada, France, Germany, Japan, and the United Kingdom, subject to specified conditions. Although these Specified Foreign Sovereign Debt instruments present credit and liquidity characteristics that are similar to those of currently Permitted Investments, such debt may also be less liquid than U.S. government securities. Do investments in Specified Foreign Sovereign Debt raise any liquidity issues or concerns? If so, please explain your responses and provide data if possible.

4. The Proposal would prohibit investments of Customer Funds in Specified Foreign Sovereign Debt if the two-year credit default swap spread of the issuing sovereign exceeds 45 BPS. Should the Commission consider a higher or lower credit default spread limit? If so, please specify the appropriate credit default spread and explain why it is necessary and appropriate. Should the investment prohibition be contingent on the breach of the 45 BPS threshold occurring a certain number of times within a specified time period or for a particular duration within a specified time period? Should there be a ''cooling-off'' period before the Specified Foreign Sovereign Debt may be used again as a Permitted Investment under Regulation 1.25? For instance, should the Specified Foreign Sovereign Debt be subject to a requirement that the CDS spread be below 45 BPS for a minimum period of time (*e.g.,* 3 months) before it could be reinstated as an eligible Permitted Investment?

5. The Proposal would limit the time-to-maturity of investments in Specified Foreign Sovereign Debt to a 60-day maximum dollar-weighted average time-to-maturity of the portfolio of investments and a 180-day maximum remaining time-to-maturity of individual direct investments. The Petitioners requested that the limits be set at six months and two years, respectively. Should the Commission consider extending the time-to-maturity limits as requested? If yes, please provide analysis and appropriate market data supporting the extension.

3. Interests in U.S. Treasury Exchange-Traded Funds

ETFs are collective investment vehicles that issue redeemable securities that are also traded at the market price on national securities exchanges.[148] The Commission proposes to add interests in ETFs to the list of Permitted Investments under Regulation 1.25, subject to specified proposed conditions discussed below.

The SEC adopted Rule 6c–11 [149] under the Investment Company Act of 1940 in 2019, creating a regulatory framework that allows ETFs meeting certain requirements to operate as investment companies under the Investment Company Act of 1940 without having to obtain an exemptive order from the SEC as previously required.[150] Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to a set investment objective and principal investment strategies.[151] Each share of an ETF represents an undivided fractional interest in the underlying assets of the ETF.[152] Similar to indexed mutual funds, many ETFs are designed to passively track a particular market index, investing in all or a representative sample of the instruments included in the index and aiming to achieve the same return as the tracked index.[153] Other ETFs are actively managed, with portfolio managers buying and selling stocks in accordance with an investment strategy rather than passively tracking an index.[154]

As an open-end management company,[155] similar to a mutual fund,[156] an ETF continuously offers its shares for sale. Unlike mutual funds, however, ETFs do not sell shares to, or redeem shares from, investors directly. Instead, ETFs issue (and redeem) shares to (and from) ''authorized participants''—market intermediaries that have a contractual arrangement with the ETF (or its distributor) and are members or participants of a clearing agency registered with the SEC—in blocks called ''creation units.'' [157] Authorized participants play a key role for ETF shares as they are the only investors that are allowed to transact directly with the ETF.[158] Authorized participants must: (i) be an SEC–registered broker or dealer or other securities market participant (such as a bank or other financial institution that is not required to register as a broker or dealer to engage in securities transactions); (ii) be a full participating member of the National Securities Clearing Corporation and the Depository Trust Company; and (iii) have entered

[145] *See* 2018 Order, Condition (e) at 35245.

[146] Proposed Regulation 1.25(d)(7).

[147] *See* 2018 Order, Condition (f) at 35245.

[148] Invesco Petition at p. 5. *See also, Exchange-Traded Funds,* 84 FR 57162 (Oct. 24, 2019) (''SEC ETFs Release'') at 57164.

[149] 17 CFR 270.6c–11 (''SEC Rule 6c–11'').

[150] *See generally* SEC ETFs Release.

[151] Invesco Petition at p. 5. *See also,* SEC ETFs Release at 57164.

[152] *Id.*

[153] *See* ''*Exchange-Traded Funds,*'' publication by FINRA, available at: *https://www.finra.org/investors/learn-to-invest/types-investments/investment-funds/exchange-traded-fund.*

[154] *Id.*

[155] Some ETFs may also be structured as unit-investment trusts. *See e.g.,* SPDR® S&P 500® ETF Trust and SPDR® Dow Jones Industrial Average ETF Trust. The regulatory framework set forth by SEC Rule 6c–11, however, applies only to ETFs that are organized as open-end management investment companies. *See* 17 CFR 270.6c–11.

[156] A ''mutual fund'' is a type of open-end management company, meaning that investors can purchase and redeem shares in the fund on a daily basis based on the NAV of their shares. Mutual funds pool the money of many investors to purchase a range of securities to meet specified investment objectives.

[157] *See* 17 CFR 270.6c–11 (defining ''exchange-traded fund'').

[158] Invesco Petition at p. 5.

into an authorized participant agreement with the ETF (and potentially other parties, such as the ETF's sponsor, distributor or transfer agent).[159]

An authorized participant may act as a principal for its own account or as an agent for others when purchasing or redeeming creation units.[160] Purchases and redemptions of ETF shares by an authorized participant are referred to as ''primary market transactions'' and occur at the next-calculated NAV. As noted above, ETF shares can also be purchased and sold in the secondary market at market prices that may reflect a discount or premium to the ETF's NAV.

As part of its periodic reassessment of the list of Permitted Investments of Customer Funds and in consideration of industry input provided by the Joint Petition and the Invesco Petition, the Commission is proposing to include shares in U.S. Treasury ETFs to the list of Permitted Investments under Regulation 1.25. More specifically, in assessing the potential expansion of the list of Permitted Investments, the Commission has considered statements emphasizing the liquidity of U.S. Treasury ETF shares and the diversification opportunity that such ETFs provide for Customer Funds. In particular, as discussed in other parts of the Proposal, the Petitioners note that U.S. Treasury ETFs have characteristics that may be consistent with those of Permitted Investments and may provide FCMs and DCOs with an opportunity to further diversify their investments of Customer Funds.[161] Similarly, the Invesco Petition focused on the fact that U.S. Treasury ETFs invest in a sub-set of the same high-quality liquid instruments that are Permitted Investments under Regulation 1.25 (*i.e.,* U.S. government securities).[162] The Invesco Petition also notes that ETFs, as registered investment companies whose shares are registered under the Securities Act and Exchange Act, must comply with a number of SEC financial reporting requirements and liquidity risk management program requirements.[163] Finally, the Invesco Petition asserts that the design and characteristics such as price and investment transparency, and intra-day trading and liquidity, are additional features that help make interests in U.S. Treasury ETFs a safe and efficient vehicle for investment of Customer Funds.[164]

Further, the Commission has taken into consideration the limited range of investments that meet the requirements of Regulation 1.25. In that regard, the Commission notes that as a result of various regulatory reforms, discussed in this **Federal Register** release, several asset classes included in Regulation 1.25 no longer qualify as Permitted Investments. In particular, as discussed in Section III.A.2. above, the range of MMFs whose securities qualify as Permitted Investments has contracted, as only interests in Permitted Government MMFs currently meet the eligibility criteria of Regulation 1.25. In addition, as discussed in Section III.A.4. below, commercial paper and corporate notes and bonds no longer qualify as Permitted Investments with the expiration of the TLGP.

Also, due to certain regulatory reforms, there has been an increased demand for high quality collateral, including for assets that currently qualify as Permitted Investments under Regulation 1.25. For example, in the aftermath of the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act,[165] which set forth a regulatory framework for swaps, requiring, among other things, the clearing of certain swaps or the margining of certain uncleared swaps. As a result, market participants dealing in swaps may be required to post to clearinghouses, or post and collect with swap counterparties, specified forms of liquid collateral, driving increased demand for assets that currently qualify as Permitted Investments.

The Commission believes expanding the range of available Permitted Investments to include interests in ETFs that meet specified conditions, as discussed below, would provide FCMs and DCOs with greater flexibility and opportunities for capital efficiency in the investment of Customer Funds, without unacceptably increasing risk to customers. Consistent with the existing regulations limiting customer risk associated with the investment of Customer Funds by FCMs and DCOs, under the terms of the Proposal, FCMs and DCOs would be financially responsible for bearing any loss on an investment of Customer Funds in an ETF in the same manner as FCMs and DCOs are financially responsible for losses incurred from the investment of Customer Funds in Permitted Investments.[166]

The Commission also believes that the proposed addition of interests in ETFs as Permitted Investments under Regulation 1.25(a) would foster innovation and promote competition in the ETF market and the financial services industry more generally, as the Proposal would permit the flow of Customer Funds into a new type of financial instrument that previously had been prohibited and, as discussed below, would offer the possibility for market participants to purchase a type of collateral that is already a Permitted Investment without having to purchase the securities directly or through a MMF.

As noted above, industry representatives and other market participants have also expressed interest in U.S. Treasury ETFs as Permitted Investments.[167] Both the Petitioners and Invesco highlight the similarity in characteristics between U.S. Treasury ETF securities and other instruments that qualify as Permitted Investments under Regulation 1.25.[168] Invesco further notes that ETFs investing in U.S. Treasury securities offer an indirect, yet simpler and more cost-efficient way, for FCMs to invest Customer Funds in such instruments, eliminating the need to identify, invest in, and administer

[159] *Id.*

[160] *See* SEC ETFs Release at 57164; *see also* David Abner, *The ETF Handbook: How to Value and Trade Exchange-Traded Funds,* 2nd ed. (2016).

[161] *See* Joint Petition at pp. 8–9.

[162] Invesco Petition at p. 2.

[163] *Id.* at pp. 6–7. Financial requirements include: (i) annual shareholder report, including audited financial statements (17 CFR 270.30e–1); (ii) semi-annual shareholder report, including unaudited financial statements (17 CFR 270.30e–1); (iii) monthly portfolio statistics and holdings filed quarterly (17 CFR 270.30b1–9); (iv) annual census report containing financial-related information (17 CFR 270.30a–1); and (v) periodic reports with respect to portfolio liquidity and derivatives use (17 CFR 270.30b1–10). With respect to liquidity risk management, SEC regulations require open-ended management investment companies, including ETFs, to adopt and implement a liquidity risk management program that is reasonably designed to assess and manage liquidity risk, which is defined to mean the risk that the fund could not meet redemption requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund (17 CFR 270.22e–4).

[164] Invesco Petition at p. 2.

[165] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, H.R. 4173).

[166] *See* Regulation 1.29(b) (providing that an FCM or a DCO, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds in Permitted Investments) and Regulations 22.2(e)(1) and 30.7(i) (providing that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and 30.7 funds, respectively, in Permitted Investments). As further discussed in Section III.C. below, the Commission is also proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for investments of Cleared Swaps Customer Collateral in Permitted Investments.

[167] They generally refer to short-term U.S. Treasury ETFs that invest at least 80 percent of their assets in U.S. Treasury securities with a remaining term to final maturity of 12 months or less.

[168] *See* Joint Petition at pp. 8–9 and Invesco Petition at pp. 9–10.

investments in individual U.S. Treasury securities.[169]

The Commission also notes that CME accepts shares of short-term U.S. Treasury ETFs as performance bond from clearing members to margin customer and house trades.[170] The Commission believes that this represents an important consideration in determining whether to add interests of U.S. Treasury ETFs to the list of Permitted Investments given that interests in U.S. Treasury ETFs that qualify as a Permitted Investment under the Proposal could ultimately be accepted by DCOs, such as CME, as performance bond, and pledged by FCMs as margin collateral.

To ensure consistency with the requirements applicable to other Permitted Investments and the general objectives of Regulation 1.25 of preserving principal and maintaining liquidity of Permitted Investments, the Commission is proposing to impose the conditions discussed below on ETFs for their interests to qualify as a Permitted Investment. The Commission preliminarily believes that to the extent ETFs meet the proposed conditions, the ETFs would be comparable to Permitted Government MMFs whose interests currently qualify as Permitted Investments under Regulation 1.25(a).[171] The Commission also notes that by allowing FCMs and DCOs to invest Customer Funds in ETFs that meet the specified proposed conditions, it would provide FCMs and DCOs with a means for investing indirectly in Permitted Investments—U.S. Treasury securities, while allowing FCMs and DCOs to dispense with the expense and resources required to manage individual investments in such instruments.

One rationale for adding ETFs investing primarily in short-term U.S. Treasury securities to the list of Permitted Investments is the similarity of the ETFs to MMFs whose interests qualify as Permitted Investments under Regulation 1.25(a). As such, the Commission preliminarily believes that it is appropriate to propose to impose all pertinent requirements applicable to MMFs under Regulation 1.25 to such ETFs, subject to certain modification to address the unique characteristics of the ETFs. Therefore, under the terms of the Proposal, an ETF would be required to satisfy specified requirements, as discussed below, to be a qualified ETF (''Qualified ETF'') whose interests qualify as a Permitted Investment.

Consistent with Regulation 1.25(c), which sets forth provisions for MMFs whose interests qualify as Permitted Investments, a Qualified ETF would be required to be an investment company that is registered under the Investment Company Act of 1940 with the SEC and that holds itself out to investors as an ETF under SEC Rule 6c–11.[172] The ETF would also be required to be sponsored by a federally regulated financial institution, a Section 3(a)(6) bank,[173] an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the FDIC.[174]

In addition, the Commission is proposing to limit Qualified ETFs to funds that are passively managed and seek to replicate the performance of a published short-term U.S. Treasury security index.[175] For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury.[176] Consistent with this condition, the Commission is further proposing to require that the eligible U.S. Treasury securities represent at least 95 percent of the ETF's investment portfolio. In that regard, the Commission notes that pursuant to SEC requirements,[177] certain registered investment companies, including ETFs, must adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus suggested by the fund's name.[178]

The Commission, however, preliminarily believes that a stricter standard is necessary to help ensure that FCMs and DCOs invest Customer Funds in accordance with Regulation 1.25's general objectives of preserving principal and maintaining liquidity. The Commission's preliminary analysis indicates that short-term U.S. Treasury ETFs generally invest at least 95 percent of their assets in securities comprising the U.S. Treasury securities index whose performance the funds seek to replicate. As such, the Commission preliminarily believes that mandating that a Qualified ETF invest a minimum of 95 percent of its assets in eligible U.S. Treasury securities would not be overly restrictive. [179] To ensure compliance with the proposed condition, FCMs and DCOs would be required to monitor the Qualified ETF's portfolio. If the portion of the ETF's assets invested in eligible U.S. Treasury securities falls below 95 percent of the fund's total assets, the FCM or DCO would not be permitted to make additional investments of Customer Funds in the ETF. The FCM or DCO would also be expected to take reasonable actions to divest interests in the fund, while managing Customer Funds in a manner consistent with Regulation 1.25's general objectives of preserving principal and maintaining liquidity. Depending on the market conditions, such actions may include taking steps to progressively reduce the

[169] Invesco Petition at p. 11. Invesco states that an ETF would allow FCMs and DCOs to gain exposure to short-term U.S. Treasury securities without buying and selling Treasury securities on a periodic basis, such as each quarter, eliminating the costs associated with trading Treasury securities.

[170] CME Advisory Notice, *Modifications to Schedule of Acceptable Performance Bond—Addition of Short-Term U.S. Treasury ETFs* (Aug. 2, 2022) (''2022 CME Advisory Notice''), available at *https://www.cmegroup.com/notices/clearing/2022/08/Chadv22-293.pdf* (providing that acceptable ETFs must track a U.S. Treasury index and must have a minimum 80 percent investment in U.S. Treasury securities with a time to maturity of 1 year or less).

[171] The Commission notes that SEC Rule 2a–7, which applies to MMFs, restricts the types of investments in which MMFs can invest their assets, limits the terms of the investments, and imposes liquidity requirements with respect to the investments, among other things. *See* 17 CFR 270.2a–7(d)(2) (providing that MMFs must limit their portfolio investments to U.S. dollar-dominated securities that at the time of acquisition are eligible securities), 17 CFR 270.2a–7(d)(1) (limiting the terms of maturity of MMFs' investments), and 17 CFR 270.2a–7(d)(4) (providing that MMFs must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions and setting forth other liquidity requirements). Although SEC Rule 2a–7 does not apply to ETFs, as described below, this Proposal would admit as a Permitted Investment only ETFs providing investors with substantial protections that are comparable, though not identical, to those afforded to MMF investors.

[172] Proposed Regulation 1.25(c)(1).

[173] For a definition of Section 3(a)(6) bank, *see supra* note 51.

[174] Proposed Regulation 1.25(c)(2), as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

[175] Proposed revised Regulation 1.25(a)(1)(vi).

[176] *Id.*

[177] SEC Rule 35d–1 under the Investment Company Act of 1940 (indicating that a fund name suggesting that the fund focuses its investments in a particular type of investments or in investments in a particular industry would be a materially deceptive and misleading name unless the fund has adopted a policy to invest, under normal circumstances, at least 80 percent of the value of its assets in the particular type of investments or in investments in the particular industry suggested by the fund's name). 17 CFR 270.35d–1.

[178] Proposed Regulation 1.25(c)(8)(ii).

[179] The Commission considered proposing to require that Qualified ETFs invest at least 99.5 percent of their assets in eligible U.S. Treasury securities to reflect an analogous condition in SEC Rule 2a–7 requiring that government MMFs invest at least 99.5 percent of their assets in government securities. The Commission, however, preliminarily believes that such threshold would be more restrictive in the context of Qualified ETFs, given that an eligible U.S. Treasury security would be defined as a bond, note, or bill with a remaining maturity of 12 months or less, issued or unconditionally guaranteed by the U.S. Department of the Treasury, whereas a government security is broadly defined in SEC Rule 2a–7 (by reference to 15 U.S.C. 80a–2(a)(16)) to include U.S. government securities and U.S. agency obligations.

amount of Customer Funds invested in ETFs instead of immediately divesting the investments in a potentially volatile market.

The Commission preliminarily believes that limiting the investments of Qualified ETFs as proposed would increase the safety and resilience of the ETFs [180] and allow the funds to more closely match the risk profile of Permitted Investments, including Permitted Government MMFs. Also, Qualified ETFs that maintain portfolios primarily comprised of high-quality and liquid investments are better able to redeem interests without placing excessive downward pressure on the NAVs.

In addition, the agreement pursuant to which an FCM or a DCO acquires and holds its interest in the Qualified ETF would be prohibited from containing provisions that would prevent the pledging of the Qualified ETF's shares.[181] FCMs and DCOs would be required to maintain confirmations relating to their purchase of interests in a Qualified ETF in their records in accordance with Regulation 1.31 and note the ownership of the interests (by book-entry or otherwise) in the FCMs' and DCOs' custody account in accordance with Regulation 1.26.[182] FCMs and DCOs would be required to obtain the acknowledgment letter required by Regulation 1.26 from an entity that has substantial control over the ETF interests purchased with Customer Funds and that has the knowledge and authority to facilitate redemption and payment or transfer of the Customer Funds. Such entity may be the sponsor of the Qualified ETF or a depository acting as custodian for the ETF interests.

Also, the NAV for the Qualified ETF would be required to be computed by 9 a.m. of the business day following each business day and made available to FCMs or DCOs, as applicable, by that time.[183] The Commission notes that this proposed requirement is intended to allow for the valuation of the Qualified ETF's investment portfolio to be available by 9 a.m. the business day following an investment in the ETF, so that the valuation is available in time for FCMs to perform their daily segregation calculations, which are required to be completed by noon each business day, reflecting balances as of the close of business on the previous business day.[184]

Further, the Qualified ETF would be required to be legally obligated to redeem its interests and make payment in satisfaction of the interests by the business day following a redemption request.[185] FCMs or DCOs, as applicable, would be required to retain documentation demonstrating compliance with this requirement.[186] Regulation 1.25(c)(5)(ii) currently provides an exception to the next-day redemption obligation for MMFs for defined extraordinary circumstances, such as the non-routine closures of the Fedwire or applicable Federal Reserve Banks, and any period during which the SEC by order restricts redemptions for the protection of security holders in the fund. Regulation 1.25(c)(5)(ii) was adopted by the Commission to be consistent with Section 22(e) of the Investment Company Act of 1940 [187] and SEC Rule 22e–3,[188] which provides exceptions to MMFs for next-day redemptions.[189] The Commission is not proposing to adopt next-day redemption exceptions for Qualified ETFs as no comparable provisions are provided under the rules of the SEC, and in recognition that the redemption process for ETFs involves the exchange of ETF share for cash by authorized participants. As noted below, the Commission is seeking comment on the potential existence of extraordinary circumstances that may warrant an exception to the proposed next-day redemption requirement.

The Commission preliminarily believes that limiting, as discussed above, Qualified ETFs to funds that track the performance of a published short-term U.S. Treasury security index would contribute to facilitating redemptions of Qualified ETFs' shares to be completed within one business day consistent with Regulations 1.25(c)(5)(i) and 1.25(b)(1).[190]

As previously discussed, ETFs issue and redeem their shares with authorized participants in primary market transactions in blocks of shares or ''creation units'' at the NAV per share. Redemptions may be in cash or in kind. Authorized participants and the general public can also purchase and sell ETF shares in the secondary market at the market price per share. The Commission preliminarily believes that FCMs and DCOs are likely to purchase and redeem the shares of a Qualified ETF through primary market transactions intermediated by authorized participants rather than purchasing and selling the ETF shares in the secondary market, because the price of the shares in the secondary market may differ from the NAV, and the sale of the shares in the secondary market may delay the liquidation of the instruments.

The Commission notes that an FCM's or a DCO's purchase or redemption of Qualified ETF shares through intermediated transactions with authorized participants raises two concerns. First, if an FCM or a DCO invests Customer Funds in shares of a Qualified ETF by purchasing the shares through an authorized participant, the FCM or DCO would need to take Customer Funds out of the segregated account maintained in compliance with Section 4d of the Act and/or Part 30 of the Commission's regulations to

[180] The Commission notes that a preliminary analysis of ETFs investing primarily in short-term U.S. Treasury securities indicates that the funds have a risk profile and volatility characteristics that are comparable to that of the underlying U.S. Treasury security investments. Specifically, using data available on Bloomberg, the Commission notes that for the period June 2020–September 2023, the Invesco Collateral Treasury ETF, as well as four other short-term U.S. Treasury ETFs that CME accepts as performance bond—SPDR® Bloomberg 1–3 Month T-Bill ETF, Goldman Sachs Access Treasury 0–1 Year ETF, iShares 0–3 Month Treasury Bond ETF, and iShares Short Treasury Bond ETF—had a standard deviation for a two-day period of risk of approximately 6 BPS, whereas the one-year U.S. Treasury securities had a standard deviation of 8 BPS for the same period.

[181] Paragraph (c)(6) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

[182] Paragraph (c)(3) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

[183] Paragraph (c)(4) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

[184] 2000 Permitted Investments Amendment at 78003.

[185] Paragraph (c)(5)(i) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

[186] *Id.*

[187] 15 U.S.C. 80a–22(e).

[188] 17 CFR 270.22e–3.

[189] Regulation 1.25(c)(5)(ii) was originally adopted in 2005. *See* 2005 Permitted Investments Amendment at 28196. It codified a 2001 letter issued by the Commission's Division of Trading and Markets in response to an industry inquiry, stating that the division would raise no issue in connection with MMFs that provide for certain exceptions to the next-day redemption requirement. *Id.* As specified in the 2001 letter, the circumstances in which the next-day redemption could be excused overlapped to a certain extent with those contained in Section 22(e) of the Investment Company Act of 1940. *See* CFTC Staff Letter No. 01–31, [2000–2002 Transfer Binder] Comm. Fut. L. Rep. (CCH)] 28,521 (Apr. 2, 2001). In 2011, the Commission revised Regulation 1.25(c)(5)(ii) to more closely align the language of that regulation with Section 22(e) and to expressly incorporate SEC Rule 22e–3. *See* 2011 Permitted Investments Amendment at 78789.

[190] *See* 17 CFR 1.25(c)(5) (providing that MMFs must be legally obligated to redeem their interests and to make payment in satisfaction of the interests by the business day following a redemption request) and 17 CFR 1.25(b)(1) (providing that Permitted Investments must be ''highly liquid'' such that the investments have the ability to be converted into cash within one business day without material discount in value).

purchase the ETF shares.[191] As a result, customer segregated accounts may not be fully funded, thus potentially violating Commission regulations that require FCMs to maintain, at all times, in the segregated account, money, securities and property in an amount that is at least sufficient in the aggregate to cover their total obligations to all customers.[192] Also, the transfer of Customer Funds to the authorized participant may be in contravention of Commission regulations that provide that Customer Funds may only be deposited with a bank or trust company, a DCO, or another FCM.[193] Second, if an FCM or a DCO uses an unaffiliated authorized participant to redeem its Qualified ETF shares, the redemption of the ETF shares may be protracted, preventing the redemption and liquidation of the shares to occur within one business day, as required by Regulation 1.25.

To address these two concerns, the Commission proposes to require an FCM or a DCO that invests Customer Funds in the shares of a Qualified ETF to be an authorized participant of the ETF.[194] The Commission believes that this approach would permit Customer Funds to be maintained in a segregated account in accordance with Section 4d or Part 30, as applicable, with a permitted depository (*i.e.,* a bank, trust company, DCO, or another FCM), given that the Customer Funds would not need to be transferred to an authorized participant unaffiliated with the FCM or DCO. In addition, because an FCM or a DCO acting as an authorized participant would be able to redeem the shares without relying on a separate authorized participant, the Commission believes that the FCM or DCO would be able to better manage completing the redemption and liquidation of the Qualified ETFs shares within one business day, as required by Regulation 1.25.

The Commission, however, understands that FCMs and DCOs may have access to other means of purchasing or liquidating interest in ETFs. For instance, an FCM or a DCO may be able to acquire interests in an ETF on a delivery-versus-payment basis through a securities broker or dealer at price equal to the next calculated NAV amount per share or another agreed-upon price that approximates the last calculated NAV. Similarly, an FCM or a DCO may be able to sell Qualified ETF shares to a broker or dealer willing to buy them at a price corresponding to the NAV amount per share and later redeem them from the fund. To be able to assess the feasibility of such arrangements and the potential associated risks, the Commission requests additional information on the availability and functioning of alternative mechanisms of purchasing and liquidating Qualified ETF interests in a manner compliant with Regulation 1.25 and compliant with the segregation requirements for Customer Funds.

The Commission is also proposing that Qualified ETFs be required to redeem their shares in cash.[195] The Commission understands that ETFs typically redeem interests in kind, although they may also redeem in cash or both in kind and in cash. The Commission also notes that CME, in announcing its acceptance of short-term U.S. Treasury ETFs as performance bond, stated that it would accept short-term U.S. Treasury ETFs that redeem their shares in cash or in kind.[196] As discussed above, the Commission is requiring that Qualified ETFs redeem their shares within one business day following the submission of the redemption request, consistent with the time limit for redemptions applicable to MMFs under Regulation 1.25(c)(5). In addition, under Regulation 1.25(c)(1), the shares of Qualified ETFs, as a Permitted Investment, would be required to be convertible into cash within one business day without material discount in value. As such, given these time limits for the redemption and liquidation of Qualified ETF shares, the Commission is proposing to require Qualified ETFs to redeem their shares in cash because in-cash redemptions may allow for a more expeditious liquidation of the shares than in-kind redemptions.

In this regard, the Commission notes that in-kind redemptions may introduce a time lag between the redemption of the ETF shares and the ultimate liquidation of the shares, as the assets received in in-kind redemptions would need to be sold or otherwise converted into cash to complete the liquidation of the ETF shares, hindering the ability to liquidate the ETF shares within one business day, as required by Regulation 1.25(b)(1). As such, the Commission is proposing to require that Qualified ETFs redeem their shares only in cash. The Commission, however, is requesting information on the availability and functioning of potential mechanisms or arrangements that may allow FCMs and DCOs to liquidate a Qualified ETF's shares in a manner compliant with Regulation 1.25 and the segregation requirements if the fund's interests were redeemed in kind.

The Commission is also proposing to require, as a condition for qualification as a Permitted Investment, that Qualified ETFs be acceptable by a DCO as performance bond from clearing members to margin customer trades.[197] Although qualification as acceptable collateral by a DCO is not determinative of qualification as a Permitted Investment, the Commission preliminarily believes that limiting Qualified ETFs to funds that have met a DCO's criteria of eligibility as performance bond represents an additional safeguard. In addition, as noted above, the possibility that ETF shares could be pledged by an FCM as margin collateral is an important consideration for the Commission in determining whether to add the interests of ETFs to the list of Permitted Investments.

In order to add the interests of Qualified ETFs to the list of Permitted Investments under Regulation 1.25, the Commission is proposing to add paragraph (vi) to Regulation 1.25(a)(1), as redesignated to accommodate other amendments to the list of Permitted Investments pursuant to this Proposal. Paragraph (vi) would identify interests in U.S. Treasury exchange-traded funds as a Permitted Investment. The Commission also proposes further conforming changes throughout Regulation 1.25. Section III.A.2. above provides for the replacement of ''money market mutual fund'' or ''money market mutual funds'' with ''government money market fund'' or ''government money market funds'' throughout Regulation 1.25. The Commission proposes, unless otherwise discussed below, to insert next to the term

[191] *See* 7 U.S.C. 6d (setting forth segregation requirements for FCMs' futures customer funds); *see also* 17 CFR 1.20(a) (providing that FCMs must separately account for futures customer funds and segregate such funds as belonging to their futures customers) and 17 CFR 1.20(g) (providing that DCOs must separately account for and segregate futures customer funds as belonging to futures customers); 17 CFR 22.2 (providing that FCMs must segregate Cleared Customer Collateral) and 17 CFR 22.3 (requiring that DCOs segregate Cleared Customer Collateral); and 17 CFR 30.7(b) (providing that FCMs must deposit 30.7 funds under an account name that clearly identifies the funds as belonging to 30.7 customers).

[192] 17 CFR 1.20(a), 17 CFR 22.2(f), and 17 CFR 30.7(a).

[193] 17 CFR 1.20(b), 17 CFR 22.2(b) and 17 CFR 30.7(b). With respect to 30.7 customer funds, Regulation 30.7(b) also permits funds to be deposited with the clearing organization of any foreign board of trade, a member of any foreign board of trade, or such member's or clearing organization's designated depositories. 17 CFR 30.7(b).

[194] Proposed paragraph (c)(8) of Regulation 1.25.

[195] Proposed Regulation 1.25(c)(8)(i).

[196] 2022 CME Advisory Notice at 1.

[197] Proposed Regulation 1.25(c)(8)(iii).

''government money market fund'' or ''government money market funds,'' the term ''U.S. Treasury exchange-traded fund'' or ''U.S. Treasury exchange-traded funds,'' as appropriate, preceded by an appropriate conjunction (*i.e.,* ''or'' or ''and''), as necessary.

To incorporate the condition that a Qualified ETF must be an investment company that is registered under the Investment Company Act of 1940 with the SEC and holds itself out to investors as an ETF under SEC Rule 6c–11, the Commission proposes to revise Regulation 1.25(c)(1) to provide that, ''The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a government money market fund, in accordance with 270.2a–7 of this title, or an exchange-traded fund, in accordance with 270.6c–11 of this title.''

Moreover, to incorporate the requirement that an FCM or a DCO investing in a Qualified ETF must be an authorized participant, the Commission proposes to revise Regulation 1.25(c) to add paragraph (8), which would provide, ''Interests in U.S. Treasury exchange-traded funds will qualify as a Permitted Investment under Regulation 1.25(a) if the interests are redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis.''

To account for the possibility that, as part of their investment strategy and within the limits of applicable SEC rules, Qualified ETFs may engage in derivatives transactions, the Commission is also proposing to amend Regulation 1.25(b)(2)(i) to indicate that the prohibition of investments containing embedded derivatives would not apply to Qualified ETFs.

Finally, the Commission is proposing to amend Regulation 1.25(b)(4)(i), which provides that except for investments in MMFs, the dollar-weighted average time-to-maturity of an FCM's or a DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a–7, may not exceed 24 months. The proposed amendment would revise Regulation 1.25(b)(4)(i) to exclude Qualified ETFs from the calculation of the dollar-weighted average time-to-maturity of the portfolio of Permitted Investments.[198] The Commission is proposing this amendment as interests in Qualified ETFs do not have maturity dates, as the Qualified ETF manages the rolling of maturing U.S. Treasury securities into new investments.

Request for Comment: The Commission seeks comment on all aspects of the Proposal relating to the expansion of the list of Permitted Investments to include interests in ETFs subject to the specified conditions discussed above, including:

6. For the interests of ETFs to be deemed a Permitted Investment, the ETFs would have to satisfy requirements similar to the requirements that apply to Government MMFs whose interests qualify as Permitted Investments. Is it appropriate to apply the regulatory framework that applies to Government MMFs to ETFs for determining whether an ETF would be deemed a Qualified ETF and interests in the ETF be deemed a Permitted Investment? To the extent some aspects of the regulatory framework applicable to MMFs is not appropriate for ETFs, please specify and explain why.

7. The Proposal to add interests in Qualified ETFs to the list of Permitted Investments provides that only the interests of ETFs that are passively managed and seek to replicate the performance of a published short-term U.S. Treasury security index by investing in a limited set of instruments would qualify as Permitted Investments. The Commission notes that the types of investments in which Qualified ETFs and Permitted Government MMFs would be permitted to invest under the Proposal would differ in that Qualified ETFs' investments would be determined by its investment strategy seeking to replicate the performance of a public short-term U.S. Treasury index and a requirement that the Qualified ETFs invest 95 percent or more of their assets in U.S. Treasury securities that are components of the index, whereas government MMFs would be required to invest 99.5 percent or more of their assets in cash, government securities (defined in 15 U.S.C. 80a–2(a)(16) to broadly include U.S. Treasury securities and U.S. agency securities), and/or Repurchase Transactions that must be collateralized fully, consistent with the definition of government money market funds under SEC Rule 2a–7. Should the Commission further limit the types of underlying instruments in which a Qualified ETF would be permitted to invest? If so, what criteria should be applied to determine the appropriate limitations? Should the Commission permit Qualified ETFs to invest a lower or higher percentage of their assets in short-term U.S. Treasury securities that are components of the index than the proposed 95 percent? If so, what percentage should the Commission consider and why? Also, should the Commission reconcile the types of investments in which Qualified ETFs and Permitted Government MMFs would be permitted to invest by allowing Qualified ETFs to invest in the same investments as Permitted Government MMFs?

8. Under the Proposal, Qualified ETFs would not be precluded from undertaking Repurchase Transactions. Does an ETF engaging in Repurchase Transactions with fund assets have the potential to adversely impact an authorized participant's ability to redeem interest in the fund in exchange for cash? Does an ETF engaging in Repurchase Transactions present other issues that would delay the ability of an authorized participant to redeem interest in the fund in cash? Could the potential delay prevent completing redemptions and liquidation of the ETF shares within one business day, as required by Regulation 1.25? Should Qualified ETFs be prohibited from undertaking Repurchase Transactions given the possible risk of delay in redemptions?

9. The Proposal would require that FCMs or DCOs that invest Customer Funds in interests of Qualified ETFs be authorized participants in order to address concerns that during purchase or redemption of ETF shares, Customer Funds might be moved to an account not held by an appropriate depository of customer segregated funds (*i.e.,* a bank, trust company, DCO or FCM) without a contemporaneous deposit of ETF shares or cash in customer segregated accounts, resulting in the FCM or DCO being undersegregated. Are there alternative approaches other than requiring FCMs or DCOs to be authorized participants that could address or mitigate the Commission's concerns? Can DCOs be authorized participants of Qualified ETFs? If not, are there alternatives that would permit DCOs to invest Customer Funds in Qualified ETFs consistent with the requirements of Regulation 1.25 and the Commission's segregation requirements?

10. The Commission understands that interests in short-term U.S. Treasury ETFs may be redeemed in cash or in kind. The Commission is proposing to require that the shares of a Qualified ETF be redeemable only in cash given the concern that in-kind redemptions may not permit the liquidation of the

[198] Proposed revised Regulation 1.25(b)(4)(i).

ETF shares within one business day, as required by Regulation 1.25(b)(1). If the Commission were to allow shares of Qualified ETFs to be redeemable in kind, would the Qualified ETF's interests have the ability to be liquidated within one business day as required by Regulation 1.25(b)(1)? What mechanisms or arrangements exist that may allow FCMs and DCOs to convert Qualified ETF shares into cash within one business day without material discount in value if redemptions occur in kind? Are there any potential risks associated with such mechanisms and arrangements that the Commission should consider? Is there an alternative approach to address the Commission's concerns that would permit the use of in-kind redemptions and also provide FCMs and DCOs with access to cash for the redemptions within one business day? Does the proposed requirement that the Qualified ETF invest 95 percent or more of its total assets in short-term U.S. Treasury securities help ensure that FCMs and DCOs will be able to liquidate securities received from an in-kind redemption within one business day? Does the proposed requirement that an FCM or a DCO must be an authorized participant help ensure that the FCM or DCO has the internal operational capability and resources to liquidate in-kind redemptions in a manner and time-frame compliant with Regulation 1.25 requirements?

11. As noted, the Commission is proposing to require that interests in Qualified ETFs be redeemable in cash within one business day. Are there any extraordinary circumstances, similar to the events listed in Regulation 1.25(c)(5)(ii) with respect to MMFs, that may justify an exception to the proposed next-day redemption requirement? If so, please specify what redemption exceptions are necessary, and explain why the exceptions are necessary. Also address potential impacts to customers if Qualified ETFs do not redeem within one business if exceptions were provided.

12. Does the Proposal to add Qualified ETFs to the list of Permitted Investments under Regulation 1.25, along with the continued inclusion of MMFs, have the potential to reduce the availability of funds from the banking system in a manner that would raise any financial stability concerns? Could the use of Repurchase Transactions by MMFs and ETFs exacerbate any financial stability issues that may exist?

13. The Proposal would require that a Qualified ETF must be a passively managed fund that seeks to replicate the performance of a published short-term U.S. Treasury security index composed of bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Should the Commission impose conditions or requirements that a publisher of an ETF index must meet or satisfy in order for the ETF to be a Qualified ETF? If so, what conditions or requirements should the Commission impose, and why?

14. Regulation 1.25(b)(5)(ii) currently provides that an FCM or a DCO may invest Customer Funds in a fund affiliated with that FCM or DCO. Should the Commission revise Regulation 1.25(b)(5)(ii) to prohibit an FCM or a DCO from investing Customer Funds in affiliated funds? Are there other Commission or SEC rules that mitigate any potential conflicts of interest that may arise from an FCM or a DCO investing Customer Funds in affiliated funds?

4. Investments in Commercial Paper and Corporate Notes or Bonds

The Commission originally approved commercial paper and corporate notes as Permitted Investments for FCMs and DCOs in 2000.[199] The Commission subsequently revised the list of Permitted Investments in 2005 to include corporate bonds.[200]

In 2007, the Commission's Division of Clearing and Intermediary Oversight conducted a review of the use of Permitted Investments by FCMs and DCOs.[201] The review indicated that commercial paper and corporate notes and bonds were not widely used by FCMs and DCOs. In 2011, in an effort to simplify Regulation 1.25 by eliminating rarely-used instruments and in consideration of the Commission's concerns that corporate debt securities posed credit, liquidity and market risks, the Commission revised Regulation 1.25 to provide that an FCM or a DCO may invest Customer Funds in commercial paper and corporate notes and corporate bonds only if the debt instruments were guaranteed by the TLGP.[202]

The TLGP expired in 2012, and, therefore, commercial paper, corporate notes, and corporate bonds are no longer Permitted Investments under the terms of Regulation 1.25.[203] Accordingly, the Commission is proposing to remove commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments.

5. Investments in Permitted Investments With Adjustable Rates of Interest

Regulation 1.25(b)(2)(iv)(A) provides that Permitted Investments may contain variable or floating rates of interest provided, among other things, that: (i) the interest payments on variable rate securities correlate closely, and on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed Permitted Investment under Regulation 1.25(a);[204] and (ii) the interest rate, in any period, on floating rate securities is determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR,[205] or the interest rate of any fixed rate instrument that is a listed Permitted Investment under Regulation 1.25(a).[206]

LIBOR has been used extensively as a reference rate in various commercial and financial contracts, including corporate and municipal bonds, commercial loans, floating rate mortgages, asset-backed securities, consumer loans, and interest rate swaps and other derivatives.[207] The U.K. Financial Conduct Authority, however, announced on March 5, 2021 that LIBOR would cease to be published and would effectively be discontinued.[208]

[199] *See* 2000 Permitted Investments Amendment at 78010.

[200] *See* 2005 Permitted Investments Amendment at 28200.

[201] 2011 Permitted Investments Amendment at 78776.

[202] *Id.* at 78779.

[203] *Temporary Liquidity Guarantee Program,* available at *https://www.fdic.gov/Regulations/resources/tlgp/index.html* (''Under the [Debt Guarantee Program], the FDIC guaranteed in full, through maturity or June 30, 2012, whichever came first, the senior unsecured debt issued by a participating entity between October 14, 2008, and June 30, 2009. In 2009, the issuance period was extended through October 31, 2009. The FDIC's guarantee on each debt instrument was also extended in 2009 to the earlier of the stated maturity date of the debt or December 31, 2012.'').

[204] 17 CFR 1.25(b)(2)(iv)(A)(*1*).

[205] For simplicity, subsequent references to ''one-month or three-month LIBOR rate'' will be referred to as LIBOR unless otherwise required by the context of the discussion.

[206] 17 CFR 1.25(b)(2)(iv)(A)(*2*).

[207] *Staff Statement on LIBOR Transition,* SEC Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant (July 12, 2019), available at *https://www.sec.gov/news/public-statement/libor-transition.*

[208] *See* CFTC Staff Letter No. 21–26, *Revised No-Action Positions to Facilitate an Orderly Transition of Swaps from Inter-Bank Offered Rates to Alternative Benchmarks* (Dec. 20, 2021) (''Staff Letter 21–26''), (More specifically, the U.K. Financial Conduct Authority, which regulates ICE Benchmark Administration Limited, the administrator of ICE LIBOR, confirmed that LIBOR

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This announcement had been anticipated given the loss of confidence in LIBOR as a reliable benchmark following a number of enforcement actions concerning attempts to manipulate the benchmark.[209]

The Federal Reserve Bank of New York convened the Alternative Reference Rate Committee (''ARRC'') in 2014 to identify best practices for U.S. alternative reference rates and best practices for contract robustness, to develop an adoption plan, and to create an implementation plan with metrics of success and a timeline.[210] In June 2017, the ARRC identified SOFR, a broad Treasury repurchase agreements financing rate, as the preferred alternative benchmark to USD LIBOR for certain new USD derivatives and financial contracts.[211] SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the Repurchase Transaction market used by financial institutions, governments, and corporations.[212] SOFR is calculated as a volume-weighted median of transaction-level triparty repo data collected from the Bank of New York Mellon as well as data on bilateral U.S. Treasury Repurchase Transactions cleared through the Fixed Income Clearing Corporation.[213] The Federal Reserve Bank of New York, in cooperation with the U.S. Office of Financial Research, publishes SOFR by 8:00 a.m. each business day.[214]

In response to the anticipated termination of the publication of LIBOR and the increasing acceptance and use of SOFR as a benchmark interest rate, MPD issued Staff Letter 21–02 on January 4, 2021.[215] Staff Letter 21–02 provides that MPD would not recommend enforcement action to the Commission if an FCM invested Customer Funds in Permitted Investments that contain adjustable rates of interest benchmarked to SOFR. Staff Letter 21–02 was a time-limited no-action position that was to expire on December 31, 2022. MPD and DCR, however, subsequently issued a joint letter, Staff Letter 22–21, extending the effective date of the no-action position to December 31, 2024, and expanding the scope of the no-action position to include Permitted Investments made by DCOs.[216]

Given the discontinuation of the publishing of LIBOR and the increasing use of SOFR, the Commission is proposing to amend Regulation 1.25(b)(2)(iv)(A) by replacing LIBOR with SOFR as a permitted benchmark for Permitted Investments that contain an adjustable rate of interest. To give effect to this revision, paragraphs (b)(2)(iv)(A)(1) and (2) of Regulation 1.25 would be amended to replace the phrase ''one-month or three-month LIBOR rate'' with the phrase ''SOFR rate.'' These proposed amendments would be consistent with the Commission's intent of providing FCMs and DCOs with a certain degree of flexibility in selecting Permitted Investments with adjustable rates of interest, while also recognizing changes in the market.[217] The Commission preliminarily believes that the replacement of LIBOR with SOFR advances the objective of Regulation 1.25 of preserving principal and maintaining liquidity by requiring the use of reliable benchmarks in the qualification as Permitted Investments.

Request for Comment: The Commission seeks comment on all aspects of the Proposal to eliminate LIBOR as a permitted benchmark, including:

15. The ARRC has identified SOFR as a preferred alternative reference interest rate to LIBOR. Should the Commission consider other additional interest rates beyond SOFR as permitted benchmarks for adjustable rate securities under Regulation 1.25? If so, please explain why such interest rates would be appropriate benchmarks.

16. The Commission is proposing to amend Regulation 1.25(b)(2)(iv) to permit SOFR as a benchmark for interest payments on variable rate securities or floating rate securities that are otherwise Permitted Investments under Regulation 1.25. Should the Commission reference a particular SOFR rate to provide greater certainty and clarity as to the acceptable benchmark? For instance, should the reference be to the overnight SOFR rate published by the Federal Reserve Bank of New York, to a CME Term SOFR Rate, or to another published SOFR rate? Please explain your answer.

6. Investments in Certificates of Deposit Issued by Banks

Regulation 1.25(a)(1)(iv) permits FCMs and DCOs to invest Customer Funds in certificates of deposit (''CDs'') issued by a Section 3(a)(6) bank or a domestic branch of a foreign bank that carries deposits insured by the FDIC (''bank CDs''). To qualify as a Permitted Investment under Regulation 1.25, a bank CD must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to accrued interest earned according to the written terms of the CD agreement.[218]

The Commission's experience has been, however, that FCMs and DCOs do not select bank CDs as an investment option. In addition to the Commission's general experience in overseeing DCOs and FCMs, Commission staff also reviewed Segregation Investment Detail Reports (''SIDR Reports'') filed by FCMs for the period September 15, 2022 through February 15, 2023 and noted no FCMs reporting investment of Customer Funds in bank CDs.[219]

The Commission believes that bank CDs are consistent with the overall objective of Regulation 1.25 that all Permitted Investments must preserve principal and maintain liquidity of the Customer Funds. In this regard, and as noted above, Regulation 1.25(b)(2)(v) provides that in order to qualify as a

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would either cease to be provided by any administrator or would no longer be representative for the 1-week and 2-month USD LIBOR settings, immediately after December 31, 2021, and for all other USD LIBOR settings immediately after June 30, 2023). As noted *supra,* CFTC Staff Letters are available at the Commission's website, *www.cftc.gov.*

[209] *See e.g., In re Barclays PLC,* CFTC Docket No. 12–25 (June 27 2012); *In re UBS AG,* CFTC Docket No. 13–09 (Dec. 19, 2012).

[210] Staff Letter 21–26 at p. 3.

[211] ARRC, ''*The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,*'' June 22, 2017, available at *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf.*

[212] *See* Secured Overnight Financing Rate Data, published by the Federal Reserve Bank of New York (''FRBNY'') and available at *https://apps.newyorkfed.org/markets/autorates/sof.*

[213] *Id.*

[214] *See* Additional Information about the Treasury Repo Reference Rates, published by the FRBNY and available at *https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information.*

[215] *See supra* note 60.

[216] *See id.*

[217] *See* 2005 Permitted Investments Amendment at 28192, where the Commission stated that it is appropriate to afford latitude in establishing benchmarks for Permitted Investments to enable FCMs and DCOs to more readily respond to changes in the market.

[218] Regulation 1.25(b)(2)(v); 17 CFR 1.25(b)(2)(v).

[219] Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) require each FCM to submit a SIDR Report to the Commission and the FCM's designated self-regulatory organization (''DSRO'') listing the names of all banks, trust companies, FCMs, DCOs, and any other depositories or custodians holding futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds, respectively. FCMs are required to submit the SIDR Report as of the 15th day of each month (or the next business day if the 15th day of the month is not a business day) and the last business day of the month. 17 CFR 1.32(f), 17 CFR 22.2(g)(5), and 17 CFR 30.7(l)(5). Proposed amendments to the SIDR Report to reflect the proposed revisions to the list of Permitted Investments discussed in this Proposal are discussed in Section III.D. below.

With respect to an FCM, a DSRO is the self-regulatory organization that has been delegated the responsibility under a formal plan approved by the Commission pursuant to Regulation 1.52 to monitor and examine the FCM for compliance with Commission and self-regulatory organization minimum financial and related financial reporting requirements. 17 CFR 1.52.

Permitted Investment, a CD must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.[220]

Request for Comment: Notwithstanding that bank CDs currently qualify as Permitted Investments, the Commission is seeking comment on whether Regulation 1.25 should be amended to remove bank CDs from the list of Permitted Investments. As noted above, the Commission's experience and the staff's review of the SIDR reports indicate that FCMs and DCOs generally have not invested Customer Funds in bank CDs. Specifically, the Commission seeks comment on the following issues:

17. Notwithstanding the Commission's experience and staff's review of the SIDR Reports discussed above, do FCMs and/or DCOs invest Customer Funds in bank CDs? If so, would the elimination of bank CDs as a Permitted Investment have a material adverse impact on FCMs' and DCOs' ability to invest Customer Funds pursuant to the proposed revisions to Regulation 1.25?

18. Are there provisions contained in current Regulation 1.25 or other regulations of the Commission that hinder or prevent FCMs or DCOs from investing Customer Funds in bank CDs? If so, please identify which provisions of Regulation 1.25 are at issue and explain why.

19. Are there legal or operational issues associated with bank CDs that hinder or prevent FCMs or DCOs from investing Customer Funds in such instruments? If so, please identify the legal or operational issues, and explain how such issues hinder or prevent the investment in bank CDs.

20. Would FCMs or DCOs elect to invest Customer Funds in bank CDs with the current rising interest rate environment? Are there other factors that may lead FCMs or DCOs to increase their use of bank CDs as Permitted Investments?

21. What factors should the Commission consider before removing bank CDs from the list of Permitted Investments?

Based on comments received and the Commission's further consideration of this issue, the Commission may determine to revise the Permitted Investments by removing bank CDs in the final rulemaking. If the Commission were to remove bank CDs from the list of Permitted Investments, the Commission would delete paragraph (a)(1)(iv) of Regulation 1.25 and redesignate the paragraphs of Regulation 1.25(a)(1) as appropriate to reflect the revised list of Permitted Investments. In addition, the Commission would delete paragraph (b)(2)(v) of Regulation 1.25, which sets forth restrictions on the features of permitted bank CDs, and revise and/or delete, as appropriate in light of other amendments, paragraphs (b)(3)(i)(C) and (b)(3)(ii)(B) of Regulation 1.25, which set forth asset-based and issuer-based concentration limits for certain instruments currently included in the list of Permitted Investments, to reflect the elimination of bank CDs from that list. The Commission would also make conforming amendments to Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Reports described in Section III.D. below, to reflect the removal of bank CDs from the list of Permitted Investments in Regulation 1.25. Specifically, the Commission would delete the requirement for an FCM to report the balances invested in bank CDs in the SIDR Report.

B. Asset-Based and Issuer-Based Concentration Limits for Permitted Investments

Regulation 1.25 establishes asset-based and issuer-based concentration limits for an FCM's and a DCO's investment of Customer Funds in Permitted Investments.[221] The asset-based and issuer-based concentration limits are set at the same levels for investments of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[222] An FCM or a DCO is also required to calculate the asset-based and issuer-based concentration limits separately for futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds based on the total amount of funds held by the FCM or DCO in each respective segregation classification.[223]

An FCM or a DCO is currently permitted to directly invest futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in each of the Permitted Investments up to the following asset-based limits: (i) U.S. government securities—100 percent; (ii) U.S. agency obligations—50 percent; (iii) for each investment asset class of bank CDs, commercial paper, and corporate notes and bonds—25 percent; and (iv) municipal securities—10 percent.[224]

With respect to MMFs, an FCM or a DCO may invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds that it holds in MMFs that invest only in U.S. government securities, provided that the size of the funds' portfolio is at least $1 billion and the funds' management company has at least $25 billion of assets under management.[225] If a fund has less than $1 billion of assets under management, or if the manager of the fund has less than $25 billion of assets under management, the FCM or DCO may invest up to 10 percent of its total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in the fund.[226] For Prime MMFs, an FCM or a DCO may invest up to 50 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in such MMFs; however, the asset-based concentration is limited to 10 percent if a fund has less than $1 billion in assets under management or if the fund's manager has less than $25 billion of assets under management.[227]

With respect to issuer-based concentration limits, an FCM or a DCO is permitted to invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds that it holds in U.S. government securities.[228] An FCM or a DCO also may invest futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds directly in qualifying Permitted Investments, other than U.S. government securities, subject to the following issuer-based concentration limits: (i) obligations of any single issuer of U.S. agency obligations—25 percent;

[220] 17 CFR 1.25(b)(2)(v).

[221] 17 CFR 1.25(b)(3).

[222] The asset-based and issuer-based concentration limits for futures customer funds are set forth in Regulation 1.25(b)(3). 17 CFR 1.25(b)(3). With respect to 30.7 customer funds, Regulation 30.7(h)(1) provides that an FCM may invest 30.7 customer funds subject to, and in compliance with the terms and conditions of Regulation 1.25, which includes the asset-based and issuer-based concentration limits. 17 CFR 30.7(h)(1). With respect to Cleared Swaps Customer Collateral, Regulations 22.2(e)(1) and 22.3(d) provide that an FCM or a DCO, respectively, may invest Cleared Swaps Customer Collateral in accordance with Regulation 1.25, which includes the asset-based and issuer-based concentration limits. 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

[223] *See* 2011 Permitted Investments Amendment at 78787, where the Commission stated that concentration limits are to be calculated on a fund-by-fund basis (*i.e.,* based on separate segregation classifications).

[224] Regulation 1.25(b)(3)(i)(A)–(D); 17 CFR 1.25(b)(3)(i)(A)–(D). U.S. government securities refers to general obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. *See* 17 CFR 1.25(a)(1)(i).

[225] 17 CFR 1.25(b)(3)(i)(E).

[226] 17 CFR 1.25(b)(3)(i)(G).

[227] 17 CFR 1.25(b)(3)(i)(F) and (G).

[228] *See* 17 CFR 1.25(b)(3)(ii), which excludes U.S. government securities from the issuer-based concentration limits. *See also,* 2011 Permitted Investments Amendment at 78788.

(ii) obligations of any single issuer of municipal securities, bank CDs, commercial paper, or corporate notes or bonds—5 percent.[229]

With respect to MMFs, an FCM or a DCO may invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in a single MMF that invests only in U.S. government securities.[230] With respect to MMFs that maintain investment portfolios that hold instruments other than U.S. government securities, an FCM or a DCO is subject to the following issuer-based concentration limits: (i) interest in any single MMF family may not exceed 25 percent of customer funds held; and (ii) interest in any individual MMF may not exceed 10 percent of customer funds held.[231]

The Commission is proposing to amend the asset-based and issuer-based concentration limits in Regulation 1.25(b)(3) to reflect the proposed revisions to the list of Permitted Investments discussed in this Proposal and to adjust the limits based on the Commission's experience administering Regulation 1.25. In that regard, as discussed in Section III.A.2. above, the Commission is proposing to limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs. A Permitted Government MMF would be defined by reference to SEC Rule 2a–7 as an MMF that invests at least 99.5 percent or more of its total assets in cash, government securities, and/or Repurchase Transactions that are collateralized fully.[232] The Commission notes that the scope of underlying instruments in which a Permitted Government MMF would be allowed to invest is broader than that of the MMFs currently excluded from the concentration limits of Regulation 1.25(c) (*i.e.,* MMFs investing solely in U.S. government securities). To account for the potential increase in risk associated with such broader scope and in the interest of imposing a simple and consistent approach to concentration limits, the Commission is proposing to establish a single concentration limit of 50 percent for all Permitted Government MMFs of a certain size, without distinguishing between funds investing solely in U.S. government securities and those whose portfolio may also include U.S. agencies securities and/or other instruments within the limits of SEC Rule 2a–7.

More precisely, under the Proposal, an FCM's or a DCO's investment of Customer Funds in interests in Permitted Government MMFs with at least $1 billion in assets and whose management company manages at least $25 billion in assets would be limited to no more than 50 percent of the total Customer Funds computed separately for each of the segregated funds classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[233] The proposed asset-based concentration limits are consistent with the concentration limits applicable to U.S. agency obligations, which along with U.S. Treasury securities, are a permitted underlying instrument for Permitted Government MMFs.[234]

More generally, the Commission is proposing these asset-based concentration limits for Permitted Government MMFs to ensure that Customer Funds are invested in a manner that limits risks arising from a high concentration in any particular Permitted Investment asset class. In particular, based on its experience administering the CFTC's customer protection rules, the Commission preliminarily believes that it is not prudent to allow FCMs and DCOs to invest up to 100 percent of segregated Customer Funds in any category of MMFs. For the reasons discussed below in connection with the proposed issuer-based concentration limits, the Commission is of the view that holding U.S. government securities through an MMF gives rise to risks that are different from those associated with holding U.S. government securities directly, including operational and cybersecurity risks. As such, the Commission preliminarily believes that even large MMFs that invest solely in U.S. government securities should be subject to a concentration limit. The Commission is also proposing to maintain the current 10 percent asset-based concentration limit on investments in MMFs that hold less than $1 billion in assets or have a management company with less than $25 billion in assets under management.[235] For purposes of clarity, the Commission is proposing to delete the conjunction ''and'' in that provision to indicate that the fund size threshold and the management company size threshold are to be construed as alternative prongs triggering the 10 percent limit.

In addition, to mitigate the potential risks arising from concentration in any particular fund or family of funds, the Commission is proposing issuer-based concentration limits for investments in Permitted Government MMFs. Specifically, the Commission is proposing to limit investments of Customer Funds in any single family of Permitted Government MMFs to 25 percent and investments of Customer Funds in any single issuer of Permitted Government MMFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[236]

In adopting the 2011 Permitted Investment Amendment, the Commission decided not to introduce concentration limits for MMFs of a certain size investing solely in U.S. government securities. This determination was made in consideration of comments received from the public, including in particular a comment asserting that if FCMs and DCOs are permitted to invest all customer segregated funds in U.S. government securities directly, an FCM or a DCO should be able to make the same investment indirectly via an MMF.[237] Based on its experience administrating CFTC's customer protection rules and in consideration of certain recent marketplace events, however, the Commission preliminarily believes that introducing concentration limits for Permitted Government MMFs is warranted. In particular, the Commission is concerned that MMFs, like any institution relying on electronic communications, are susceptible to cyber-attacks and operational incidents that may adversely impact their normal operating capabilities, including delaying or otherwise preventing them from processing redemption requests of FCMs and DCOs in a timely manner.[238] FCMs and DCOs may need to redeem

[229] 17 CFR 1.25(b)(3)(ii)(A) and (B).

[230] *See* 17 CFR 1.25(b)(3)(ii) which excludes MMFs that invest only in U.S. government securities from the issuer-based concentration limits.

[231] 17 CFR 1.25(b)(3)(ii)(C) and (D).

[232] *See supra notes* 120 and 121.

[233] Proposed revised Regulation 1.25(c)(3)(i)(E).

[234] 17 CFR 1.25(b)(3)(i)(B).

[235] Proposed Regulation 1.25(c)(3)(i)(F).

[236] Proposed Regulations 1.25(c)(3)(ii)(C) and (D), respectively.

[237] 2011 Permitted Investments Amendment at 78787.

[238] The cyber-attack against ION Cleared Derivatives, a third-party provider of cleared derivatives order management, order execution, trading, and trade processing, demonstrated that an incident affecting a single entity may disrupt the operations of other market participants and have ripple effects across the industry. The incident impacted certain FCMs' operations, including by preventing such FCMs from submitting timely and accurate positions data to the CFTC. *See* CFTC Statement on ION and the Impact on the Derivatives Markets, available here: *https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcstatement020223.*

their interest in Permitted Government MMFs to provide customers with cash that is needed to meet, for example, margin calls at other FCMs or DCOs, or variation or initial margin requirements for uncleared swap transactions, or to cover cash market losses or purchases. More generally, the concentration of Customer Funds in any single MMF creates vulnerabilities that may affect FCMs' and DCOs' ability to meet their regulatory obligations, including providing customers with prompt access to their funds.[239]

Although cyber-attacks and other operational incidents may impact transactions in any Permitted Investment, including U.S. government securities, the Commission believes that the potential risk of Customer Funds becoming unavailable is elevated when access to such funds depends on the operations of a third party such as an MMF. For instance, to the extent a fund experiences an operational issue, such incident may result in a redemption suspension for all participants in the fund. Thus, by imposing issuer-based concentration limits, the Commission intends to facilitate the preservation of principal and maintenance of liquidity of Customer Funds through sound diversification standards and to mitigate the potential risk of access to a large portion of Customer Funds becoming unavailable due to cybersecurity or operational incidents, among other events. Given the large number of SEC-registered Government MMFs available on the market and likely to meet the Permitted Investments' eligibility criteria, the Commission preliminarily believes that diversifying an FCM's or DCO's portfolio of MMF investments would not be burdensome.[240]

In addition, as part of the proposed amendments to the concentration limits in Regulation 1.25,[241] the Commission is proposing to revise the asset-based and issuer-based concentration limits set forth in paragraphs (b)(3)(i)(F) and (b)(3)(ii)(C) and (D), respectively, to reflect the removal of Prime MMFs from the list of Permitted Investments.

As discussed in Section III.A.3 above, the Commission is also proposing to permit FCMs and DCOs to invest Customer Funds in Qualified ETFs.[242] The Commission is proposing to impose conditions on Qualified ETFs that are similar to the conditions that are imposed on Permitted Government MMFs whose interests qualify as Permitted Investments.[243] Among other things, similar to Government MMFs, which can invest in a limited set of instruments, including government securities and cash, Qualified ETFs would be required to limit their investments to instruments that are consistent with their investment strategy of seeking to replicate the performance of a public short-term U.S. Treasury security index.[244] For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Consistent with this condition, the Commission is also proposing to require that the eligible U.S. Treasury securities represent at least 95 percent of the ETF's investment portfolio. Given the similarity of the terms that would apply to Permitted Government MMFs and Qualified ETFs under the Proposal, and the comparable credit, market, and liquidity risk associated with these types of funds comprising instruments generally recognized as safe and highly liquid, the Commission preliminarily believes that it is appropriate for Qualified ETFs to have the same asset-based and issuer-based concentration limits as those proposed for Permitted Government MMFs. Specifically, under the Proposal, an FCM's or a DCO's investment of Customer Funds in Qualified ETFs with at least $1 billion in assets and whose management company manages at least $25 billion in assets would be limited to an asset-based concentration limit of 50 percent of total funds held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[245] The current 10 percent asset-based concentration limit for investments in MMFs that hold less than $1 billion in assets or whose management company manages less than $25 billion in assets under management would also be extended to Qualified ETFs. In addition, for the reasons described *supra* in connection with Permitted Government MMFs, the Commission is proposing to limit investments of Customer Funds in any single family of Qualified ETFs to 25 percent and investments of Customer Funds in any single issuer of Qualified ETFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[246] Given that there may be at least five U.S. Treasury ETFs that could potentially qualify as Permitted Investments, the Commission preliminarily believes that the proposed issuer-based concentration limits would not be overly restrictive.[247]

The Commission is also proposing revisions to the asset-based and issuer-based concentration limits to remove commercial paper, and corporate notes and bonds from the limits.[248] As noted in Section III.A.4. above, the Commission is proposing to remove commercial paper and corporate notes and bonds from the list of Permitted Investments due to the termination of the TLGP by the FDIC in 2012, which resulted in such investments no longer qualifying as Permitted Investments. In addition, as discussed in Section III.A.6. above, the Commission is requesting public comment on the elimination of bank CDs as a Permitted Investment due to the apparent lack of interest by FCMs and DCOs in such instruments. Therefore, if bank CDs are removed from the list of Permitted Investments in a final rulemaking after considering

[239] For instance, as discussed in the 2011 Permitted Investments Amendment, the Reserve Primary Fund's "breaking the buck," in September 2008, called attention to the risk to principal and potential lack of sufficient liquidity of Prime MMF investments. *See* 2011 Permitted Investments Amendment at 78785. In connection with the events affecting the Reserve Primary Fund, staff of the CFTC's Division of Clearing and Intermediary Oversight, intervened and issued guidance indicating that FCMs holding shares of the fund, either as a proprietary investment or as an investment of customer segregated funds, could include these investments in the calculations required for purposes of compliance with capital, segregation, and secured amount reporting requirements (with the condition that the NAV be reduced appropriately) even though the fund had suspended redemptions. *See* CFTC Staff Letter No. 08–17, available here: *https://www.cftc.gov/csl/08-17/download.*

[240] As of August 17, 2023, there are 183 government MMFs registered with the SEC (of which 49 are "Treasury-only" MMFs). *See* U.S. Securities and Exchange Commission, Money Market Funds Statistics, available here: *https://www.sec.gov/divisions/investment/mmf-statistics.* The government MMFs currently registered with the SEC generally do not elect to apply liquidity fees and/or redemption gates.

[241] *See* discussion in Section III.A.2 above.

[242] Proposed Regulation 1.25(a)(1)(vi).

[243] *See* Section III.A.3. above.

[244] Proposed Regulation 1.25(a)(1)(vi).

[245] Proposed Regulation 1.25(b)(3)(i)(E).

[246] Proposed Regulations 1.25(b)(3)(ii)(C) and (D).

[247] *See* 2022 CME Advisory Notice, *supra* note 170 (announcing that CME has added five Short-Term U.S. Treasury ETFs to the list of accepted margin collateral). The five ETFs would meet the proposed condition of being accepted as performance bond by a DCO. For purposes of clarity, the Commission notes, however, that should the Commission proceed with adding Qualified ETFs to the list of Permitted Investments, FCMs and DCOs would need to assess ETFs' eligibility in light of all applicable conditions.

[248] *See* proposed Regulation 1.25(b)(3)(i)(C) removing commercial paper and corporate notes and bonds from the 25 percent asset-based concentration limit and proposed Regulation 1.25(b)(3)(ii)(B) removing commercial paper and corporate notes and bonds from the 5 percent issuer-based concentration limit.

comments, specifying asset-based and issuer-based concentration limits on investments in commercial paper, corporate notes and bonds, and bank CDs would no longer be necessary and would be removed from Regulation 1.25.

Finally, as noted in Section III.A.1., the Commission is proposing to expand the types of investments that would qualify as Permitted Investments to include Specified Foreign Sovereign Debt. The Commission, however, is not proposing to impose asset-based or issuer-based concentration limits on FCM or DCO investments in Specified Foreign Sovereign Debt.

Not imposing concentration limits on the Specified Foreign Sovereign Debt would be consistent with the current exclusion of U.S. government securities from the asset-based and issuer-based concentration limits. As discussed in Section III.A.1. above, the relative strength of the economies and limited default risk of Canada, France, Germany, Japan, and the United Kingdom are demonstrated by such countries being ranked among the seven largest economies in the International Monetary Fund's classification of advanced economies,[249] and by the countries being members of the G7, which represents the world's largest industrial democracies. In addition, as discussed in Section III.A.1. above, the Commission has preliminarily determined that the two-year debt instruments that would qualify as Specified Foreign Sovereign Debt have credit, liquidity, and volatility characteristics that are consistent with two-year U.S. Treasury securities. Furthermore, the proposed condition in Regulation 1.25(a)(1)(vii) that permits an FCM or a DCO to invest Customer Funds in Specified Foreign Sovereign Debt only to the extent that the DCO or FCM has balances owed to customers denominated in the currency of the applicable country is expected to effectively limit the amount of Customer Funds that an FCM or a DCO may invest in the Specified Foreign Sovereign debt.[250] The proposed condition that an FCM or a DCO must stop making direct investments, or engaging in reverse repurchase agreements, involving the Specified Foreign Sovereign Debt of a country whose credit default spread on two-year debt instruments exceeds 45 BPS would be expected to further preserve the principal of customers' foreign currency deposits held by FCMs and DCOs.[251] Lastly, not imposing asset-based or issuer-based concentration limits on an FCM's or a DCO's investments in Specified Foreign Sovereign Debt is consistent with the Commission's 2018 Order, which did not impose concentration limits on a DCO's investment of futures customer funds or Cleared Swaps Customer Collateral in the sovereign debt of France or Germany. Accordingly, based on the above, the Commission preliminarily believes that asset-based and issuer-based concentration limits are not necessary for investments in Specified Foreign Sovereign Debt.

The Commission also notes that the concentration limits in Regulation 1.25 are minimum requirements. Pursuant to Regulation 1.11, an FCM is required to monitor and manage market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, capital, and any other applicable risks associated with its activity, as part of the FCM's risk management program.[252] If, based on its independent risk assessment, an FCM determines that stricter concentration limits with respect to Permitted Investments of Customer Funds are appropriate, the FCM is required to implement such stricter limits, in accordance with Regulation 1.11. Similarly, Regulation 39.13(g)(10) requires a DCO to limit the assets it accepts as initial margin to those that have minimal credit, market, and liquidity risks, while Regulation 39.13(g)(13) requires the DCO to apply appropriate limitations or charges on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly with minimal adverse price effects.

In addition, if as a result of market events or extraneous circumstances, such as a change in an MMF's size, the FCM or DCO inadvertently breaches the concentration thresholds, the FCM or DCO would be expected to undertake prompt actions to restore compliance with the concentration limits, while managing the investments of Customer Funds in a manner consistent with the general objectives of preserving principal and maintaining liquidity. Depending on the market conditions, such actions may include taking steps to progressively reduce the amount of Customer Funds invested in a particular asset class instead of immediately divesting the investments in a potentially volatile market.

[249] *See* Statistical Appendix to the World Economic Outlook, April 2023, International Monetary Fund, available here: *https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023.*

[250] Proposed Regulation 1.25(a)(1)(vii).

[251] Proposed Regulation 1.25(f)(3).

[252] 17 CFR 1.11.

The foregoing discussion of concentration limits can be summarized as follows:

Instrument	Size	Current concentration limits		Proposed concentration limits	
		Asset-based	Issuer-based	Asset-based	Issuer-based
U.S. government securities	N/A	No limit	No limit	No limit	No limit.
Municipal Securities	N/A	10%	5%	10%	5%.
U.S. agency obligations	N/A	50%	25%	50%	25%.
Bank CDs	N/A	25%	5%	25%	5%.
Government MMFs investing solely in U.S. government securities (*i.e.,* securities issued or fully guaranteed by the U.S. government).	>$1B assets and/or management company with >25B in assets.	No limit	No limit	50%	25% per family 5% per fund.
	<$1B assets and/or management company with <$25B in assets.	10%	10% (*de facto* limit based on asset-based limit).	10%	
Government MMFs as defined in SEC Rule 2a–7 (including MMFs whose portfolio includes U.S. agency obligations and other instruments).	>$1B assets and/or management company with >25B in assets.	50%	25% per family 10% per fund	50%	
	<$1B assets and/or management company with <$25B in assets.	10%		10%	
Qualified ETFs	>$1B assets and/or management company with >25B in assets.	N/A	N/A	50%	25% per family 5% per fund.
	<$1B assets and/or management company with <$25B in assets.	N/A	N/A	10%	

Request for Comment: The Commission requests comment on all aspects of its Proposal relating to concentration limits, including the proposed asset-based and issuer-based concentration limits for Permitted Government MMFs and Qualified ETFs. The Commission requests specific comment with respect to the following:

22. Should the Commission adopt different asset-based and issuer-based concentration limits for Permitted Government MMFs and/or Qualified ETFs than the limits proposed? Are the proposed limits sufficiently conservative to ensure that Customer Funds are adequately protected and liquid?

23. Should the Commission revise any of the asset-based concentration limits that are not proposed to be revised as part of this Proposal? For instance, FCMs and DCOs are permitted to invest up to 50 percent of their Customer Funds in U.S. agency obligations and up to 10 percent in municipal securities. Should the Commission consider revising these or other asset-based concentration limits? If so, how should the asset-based concentration limits be revised? Please explain, and provide data if possible.

24. Should the Commission revise any of the issuer-based concentration limits that are not proposed to be revised as part of this Proposal? For instance, FCMs and DCOs are permitted in invest up to 25 percent of their Customer Funds in obligations of a single issuer of U.S. agency obligations and up to 5 percent in obligations of any single issuer of municipal securities. Should the Commission consider revising these or other issuer-based concentration limits? If so, how should the issuer-based concentration limits be revised? Please explain, and provide data to support your comment, if possible.

25. Should the Commission impose asset-based and/or issuer-based concentration limits on Specified Foreign Sovereign Debt? If so, please explain why such concentration limits are necessary. Please provide data to support your comment, if possible.

26. Given the similarities between Permitted Government MMFs and Qualified ETFs discussed above, the Commission is proposing to apply the same asset-based and issuer-based concentration limits to both asset classes. Is there any reason to distinguish between Permitted Government MMFs and Qualified ETFs with respect to the application of concentration limits? If so, please explain.

C. Futures Commission Merchant Capital Charges on Permitted Investments

Although FCMs and DCOs may invest Customer Funds in Permitted Investments, as discussed *supra,* Commission regulations provide that FCMs and DCOs are also financially responsible for any losses resulting from such investments, and are explicitly prohibited from allocating investment losses to customers or clearing FCMs, respectively. Specifically, Regulation 1.29 provides that FCMs or DCOs, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds, and further provides that no investment losses shall be borne or otherwise allocated to FCM customers or to FCMs clearing customer accounts at DCOs.[253] In addition, Regulation 22.2(e)(1)[254] provides that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and may not allocate investment losses to Cleared Swaps Customers of the FCM and Regulation 30.7(i) provides that an FCM shall bear sole financial responsibility for any losses resulting from the investment of 30.7 customer funds, and further provides that no investment losses may be allocated to the 30.7 customers of the FCM.[255] Additionally, the Commission is proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for any losses resulting from investments of Cleared Swap Customer Collateral in Permitted Investments, consistent with Regulation 1.29, which addresses financial responsibility for losses resulting from investment of futures customer funds, and the Commission's original intent to permit investments of Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.[256]

To reserve liquidity for potential losses resulting from investments of Customer Funds, Regulation 1.17(c)(5)(v) requires an FCM to take capital charges in computing the firm's regulatory capital.[257] The capital

[253] 17 CFR 1.29(b).

[254] 17 CFR 22(e)(1).

[255] 17 CFR 30.7(i).

[256] *See supra* note 42.

[257] 17 CFR 1.17(c)(5). Although capital charges do not apply to DCOs, a DCO is required under Regulation 39.11(a)(2) to maintain financial resources sufficient to enable it to cover its

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charges are designed to reflect potential market risk associated with the FCM's holding of Permitted Investments, and to ensure that the firm has sufficient liquid financial resources to cover potential investment losses. Regulation 1.17(c)(5)(v) further provides that an FCM must apply the capital charges set forth in Rule 15c3–1 under the Securities Exchange Act (''SEC Rule 15c3–1'') [258] and Appendix A to SEC Rule 15c3–1 [259] to the Permitted Investments.

As discussed in Section III.A.1. above, the Commission is proposing to revise the Permitted Investments to include Specified Foreign Sovereign Debt (*i.e.,* the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom). Under the Proposal, each Specified Foreign Sovereign Debt instrument must have a remaining time-to-maturity of 180 calendar days or less. Given the proposed remaining time-to-maturity limit of 180 calendar days for each Specified Foreign Sovereign Debt instrument, an FCM investing Customer Funds in qualifying sovereign debt of Canada would have no capital charge for instruments with a remaining time to maturity of less than 3 months and a capital charge of 0.5 percent of the market value for instruments with a remaining time to maturity of 3 to 6 months under SEC Rule 15c3–1.[260] The capital charge for the sovereign debt of France, Germany, Japan, and the United Kingdom, is determined under SEC rules by reference to nonconvertible debt securities with a fixed interest rate, fixed maturity date, and minimal credit risk. Such nonconvertible debt securities that have a remaining time to maturity of one year or less are subject to a capital charge of 2 percent of the market value of the security under SEC Rule 15c3–1(c)(2)(F)(1).[261]

With respect to Qualified ETFs, neither SEC Rule 15c3–1 nor Appendix A to SEC Rule 15c3–1 explicitly addresses capital charges for ETFs primarily comprised of U.S. Treasury securities. SEC Rule 15c3–1(c)(2)(vi)(D)(1) does specify a 2 percent capital charge for a broker-dealer's net position in redeemable securities of a Prime MMF or a Permitted Government MMF.

SEC staff, however, has provided guidance to registered securities brokers or dealers stating that staff would not recommend an enforcement action to its Commission if a broker or dealer applied a capital charge of 2 percent of the market value of ETFs shares held in the size of a creation units.[262] The SEC staff's guidance was applicable to a U.S. Treasury ETF that: (i) is an open-ended management company registered with the SEC under the Investment Company Act of 1940 that issues securities redeemable at the net asset value; and (ii) invests solely in cash and government securities that are eligible securities under paragraph (a)(11) of Rule 2a–7, limited to U.S. Treasury floating and fixed rate bills, notes, and bonds with a remaining term to final maturity of 12 months or less, government money market funds as defined in Rule 2a–7, and/or Repurchase Transactions with a remaining term to final maturity of 12 months or less collateralized by U.S. Treasury securities or other government securities with a remaining term to final maturity of 12 months or less. The SEC staff position was subject to the following conditions: (i) the broker or dealer is not aware of any substantial operational problem that the U.S. Treasury ETF may be experiencing; (ii) the U.S. Treasury ETF shares can be redeemed by a broker or dealer through an authorized participant, the redemption of the U.S. Treasury ETF's shares can be settled in exchange for a basket of the ETF's underlying securities and/or cash by T+1, and the U.S. Treasury ETF has committed in its registration statement to permit shareholders, except in extraordinary circumstances, to settle transactions within that timeframe; and (iii) the U.S. Treasury ETF's shares are listed for trading on a national securities exchange and trades of such shares are settled in accordance with the standard cycle prescribed by SEC Rule 15c6–1 [263] under the Securities Exchange Act of 1934.

Based on the SEC's guidance regarding the capital charges for U.S. Treasury ETFs, the Commission is specifying that FCMs would be required to apply a capital charge equal to 2 percent of the fair market value of the shares of a Qualified ETF that invests in the instruments specified in the SEC ETF Letter.

Request for Comment:

27. The Commission requests comment on the proposed capital charges for Specified Foreign Sovereign Debt and Qualified ETFs.

28. The Proposal would apply a 2 percent capital charge on the value of Qualified ETF shares that invests solely in cash and government securities that are eligible securities under paragraph (a)(11) of SEC Rule 2a–7, limited to U.S. Treasury floating and fixed rate bills, notes, and bonds with a remaining term to final maturity of 12 months or less, government money market funds as defined in SEC Rule 2a–7, and/or Repurchase Transactions with a remaining term to final maturity of 12 months or less collateralized by U.S. Treasury securities or other government securities with a remaining term to final maturity of 12 months or less. Does the limitation on the investments that the Qualified ETF may hold in order to apply the 2 percent capital charge raise any issues for FCMs investing in Qualified ETFs? Would Qualified ETFs hold investments not covered by the SEC ETF Letter? If so, what different investments could a Qualified ETF hold? How would such additional investments impact the capital charge that should be applied to Qualified ETFs?

D. Segregation Investment Detail Report

Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) require each FCM to submit a SIDR Report to the Commission and the FCM's DSRO listing the names of all banks, trust companies, FCMs, DCOs, and other depositories or custodians holding futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds. The FCM is further required to identify in the SIDR Report the amount of futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds invested in each of the following categories of Permitted Investments: (i) U.S. Treasury securities;

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operating costs for a period of at least one year, calculated on a rolling basis. Investment losses would be included in the DCO's operating costs.

[258] 17 CFR 240.15c3–1.

[259] 17 CFR 240.15c3–1a.

[260] SEC Rule 15c3–1(c)(2)(vi)(C) provides that the capital charges on the sovereign debt of Canada is the same as the capital charges set forth in SEC Rule 15c3–1(c)(2)(vi)(A) for debt obligations of the U.S., debt obligations fully guaranteed as to principal and interest by the U.S., or debt obligations of U.S. agencies. SEC Rule 15c3–1(c)(2)(vi)(A) provides that a broker or dealer must take a 0.5 percent capital charge on U.S. Treasury and U.S. agency debt instruments that have a remaining time to maturity of between 3 months and 6 months, and no capital charge on U.S. Treasury and U.S. agency debt instruments having a remaining time to maturity of less than 3 months.

[261] SEC Rule 15c3–1(c)(2)(F)(*1*) specifies the capital charges for nonconvertible debt securities with a fixed interest rate, fixed maturity date, and minimal credit risk, which includes the sovereign debt of France, Germany, Japan, and the United Kingdom. The capital charge for the sovereign debt of these countries that have a remaining time-to-maturity of no more than one year is 2 percent of the market value of debt instrument.

[262] *See* Letter titled *Net Capital Treatment of Certain U.S. Treasury Exchange-Traded Funds,* issued by the Division of Trading and Markets to Ms. Kris Dailey, Vice President, Risk Oversight & Operational Regulations, Financial Industry Regulatory Authority, June 2, 2022 (''SEC ETF Letter''). The SEC ETF Letter is available at the SEC's website: *https://www.sec.gov/divisions/marketreg/mr-noaction/2022/finra-060222-15c3-1.pdf.*

[263] 17 CFR 240.15c6–1.

(ii) municipal securities; (iii) government sponsored enterprise securities (*i.e.,* U.S. agency obligations); (iv) bank CDs; (v) commercial paper; (vi) corporate notes or bonds; and (vii) interests in MMFs. The SIDR Report is required to be filed twice each month with the Commission and the firm's DSRO, with balances reported as of the fifteenth day of each month, or the first business day thereafter if the fifteenth day of the month is not a business day, and as of the last business day of each month.

The Commission is proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Report, by deleting the requirement for an FCM to report the balances invested in commercial paper and corporate notes and bonds as such investments would no longer be Permitted Investments under the Proposal, for the reasons articulated *supra.*[264]

The Commission is also proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to require each FCM to report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Specified Foreign Sovereign Debt of each country that is included within the Specified Foreign Sovereign Debt (*i.e.,* individual reporting for Canada, France, Germany, Japan, and the United Kingdom). The Commission is also proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to require an FCM to include in the SIDR Report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Qualified ETFs as such investments would be Permitted Investments under the Proposal. In addition, the Commission is proposing to amend the above regulations by revising the requirement to report balances invested in interests in MMFs to reflect that such investments are limited to interests in Government MMFs consistent with the Proposal.

Request for Comment:

29. The Commission requests comment on the proposed amendments to Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) and the proposed revisions to the SIDR Reports, including whether additional revisions would be necessary.

E. Read-Only Electronic Access to Customer Funds Accounts Maintained by Futures Commission Merchants

Commission regulations require depositories holding Customer Funds for FCMs to provide the Commission with direct, read-only electronic access to the Customer Fund accounts (''Read-only Access Provisions''). The Read-only Access Provisions are set forth in Regulation 1.20, Appendix A to Regulation 1.20, and Appendix A to Regulation 1.26, for futures customer funds; Regulation 22.5 for Cleared Swaps Customer Collateral; and, Regulation 30.7 and appendices E and F to Part 30 of the Commission's regulations for 30.7 customer funds.

The Commission adopted the Read-only Access Provisions in 2013 as part of a regulatory reform seeking to enhance the CFTC's customer protection regime.[265] In particular, the Commission sought to strengthen the customer fund protections in response to the failure of two FCMs that violated customer fund segregation laws, which resulted in shortfalls in Customer Funds balances.[266] The Commission noted that the FCM failures raised questions concerning the adequate functioning and capacity of the oversight system to monitor FCM activities, verify Customer Funds balances, and detect fraud.[267]

By adopting the Read-only Access Provisions, the Commission sought to establish, among other measures, a mechanism that would enable Commission staff to review and identify discrepancies between an FCM's daily segregation reports[268] and customer fund balances on deposit at various depositories.[269] To that effect, the Commission amended Regulations 1.20 and 30.7 to include provisions requiring FCMs to deposit Customer Funds only with depositories that agree to provide the Commission with direct, read-only electronic access to allow Commission staff to review account balance information and transactions.

The Commission also adopted template acknowledgment letters set forth in Appendix A to Regulation 1.20 and Appendix E to Part 30 of the Commission's regulations to require, among other things,[270] that the depository acknowledge and agree, pursuant to authorization granted by the FCM, to provide the appropriate Commission staff with ''the technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information.''[271] The template acknowledgment letters set forth in Appendix A to Regulation 1.26 and Appendix F to Part 30 contain similar provisions with respect to MMF accounts in which FCMs hold customer segregated funds.[272]

In adopting the Read-only Access Provisions, the Commission noted that it did not anticipate that staff would access FCM accounts on a regular basis to monitor account activity, but, rather, that staff would make use of the Read-only Access Provision only when necessary to obtain account balances and other information that staff could not obtain via the CME and NFA automated daily segregation confirmation system or otherwise directly from the depositories.[273] Specifically, the Commission explained that CME and NFA had adopted rules requiring FCMs to instruct each depository holding Customer Funds to report balances on a daily basis to CME or NFA, respectively.[274]

[264] As discussed in Section III.A.6. above, the Commission notes that no FCMs or DCOs currently invest Customer Funds in bank CDs and has requested public comment regarding the elimination of bank CDs from the list of Permitted Investments. If the Commission were to eliminate bank CDs in the final rulemaking, the Commission would also amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to remove references to bank CDs.

[265] *See generally* 2013 Protections of Customer Funds Release.

[266] *Id.* at 68509.

[267] *Id.* at 68510.

[268] Regulations 1.32 (for futures customer funds), 22.2(g) (for Cleared Swaps Customer Collateral) and 30.7(l) (for 30.7 customer funds) require an FCM to prepare, among other records, a daily record as of the close of each business detailing the total amount of funds on deposit in customer segregated accounts and the total amount of funds owed to customers. The purpose of the daily record is for the FCM to demonstrate compliance with its obligation to hold a sufficient amount of funds in segregated accounts to pay the full account balance of each customer.

[269] *See* 2013 Protections of Customer Funds Release at 68537 and 68580.

[270] These appendices are intended to be used by depositories that accept Customer Funds from FCMs to acknowledge that the funds belong to the FCM customer and cannot be used to offset obligations of the FCM.

[271] 17 CFR Appendix A to 1.20, 17 CFR Appendix E to Part 30.

[272] 17 CFR Appendix A to 1.26, 17 CFR Appendix F to Part 30.

[273] 2013 Protections of Customer Funds Release at 68537 and 68592 (noting in footnote 662 that the Commission generally expected that it would seek to obtain account information from the CME and NFA automated daily segregation confirmation system and/or from depositories directly prior to requesting a depository to activate electronic access).

[274] *Id.,* at 68512. CME Rule 971.C. provides that in order for an FCM clearing member's account held at a depository to qualify as a segregated account for Customer Funds, the FCM clearing member must provide CME with access to account information, in a form and manner prescribed by CME, and the depository must allow the FCM clearing member to provide CME with access to the account information, in a form and manner prescribed by CME. NFA Financial Requirements Section 4, paragraph (b), provides that each member FCM must instruct each depository, as required by

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In practice, CME and NFA receive account information from all depositories holding Customer Funds on a daily basis pursuant to CME Rule 971.C. and NFA Financial Requirements Section 4, respectively. Furthermore, CME and NFA have developed programs that compare the daily balances reported by each of the depositories with balances reported by the FCMs in their daily segregation reports that are filed with CME and/or NFA.[275] Under these programs, an alert is generated for discrepancies that exceed defined thresholds. In the event of such alerts, CME/NFA staff conduct appropriate analysis and follow-up actions, which may involve communications with an FCM to clarify or remedy the situation, and document the outcome.

The Commission's experience with overseeing the administration of the CME and NFA daily segregation confirmation and verification processes for several years has afforded sufficient assurances that the system provides adequate access to relevant information and is capable of detecting discrepancies in account balances in a timely manner. Moreover, the establishment of an efficient method for obtaining and verifying FCM balances of Customer Funds at each depository supports the Commission's initial expectation that the direct, read-only electronic access would not be the Commission's principal tool for obtaining account information at depositories.[276] The Commission also is retaining the current requirement that FCMs deposit Customer Funds only with depositories that agree that accounts may be examined by Commission or DRSO staff at any reasonable time, and that further agree to reply promptly and directly to any request from Commission or DSRO staff for confirmation of account balances or provision of any other information regarding or related to an account, in order to ensure that staff have timely access information concerning Customer Funds from depositories.[277]

In addition, in implementing the Read-only Access Provisions, the Commission has encountered various practical challenges. Specifically, given the number of depositories with which FCMs establish relationships and the total number of accounts that FCMs maintain with various depository institutions, the Commission must obtain and keep a current log of credentials to access the depository accounts, and in some instances, must obtain and store physical devices required as part of a multi-factor authentication process, for thousands of different depository accounts.[278] Frequently, Commission staff must be trained to navigate the various account access systems and work regularly with depositories' technology staff to ensure that the systems' security features do not prevent the Commission's access to the accounts.[279] Furthermore, due to lack of appropriate infrastructure, some foreign depository institutions are unable to provide direct electronic access to the customer segregated accounts, offering instead to send end-of-day accounts statements by email. These operational challenges put an undue burden on the Commission's resources, particularly considering that the Commission contemplated that the use of real-time access would be limited, and prevent Commission staff from using the Read-only Access Provisions as intended.[280]

Thus, in light of the practical challenges of maintaining direct read-only access to depository accounts and the availability of efficient alternative methods for verifying customer segregated account balances, the Commission is proposing to eliminate the Read-only Access Provisions in Regulations 1.20 and 30.7, and Appendix A to Regulation 1.20, Appendix A to Regulation 1.26, and appendices E and F to Part 30 of the Commission's regulations.[281]

The Commission notes that under the Proposal, FCMs would not need to obtain new acknowledgment letters for existing accounts at depositories holding Customer Funds. Should the Commission proceed with the proposed amendments after notice and comment, the revised acknowledgment letters would have to be obtained for accounts opened following the effective date of the revisions or in the event the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the elimination of the Read-only Access Provisions. For the avoidance of doubt, the Commission confirms that even if an FCM had not obtained revised acknowledgment letters for accounts existing prior to the effective date of the proposed revisions, but keeps instead such letters in the currently applicable template form, the depositories would not be required to provide direct, read-only access to accounts holding Customer Funds.

Request for Comment: The Commission seeks comment on all

NFA, holding segregated Customer Funds to report balances in the FCM's customer segregated accounts to NFA or a third party designated by NFA in the form and manner prescribed by NFA. CME and NFA Rules are available at the following websites: *https://www.CMEGroup.com,* and *https://www.NFA.Futures.Org.*

[275] At the time the Commission issued the 2013 Protections of Customer Funds Release, CME and NFA had just recently launched the programs. *See* 2013 Protections of Customer Funds Release at 68512. The verification programs have been further developed in the years that followed. FCMs report on the daily segregation records total funds held in segregation with banks, clearing organizations, and net equities with other FCMs in addition to other balances.

[276] *See* 2013 Protections of Customer Funds Release at 68537 (noting that the Commission anticipated that the combination of receipt of daily account balances reported by depositories to CME and NFA, and the Commission's ability to confirm account balances and transactions directly with depositories via direct communications would diminish the need to rely upon direct electronic access to account information at depositories).

[277] *See* Regulations 1.20(d)(5) and (6), 1.26(b), 22.5(a) and (b), and 30.7(d)(5) and (6). 17 CFR 1.20(d), 1.26(b), 22.5, and 30.7(d). For example, Regulation 1.20(d)(5) provides that an FCM must deposit futures customer funds only with a depository that agrees that accounts may be examined at any reasonable time by specified Commission or DSRO staff. Regulation 1.20(d)(6) provides that an FCM must deposit futures customer funds only with a depository that agrees to reply promptly and directly to any request from specified Commission staff or DSRO staff for confirmation of account balances or provision of any other information regarding or related to the FCM's account. Regulation 1.20(d)(5) and (6) further provide that the written acknowledgment required from the depository must contain the FCM's authorization to the depository to reply promptly and directly to the Commission or DSRO without further notice to or consent from the FCM. Regulation 22.5 provides that an FCM must obtain a written acknowledgment letter in accordance with Regulation 1.20 and Regulation 1.26 from each depository holding Cleared Swaps Customer Collateral, except an acknowledgment letter is not required of a DCO that has adopted rules providing for the segregation of Cleared Swaps Customer Collateral.

[278] Based on information provided by CME, as of March 7, 2023, FCM registrants maintained over 3,600 active accounts with approximately 200 banks, other registered FCMs, foreign broker-dealers, foreign exchanges, and DCOs.

[279] In this regard, depositories often require Commission staff to revise user-ids and passwords on a regular basis otherwise the access is interrupted and must be reset by the depositories. Some depositories also require the use of additional security devices beyond user-IDs and passwords, including key fobs or other forms of multi-factor authentication.

[280] Commission staff has not had a regulatory need to attempt to use read-only access for any FCM's depository accounts in the approximately 10 years since the Regulation was implemented.

[281] If adopted, the proposed amendments would extend to Regulation 22.5, which requires FCMs to obtain an acknowledgment letter from depositories before depositing Cleared Swaps Customer Collateral with a depository, in accordance with Regulations 1.20 and 1.26. 17 CFR 22.5(a). Regulation 22.5(b) further requires FCMs to adhere to all requirements specified in Regulation 1.20 and 1.26 regarding retaining, permitting access to filing, or amending the written acknowledgment letters. 17 CFR 22.5.

Separately, the Commission is proposing to redesignate appendices A and B to Regulation 1.20 as appendices C and D to Part 1, and appendices A and B to Regulation 1.26 as appendices F and G to Part 1, to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

aspects of the Proposal relating to the elimination of the Read-only Access Provisions, including:

30. The existing Read-only Access Provisions currently afford the Commission with direct access to depository accounts holding Customer Funds. Given the challenges depositories and Commission staff are encountering in implementing and administrating the provisions and the availability of alternative means of obtaining transaction and account balance information, what practical implications should the Commission consider prior to deciding whether to eliminate the requirement for depositories to provide Commission's staff with direct, read-only electronic access?

F. Proposed Conforming Amendments

Regulation 1.26 requires each FCM or DCO that invests futures customer funds in financial instruments that are Permitted Investments, including qualifying MMFs, to separately account for such instruments and to segregate the instruments from its own funds. The FCM or DCO also must obtain and retain in its files a written acknowledgment from the depository holding the instruments stating that the depository was informed that the instruments belong to futures customers and are being held in accordance with the provisions of the Act and Commission regulations. Regulation 1.26 also specifies how direct investments in MMFs must be held and sets forth the template acknowledgement letter to be used with respect to direct investments in MMFs.[282]

To account for the proposed change in the scope of MMFs that qualify as Permitted Investments and the proposed addition of Qualified ETFs to the list of Permitted Investments, the Commission proposes revisions to paragraphs (a) and (b) of Regulation 1.26 to replace the term ''money market mutual fund'' with ''government money market fund and U.S. Treasury exchange-traded fund'' or ''government money market fund or U.S. Treasury exchange-traded fund,'' as appropriate. To address the adoption of appendices H and I, as discussed below, paragraph (b) of Regulation 1.26 would be further revised to replace the reference to ''appendix A or B to this section'' with ''appendix F, G, H or I to this part.'' [283]

The Commission also proposes to amend Appendices A and B to Regulation 1.26 (to be redesignated appendices F and G to Part 1) to replace the term ''Money Market Mutual Fund'' with ''Government Money Market Fund.''

To account for the proposed addition of Qualified ETFs to the list of Permitted investments, the Commission also proposes to adopt new appendices H and I to Part 1. The appendices would set forth template acknowledgment letters for Qualified ETFs and would be modeled on appendices A and B to Regulation 1.26 (to be redesignated appendices F and G to Part 1), which currently address money market mutual funds. Appendices H and I to Part 1 would mostly replicate appendices A and B to Regulation 1.26, except that the term ''money market mutual fund'' would be replaced with ''U.S. Treasury exchange-traded fund;'' condition (1) will read ''To qualify as a Permitted Investment, interests in U.S. Treasury exchange-traded funds must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of this title, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;'' and references relating to money market mutual funds would be eliminated.

In addition, Regulation 30.7(d) requires that FCMs obtain written acknowledgment letters from each depository with which they maintain 30.7 customer funds. Appendices E and F to Part 30 of the Commission's regulations set forth the template acknowledgment letters. The Commission is proposing conforming changes to Regulation 30.7(d)(2) to replace the term ''money market mutual fund'' with ''government money market fund and U.S. Treasury exchange-traded fund'' or ''government money market fund or U.S. Treasury exchange-traded fund,'' as appropriate. The Commission is also proposing changes to Appendix F to Part 30, to replace the term ''money market mutual fund'' with ''government money market fund.'' In addition, the Commission is also proposing to revise Regulation 30.7(d)(2) to add ''or Appendix G to this part, respectively'' after ''Appendix F to this part'' to address the adoption of new Appendix G to Part 30, which would set forth a template acknowledgment letter modeled on proposed Appendix C to Regulation 1.26 but addressing 30.7 customer funds.

Request for Comment: The Commission seeks comment on all aspects of the Proposal relating to the conforming amendments. The Commission also invites comments on any other aspect of the Proposal. The Commission also specifically requests comment on the following question:

31. Are there any risks associated with the Proposal that the Commission has not considered? What measures could the Commission take to mitigate such risks?

IV. Section 4(c) of the Act

With respect to investment of futures customer funds, the proposed amendments to Regulation 1.25 would be promulgated under Section 4d(a)(2) of the Act.[284] Section 4d(a)(2) provides that customer money may be invested in U.S. government securities and municipal securities. It further provides that such investments must be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

Pursuant to its authority under Section 4(c) of the Act, the Commission proposes to expand the range of instruments in which FCMs and DCOs may invest futures customer funds beyond those listed in Section 4d(a)(2) of the Act to enhance the yield available to FCMs, DCOs and their customers, without compromising the safety of futures customer funds.

Section 4(c)(1) of the Act empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to certain exceptions.[285] The Commission's authority under Section 4(c) extends to transactions covered by Section 4d(a)(2) and to FCMs and DCOs that offer, enter into, render advice, or render other services with respect to such

[282] For purposes of clarification, an FCM or a DCO that holds shares of an MMF in a custodial account at a depository (not directly with the MMF or its affiliate) is required to execute the template acknowledgement letter set forth in Appendix A or B of Regulation 1.20 (to be redesignated Appendix C and Appendix D to Part 1), as applicable. 17 CFR 1.20.

[283] Regulation 1.26 currently refers to ''appendix A or B to this section.'' As noted *supra,* Appendix A and Appendix B to Regulation 1.26 would be redesignated Appendix F and Appendix G to Part 1 to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

[284] 7 U.S.C. 6(c).

[285] 7 U.S.C. 6(c)(1).

transactions. In enacting Section 4(c), Congress noted that its goal ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [286] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions under Section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the Act. The Proposal would provide FCMs and DCOs with a limited exemption from the restrictions in Section 4d(a) and (b) of the CEA pertaining to the safeguarding and investment of Customer Funds. As such, the Commission's preliminary analysis below focuses on how the proposed expansion of the list of Permitted Investments meets the conditions in Section 4(c)(2)(A) as they apply to an exemption with respect to an FCM or a DCO. More specifically, the discussion below describes how the proposed expansion is, in the Commission's view, consistent with the public interest and the purposes of the CEA.[287] In that regard, the Commission notes that when Section 4(c) was enacted, the Conference Report accompanying the Futures Trading Practices Act of 1992 [288] stated that the ''public interest'' in this context would ''include the national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition.'' [289]

To qualify as Permitted Investments, the instruments subject to this Proposal would need to meet strict conditions to ensure that investments of futures customer funds in these instruments are consistent with the objective of preserving principal and maintaining liquidity, as provided by Regulation 1.25. The Commission's preliminary analysis, presented above, indicates that the instruments proposed herein to be included as Permitted Investments meeting the specified proposed conditions present credit and volatility characteristics that are comparable to instruments that already qualify as Permitted Investments. As such, the Commission is of the view that the proposed expansion of the list of Permitted Investments would provide FCMs and DCOs with an opportunity to diversify their investments of Customer Funds, mitigating the risks that can arise from concentrating Customer Funds in a smaller set of Permitted Investments, without compromising the safety of such investments.

The expanded selection of Permitted Investments is expected to also permit FCMs and DCOs to remain competitive globally and domestically and maintain safeguards against systemic risk. A wider range of alternatives to invest futures customer funds may provide more profitable investment options, allowing FCMs and DCOs to generate more income for themselves and their customers. This, in turn, may motivate FCMs and DCOs to increase their presence in the futures market and other relevant markets, thus increasing competition. Increased revenue to FCMs and DCOs from the investment of Customer Funds also may benefit customers in the form of lower commission charges or direct interest payments on funds on deposit with the FCM or DCO, which may lead to greater market participation by customers and increased market liquidity. In light of the foregoing, the Commission believes that the adoption of the proposed amendments would promote responsible economic and financial innovation and fair competition, and would be consistent with the objective of Regulation 1.25 and with the ''public interest,'' as that term is used in Section 4(c) of the Act. Specifically, permitting FCMs and DCOs to invest Customer Funds in Specified Foreign Sovereign Debt to the extent they hold balances owed to customers denominated in the applicable currency reduces potential currency risk to DCOs, FCMs, and customers that would result from investing such foreign currencies in U.S.-dollar denominated assets. In addition, permitting investments in Qualified ETFs, subject to the proposed conditions, including that the ETF is passively managed with the investment objective of replicating the performance of a published short-term U.S. Treasury security index composed of U.S. Treasury bonds, notes, and bills with a remaining maturity of 12 months or less, provides an opportunity for greater diversification of the types of investment options that FCMs and DCO may use to manage the risk of holding Customer Funds. Proposed Qualified ETFs also provide potential benefits to FCMs, particularly smaller FCMs, that don't have the internal operations and resources to effectively manage direct investments in other Permitted Investments, such as U.S. government securities, U.S. agency obligations, and municipal securities. Both Specified Foreign Sovereign Debt and Qualified ETFs have the potential to reduce costs to FCMs, DCOs, and customers while remaining consistent with the requirement in Regulation 1.25 for the preservation of principal and liquidity of Permitted Investments. The Commission solicits public comment on whether the Proposal satisfies the requirements for exemption under Section 4(c) of the Act.

The Commission notes that with respect to investments of Cleared Swaps Customer Collateral and 30.7 customer funds, the Commission would be acting pursuant to its plenary authority under Sections 4d(f) [290] and 4(b) [291] of the Act, respectively, and would not need to apply Section 4(c) to effectuate the proposed amendments.

V. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the

[286] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[287] The analysis does not include a discussion of Section 4(c)(2)(B)'s conditions because the exemption in this instance does not implicate or affect a futures agreement, contract, or transaction.

[288] Public Law 102–546, 106 Stat. 3590 (1992).

[289] H.R. Conf. Rep. No. 102–978 (1992). The Conference Report also states that the reference in Section 4(c) to the ''purposes of the Act'' is intended to ''underscore [the Conferees'] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants.'' *Id.*

[290] 7 U.S.C. 6d(f)(4) (providing that Cleared Swaps Customer Collateral may be invested in certain specified investments and ''in any other investment that the Commission may by rule or Regulation prescribe, and such investments shall be made in accordance with such rules and Regulations and subject to such conditions as the Commission may prescribe.'')

[291] 7 U.S.C. 6(b)(2)(A) (providing that the Commission may adopt rules and Regulations requiring, among other things, the safeguarding of customer's funds, by any person located in the U.S. who engages in foreign futures trading).

impact.[292] Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[293] a regulatory flexibility analysis or certification typically is required.[294] The Commission has previously determined that registered FCMs and DCOs are not small entities for purposes of the RFA.[295] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[296] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB'').[297] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.[298] The PRA applies to all information, regardless of form or format, whenever the Federal Government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[299]

The regulation to be amended under this proposal contains a collection of information for which the Commission has previously received control numbers from OMB. The titles for this collection of information are OMB Control No. 3038–0024, Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs and OMB Control No. 3038–0091, Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral.[300]

As discussed in Section III.D. above, among other reporting items, FCMs are required to report in the SIDR Reports the amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in each of the current categories of Permitted Investments. The Commission is proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Report, by deleting the requirement for an FCM to report the balances invested in commercial paper and corporate notes and bonds as such investments would no longer be Permitted Investments under the Proposal; to require each FCM to report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Specified Foreign Sovereign Debt of each country that is included within the Specified Foreign Sovereign Debt; and to require an FCM to include in the SIDR Report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Qualified ETFs as such investments would be Permitted Investments under the Proposal. As such, the proposed changes to the content of the SIDR Reports would reflect the proposed revisions to the list of Permitted Investments discussed in Section III.A. of the Proposal. The Commission does not expect these proposed changes to result in an increase in the number of burden hours required for the completion of the reports. Accordingly, the Commission is retaining its existing burden estimates associated with this collection of information.[301]

In addition, the Commission is proposing to revise Regulation 1.26, which requires each FCM or DCO investing futures customer funds in MMFs that are Permitted Investments to obtain and retain in its files a written acknowledgment from the depository holding the funds stating that the depository was informed that the funds belong to customers and are being held in accordance with the provisions of the Act and Commission regulations. Regulation 1.26 also specifies the form of the written acknowledgment letter that each FCM or DCO must obtain from an MMF, in the event futures customer funds are held directly with the MMF. Regulations 22.5 and 30.7(d) set forth similar requirements with respect to Cleared Swaps Customer Collateral and 30.7 customer funds. The proposed amendments to Regulation 1.26 would require FCMs and DCOs segregating Customer Funds in a Permitted Government MMF or Qualified ETF account to obtain and maintain in their files an acknowledgment letter from the fund in which Customer Funds are held and to file such acknowledgment letter electronically with the Commission. The Commission is proposing an analogous amendment to Regulation 30.7(d)(2) with respect to investments of 30.7 customer funds by FCMs.[302] The Commission notes that the proposed revisions to Regulations 1.26 and 30.7(d) would reduce the scope of MMFs from which FCMs and DCOs, as applicable, would be required to obtain an acknowledgment letter by limiting the requirement to Permitted Government MMFs, a smaller set of MMFs. The proposed revisions to Regulations 1.26 and 30.7(d) would also impose a new requirement on FCMs and DCOs, as applicable, to obtain an acknowledgment letter from Qualified ETFs. The requirement would also apply under Regulation 22.5, which cross-references Regulation 1.26. To the extent that the new collection requirement would apply only to FCMs and DCOs that are APs and invest in Qualified ETFs in such capacity, the Commission estimates that the proposed requirement would affect no more than 15 registrants (*i.e.,* approximately 10 FCMs and five DCOs). Using the Commission's prior estimates of the number of burden hours necessary to comply with the requirement to obtain an acknowledgment letter pursuant to Regulations 1.26 and 30.7(d) (*i.e.,* 0.75 burden hours per response), the Commission estimates that the new requirement would result in 0.75 annual burden hours per registrant per category

[292] 5 U.S.C. 601 *et seq.*

[293] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[294] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[295] *See* 47 FR 18618, 18619 (Apr. 30, 1982) and 66 FR 45604, 45609 (Aug. 29, 2001).

[296] 44 U.S.C. 3501 *et seq.*

[297] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

[298] *See* 44 U.S.C. 3501.

[299] *See* 44 U.S.C. 3502(3).

[300] For the previously approved PRA estimates under OMB Control No. 3038–0024, *see* ICR Reference No. 202101–3038–001, at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-001.* For previously approved PRA estimated under OMB Control No. 3038–0091, see ICR Reference No. 202009–3038–007, at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202009-3038-007.*

[301] The Commission has previously estimated that compliance with the requirements under Regulations 1.32(f) and 1.32(g) to file SIDR reports requires 59 covered FCMs to expend 2,832 burden hours annually. The Commission has estimated that each FCM will file 24 reports per year requiring approximately 48 burden hours per respondent. This yields a total of 2,832 burden hours annually (59 FCM respondents × 48 burden hours annually = 2,832 hours).

[302] The Commission notes that an amendment to Regulation 22.5 would not be necessary as this regulation cross-references Regulation 1.26.

of Customer Funds, as applicable, assuming that a registrant would obtain one acknowledgement letter per year from a Qualified ETF with which it holds Customer Funds.[303]

The Commission also notes that, in connection with the proposed revisions related to the elimination of the Read-only Access Provisions, an FCM would need to obtain the revised acknowledgment letter only for accounts opened following the effective date of the proposed revisions or if the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the elimination of the Read-only Access Provisions. The opening of a new depository account triggers a requirement to obtain an acknowledgment letter in all circumstances, regardless of the proposed revisions related to the elimination of the Read-only Access Provisions. For these reasons, the Commission is retaining its existing estimate of the burden that covered FCMs and DCOs incur to obtain, maintain, and electronically file the acknowledgment letters with the Commission, as currently provided in the approved collection of information.[304]

[303] The Commission has previously estimated that an FCM or a DCO, as applicable, spends 0.75 hours per acknowledgement letter required under Regulation 1.26 or Regulation 30.7(d). *See* ICR Reference No. 202101–3038–001, at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-001.* The Commission therefore estimates that to obtain an acknowledgement letter from Qualified ETFs, 15 registrants would have to extend 30 burden hours annually. Specifically, the Commission estimates that FCMs would have to spend a total of 22.5 hours (10 FCMs × 1 report × 0.75 burden hours × 3 categories of Customer Funds = 22.5 hours) and DCOs would have to spend a total of 7.5 hours (5 DCOs × 1 report × 0.75 burden hours × 2 categories of Customer Funds = 7.5 hours). The Commission notes that investments by DCOs are only relevant with respect to futures customer funds and Cleared Swaps Customer Collateral.

[304] The Commission has estimated that 36 covered FCMs incur an estimated 216 burden hours annually to file required acknowledgement letters pursuant to Regulation 1.20(d). The Commission has estimated that each respondent will file 3 reports per year requiring an estimated 2 burden hours per report, for a total of 6 burden hours per respondent. This yields a total of 216 burden hours annually (36 respondents × 6 burden hours annually = 216 burden hours). Under Regulation 1.26, the Commission has estimated that 74 covered respondents incur an estimated 111 burden hours annually to obtain and maintain required acknowledgement forms (74 respondents × 1.5 hours annually = 111 burden hours). Under Regulation 30.7, the Commission has estimated that 42 covered respondents incur an estimated 252 burden hours annually (42 respondents × 6 burden hours annually = 252 burden hours) and under Regulation 22.5, the Commission has estimated that 78 covered respondents incur an estimated 390 burden hours annually (78 respondents × 5 burden hours annually = 390 burden hours) to obtain and maintain the required acknowledgment letters.

The Commission welcomes public comment on all aspects of its analysis of the PRA requirements. In particular, the Commission invites comment on its estimates of additional burden hours in connection with the proposed requirement for FCMs and DCOs that invest Customer Funds in Qualified ETFs to obtain an acknowledgment letter from such ETFs.

C. Cost-Benefit Considerations

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act.[305] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

As described in more detail above, the Commission is proposing to revise the list of Permitted Investments in Regulation 1.25(a) to: (i) add the foreign sovereign debt of certain jurisdictions and interests in certain ETFs that invest primarily in short-term U.S. Treasury securities; (ii) limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs; and (iii) eliminate commercial paper, corporate notes or bonds. The Commission is further specifying the capital charges that FCMs would be required to take on investments of Customer Funds in foreign sovereign debt and ETFs. The Commission is also proposing to replace LIBOR with SOFR as a permitted benchmark under Regulation 1.25(b)(2)(iv)(A)(1) and (2), as well as to adopt certain conforming changes consistent with the proposed amendments, and is requesting public comment on the possible removal of bank CDs from the list of Permitted Investments. Finally, the Commission is proposing to revise relevant provisions in Parts 1 and 30 of the Commission's regulations to eliminate the requirement for depositories to provide read-only electronic access to accounts maintained by FCMs that hold Customer Funds.

[305] 7 U.S.C. 19(a).

The baseline for consideration of the benefits and costs associated with the Proposal are the benefits and costs that FCMs, DCOs, and the public would realize if the Commission does not proceed with the proposed amendments, or in other words, the status quo.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of these proposed amendments on all activity subject to the proposed amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, U.S. commerce under Section 2(i) of the Act.[306]

The Commission recognizes that the Proposal may result in some additional, incremental costs for FCMs and DCOs. However, the Commission lacks the data necessary to reasonably quantify all of the costs and benefits considered below. Additionally, any initial and recurring compliance costs for any particular FCM or DCO will depend on its size, existing infrastructure, practices, and cost structures. The Commission welcomes comments on any such incremental costs, especially by DCOs and FCMs, who may be better able to provide quantitative costs data or estimates, based on their respective experiences relating to Commission's regulations governing the investment of Customer Funds and related requirements.

The Commission is also including a number of questions for the purpose of eliciting cost and benefit estimates from public commenters wherever possible. Quantifying other costs and benefits, such as the effects of potential changes in the behavior of FCMs and DCOs resulting from the proposed amendments are inherently harder to measure. Thus, the Commission is similarly requesting comment through questions to help it better quantify these impacts. Due to these quantification

[306] 7 U.S.C. 2(i).

difficulties, for this NPRM, the Commission offers the following qualitative discussion of its costs and benefits.

a. Foreign Sovereign Debt, Interests in Exchange-Traded Funds, and Associated Capital Charges

The Proposal would expand the list of Permitted Investments to add two new categories of instruments. Specifically, the Proposal would add: (i) the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, and (ii) interests in certain ETFs that invest in primarily short-term U.S. Treasury securities, to the list of Permitted Investments in which FCMs and DCOs may invest customer segregated funds pursuant to Regulation 1.25. The Proposal would also require an FCM to apply capital charges on any investments of Customer Funds in the Specified Foreign Sovereign Debt and Qualified ETFs to account for potential market risk associated with such investments. The Proposal would further expand the universe of permitted counterparties and depositories that can be used to buy and sell permitted foreign sovereign debt pursuant to Repurchase Transactions to include certain non-U.S. entities.

1. Benefits

The Commission preliminarily believes that expanding the list of Permitted Investments to include Specified Foreign Sovereign Debt and interests in Qualified ETFs would provide FCMs and DCOs with a wider range of alternatives to invest Customer Funds, and as a result, FCMs and DCOs might have more investment options, some of which might be more profitable than the existing Permitted Investments, such that FCMs and DCOs may be able to generate more income for themselves and their customers. This may motivate FCMs or DCOs to increase their presence in the futures market and other relevant markets, thereby increasing competition, which might lead to a reduction in charges to customers and an increase trading activity and liquidity.

Also, the ability to use Specified Foreign Sovereign Debt as a Permitted Investment would facilitate FCMs' and DCOs' management of foreign currencies that customers deposit to margin their trades and enable FCMs and DCOs to avoid certain risks and practical challenges in the handling of foreign currencies. For example, providing FCMs and DCOs with the opportunity to invest customer foreign currencies in identically-denominated assets would help manage the foreign currency risk that FCMs and DCOs face if they seek to invest foreign currencies in the currently permitted, U.S. dollar-denominated investments. In addition, in their Joint Petition, the Petitioners asserted that as a matter of risk management policy, or due to regulatory requirements, many clearing organizations located outside of the United States impose strict cut-off times for cash withdrawal by clearing members, while allowing later cut-off times for withdrawal of other types of collateral.[307] Also, for reasons such as capital requirements and balance sheet management, banks may not accept foreign currencies at all or may place limits on the accepted amount. Banks may also charge higher rates for holding foreign currencies. As such, FCM customers depositing foreign currencies might potentially absorb those costs. The Petitioners also argued that it may be preferable to hold foreign currencies in the form of high-quality sovereign debt than keeping the funds in unsecured bank demand deposit accounts that might expose the funds to the credit risk of commercial banks.

Similarly, for reasons related to balance sheet management, custodian institutions may impose higher fees for accepting cash deposits denominated in USD or limit the amounts of USD cash that they are willing to safeguard.

Expanding the list of Permitted Investments to instruments that meet the overall required standards of preserving principal and maintaining liquidity, while also providing the potential for greater diversification or higher returns for FCMs, DCOs and customers, would give FCMs and DCOs more flexibility in the management of Customer Funds. This might be particularly important given the narrower range of assets that currently qualify as Permitted Investments under Regulation 1.25.

In addition, Qualified ETFs, in particular, may offer an opportunity to invest in U.S. Treasury securities, which qualify as a Permitted Investment, without devoting the resources required to purchase, monitor, and roll over such securities when they mature.

The Commission also preliminarily believes that requiring an FCM to apply capital charges on investments of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs helps ensure that the FCM maintains a sufficient level of readily available liquid funds that would be available to transfer into the FCM's futures accounts, Cleared Swaps Customer Accounts, and/or 30.7 accounts to cover decreases in value of the investments to help ensure continue compliance with Customer Funds segregation requirements.[308] Requiring an FCM to maintain regulatory capital to cover potential decreases in the value of the Permitted Investments benefits the FCM by helping to ensure that such firms have sufficient, liquid financial resources to meet 100 percent of their obligations to futures customers, Cleared Swaps Customers, and 30.7 customers at all times as required by Regulations 1.20, 22.2, and 30.7. Capital charges on Permitted Investments also benefit FCM customers as the charges help ensure an FCM maintains capital in an amount sufficient to cover investment losses and to prevent such losses from being passed on to customers in violation of Regulations 1.29(b), 22.2(e)(1), and 30.7(i).

In addition, the Commission also notes that the proposed amendment to Regulation 22.3(d), seeking to clarify that DCOs are responsible for losses resulting from their investments of Customer Funds, would provide legal certainty with respect to the Commission's customer protection regulations.

2. Costs

Although the Proposal would increase the range of permissible investments in which DCOs and FCMs may invest customers funds, facilitating their management of investments and capital, the Proposal may result in customer segregated funds being invested in instruments that may be less liquid and have increased exposure to credit and market risks than those currently permitted under Regulation 1.25. Such risks could result in an increased exposure for FCMs and DCOs, who pursuant to Regulations 1.29(b), 22.2(e)(1), 22.3(d), and 30.7(i), as applicable, are responsible for losses resulting from investments of Customer Funds. A heightened risk exposure may also indirectly impact customers if the

[307] Joint Petition at p. 3 (citing, as an example of regulatory requirements, Article 45 of the regulatory technical standards on requirements for central counterparties (Commission Delegated Regulation (EU) No. 153/2013) (''CCP RTS''), which supplements provisions in the EU Market Infrastructure Regulation (Regulation (EU) No 648/2012) (''EMIR'') governing the investment policies of EU central counterparties. Per Article 45(2) of the CCP RTS, not less than 95 percent of cash deposited other than with a central bank and maintained overnight must be deposited through arrangements that ensure its collateralization with highly liquid financial instruments).

[308] The terms ''futures account,'' ''Cleared Swap Customer Account,'' and ''30.7 account'' are defined in Regulations 1.3, 22.1, and 30.1, respectively. 17 CFR 1.3, 17 CFR 22.1, and 17 CFR 30.1.

losses compromise the FCM's or DCO's ability to return Customer Funds.

To account for these potential risks and ensure that the proposed Permitted Investments are consistent with the general objectives of Regulation 1.25 of preserving principal and maintaining liquidity, the Commission is proposing several conditions for foreign sovereign debt and interests in U.S. Treasury ETFs to qualify as Permitted Investments. Specifically, for the Specified Foreign Sovereign Debt, the proposed conditions include a cap of 45 BPS on the two-year credit default spread of the issuing sovereign, a 60-day limit on the dollar-weighted average of the time to maturity of the FCM's or DCO's portfolio of investments in each type of Specified Foreign Sovereign Debt, and a 180-day limit on the time-to-maturity of any individual Specified Foreign Sovereign Debt instrument. For interests in Qualified ETFs to be deemed Permitted Investments, the Commission proposes to require, among other conditions, that the ETF is passively managed and seeks to replicate the performance of a published short-term U.S. Treasury security index. For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Under the Proposal, the eligible U.S. Treasury securities must represent at least 95 percent of the Qualified ETF's investment portfolio. In addition, to be able invest in a Qualified ETF, an FCM or a DCO would have to qualify as an authorized participant such that it would be able to redeem interests in the ETF directly from the fund. Moreover, as discussed above, the Proposal would require FCMs to take capital charges based on the current market value of the Specified Foreign Sovereign Debt and Qualified ETFs to address potential market risk of such investments. The capital charges are intended to ensure that an FCM has sufficient financial resources in the form of cash and other readily marketable collateral to adequately cover potential market risk of the investments, consistent with the FCM's obligation to bear any losses resulting from such investments.

Requiring an FCM to apply capital charges in connection with the proposed new categories of Permitted Investments would result in costs associated with reserving capital. The FCM may not be able to use the amounts reserved as capital to maximize the profit of its business operations, thus potentially reducing its income. The Commission notes, however, that capital requirements are an essential risk-management feature of the FCM's regulatory regime and the amounts reserved as capital would be necessary and expected costs associated with operating a business as an FCM.

In addition, the Commission preliminarily believes that the proposed clarifying amendment to Regulation 22.3(d) would not result in increased costs for DCOs. The proposed amendment seeks to expressly state a regulatory obligation that is consistent with the Commission's original intent to permit DCOs to invest Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.[309] As such, the Commission preliminarily believes that DCOs already reserve financial resources to account for their responsibility for such investments.

Finally, as discussed above, the Commission has slightly adjusted its existing burden estimates associated with the approved collection of information. As such, the Commission preliminarily believes that FCMs and DCOs would not incur material costs relating to the collection of information as a result of this Proposal.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

The Proposal would expand the list of permitted instruments set forth in Regulation 1.25(a) to include instruments that may be less liquid and may be more exposed to credit and market risks than some of the currently Permitted Investments under Regulation 1.25, resulting in Customer Funds being invested in potentially illiquid and risky instruments. To address these potential risks with respect to Specified Foreign Sovereign Debt and Qualified ETFs, the Proposal would include strict conditions for the relevant instruments to qualify as Permitted Investments, and would require FCMs to reserve regulatory capital to cover potential decreases in the market value of the Specified Foreign Sovereign Debt and Qualified ETFs and not pass such losses on to customers. The Commission's preliminary analysis indicates that instruments meeting the specified conditions present credit and volatility characteristics that are comparable to those of instruments that already qualify as Permitted Investments.[310] As such, the Commission believes that the current level of protection provided to Customer Funds would be maintained under the terms of the proposal.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

Having a greater selection of Permitted Investments may provide FCMs or DCOs with the ability to generate more income from their investment of Customer Funds. This may motivate FCMs or DCOs to increase their presence in the futures and other relevant markets increasing competition, which might lead to lower charges for customers. The increase in revenue may also increase earnings to customers as DCOs and FCMs often pay a return on customer deposited funds, and FCMs may otherwise share some or all of the income to customers.

The increased range of Permitted Investments is expected to provide investment flexibility to FCMs and DCOs and an opportunity to realize cost savings. More specifically, by being able to invest in Specified Foreign Sovereign Debt, FCMs and DCOs may be able to avoid practical challenges, such as having to meet clearing organizations' strict cut-off times for cash withdrawal, or the additional fees for holding foreign currencies, imposed by some institutions. In addition, investing in Specified Foreign Sovereign Debt could be a safer alternative than holding cash at a commercial bank. It may also help avoid the foreign currency risk to which FCMs and DCOs may be exposed absent the ability to invest customer foreign currencies in identically-denominated assets.

In addition, Qualified ETFs may provide a simpler and cost-efficient way of investing in U.S. Treasury securities, saving the resources that would otherwise be required to roll over such securities at their maturity.

(c) Price Discovery

The Proposal would increase the selection of Permitted Investments and may lead FCMs and DCO to generate more income from their investments of

[309] *See supra* note 42.

[310] *See supra* note 77 (using one-year sovereign debt instruments yield data to demonstrate that the price risk of the Specified Foreign Sovereign Debt instruments is comparable to that of U.S. government securities), Section III.A.1 and note 94 (using credit default swap data to demonstrate that the Specified Foreign Sovereign Debt instruments have a risk profile comparable to that of U.S. government securities) and note 180 (using yield data to demonstrate that five ETFs currently available on the market, which invest in short-term U.S. Treasury securities, are at least as stable as one-year U.S. Treasury securities).

Customer Funds. This might lead to a reduction in charges for customers, or provide customers with additional revenue, and potentially motivate customers to increase their trading in the futures market and other relevant markets, which might increase liquidity in those markets and enhance price discovery.

(d) Sound Risk Management

Increasing the range of Permitted Investments would provide FCMs and DCOs with a broader selection of investment options to invest Customer Funds, enabling FCMs and DCOs to have more diversified portfolios and reduce the potential concentration in a few instruments. Providing safe alternative investment options may be particularly beneficial for FCMs and DCOs in light of the limited range of instruments that meet the eligibility criteria of Regulation 1.25 and the competing demand for high quality forms of collateral driven by the regulatory reforms implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

By making available Specified Foreign Sovereign Debt as a Permitted Investment, the Commission would provide FCMs and DCOs with an opportunity to better manage risks associated with holding foreign currencies deposited by customers. As noted above, the Commission recognizes that investing customer segregated funds in Specified Foreign Sovereign Debt provides an alternative to taking on the exposure of holding cash at a commercial bank. The Commission notes also that absent the ability to invest Customer Funds in identically-denominated sovereign debt securities, an FCM or a DCO seeking to invest customer foreign currency deposits would need to convert the currencies to a U.S. dollar-denominated asset, which would increase the potential foreign currency risk. In addition, by limiting the investment of foreign currency to foreign sovereign debt that meets certain requirements, the Proposal is expected to further promote sound risk management. Lastly, requiring an FCM to reserve capital to cover potential decreases in the value of the Specified Foreign Sovereign Debt and Qualified ETFs would help ensure that an FCM has the financial resources to meet its regulatory obligations of bearing 100 percent of the losses on the investment of Customer Funds.

(e) Other Public Interest Considerations

Although the four factors mentioned above are considered to be the primary cost-benefit considerations, other public interest considerations may also be relevant. For instance, in addition to the potential benefits that may accrue to FCMs, DCOs, and customers, benefits associated with the addition of Qualified ETFs to the list of Permitted Investments may also accrue to the general public, as allowing FCMs and DCOs to invest Customer Funds in such instruments may contribute to a more vibrant and robust market for ETFs. In addition, the expansion of Permitted Investments to include Specified Foreign Sovereign Debt may ease access to futures and cleared swaps markets for entities domiciled in non-U.S. jurisdictions that can now more easily transaction in foreign currency with potentially lower costs and risk. This may provide additional hedging opportunities for entities and enhance market liquidity.

b. Government Money Market Funds, Commercial Paper and Corporate Notes or Bonds, and Certificates of Deposit Issued by Banks

The Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs as defined by SEC Rule 2a-7, revise the asset-based concentration limits applicable to such funds, and add issuer-based concentration limits. The Proposal would also remove from the list of Permitted Investments commercial paper and corporate notes or bonds guaranteed as to principal and interest by the United States under the TLGP. The Proposal would also request public comment as to whether bank CDs should be removed from the list of Permitted Investments due to a lack of use by FCMs and DCOs.

1. Benefits

The Proposal would remove interests in certain MMFs, including Prime MMFs and Electing Government MMFs, from the list of Permitted Investments set forth in Regulation 1.25, limiting the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs, as further discussed above. The Commission believes that interests in Prime MMFs and Electing Government MMFs are unsuitable as Permitted Investments under Regulation 1.25 because such MMFs are subject to the SEC MMF Reforms pursuant to which liquidity fees to stem redemptions may be imposed, which could hinder the liquidity of the MMFs and adversely impact customers' access to their funds, which may be needed to meet margin calls on open positions or cash market transaction. The Proposal would therefore prevent investments of Customer Funds in MMFs that might pose unacceptable levels of liquidity risk.

The Proposal would impose asset-based concentration limits according to the size of the Permitted Government MMFs and their management companies. A 50 percent concentration limits would apply to Government MMFs with at least $1 billion in assets and with management companies with more than $25 billion in assets under management. The current 10 percent concentration limit for MMFs with less than $1 billion in assets and/or which have a management company managing less than $25 billion in assets would be maintained. These concentration limits recognize that larger Government MMFs may be a safer investment alternative given that they may be better positioned to withstand times of significant financial stress and to manage high levels of redemptions. As such, the concentration limits, as proposed, ensure that FCMs' and DCOs' investments in Permitted Government MMFs account for the level of liquidity, market, and credit risk posed by a fund in light of its capital base, portfolio of holdings, and capacity to handle market stress.

The proposed concentration limits would promote investments of Customer Funds in Permitted Government MMFs of different sizes subject to different concentration limits, leading to diversification in FCMs' and DCO's portfolios, while encouraging investments in safer larger Government MMFs. The proposed concentration limits might also reduce the potential concentration in certain Permitted Government MMFs, fostering competition across the funds, which might lead to better terms and reduced costs for FCMs and DCOs. In addition, the Commission is proposing issuer-based limits with the goal of mitigating potential risks associated with concentrating investments of Customer Funds in any single fund or family of Government MMFs such as the risk that access to Customer Funds may become restricted due to a cybersecurity or an operational incident affecting the fund. Specifically, the Commission is proposing to limit investments of Customer Funds in any single family of Government MMFs to 25 percent and investments of Customer Funds in any single issuer of Government MMFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds. In establishing these concentration limits, the Commission acknowledges that there are no precise

limits that can guarantee absolute protection against market volatility. The Commission's preliminary assessment indicates, however, that these proposed limits represent a practical approach that effectively balances the need to support the viability of FCMs' and DCOs' business model while safeguarding the principal and liquidity of the Customer Funds.

The Proposal would also eliminate commercial paper and corporate notes or bonds guaranteed under the TLGP as Permitted Investments given that the TLGP expired in 2012. This proposed rule amendment will streamline the CFTC rules, facilitating their implementation and administration, and is consistent with the Commission's earlier determination that commercial paper and corporate notes or bonds are rarely used and pose unacceptable levels of credit, liquidity, and market risk.[311] The Proposal is also requesting public comment on whether to remove bank CDs from the list of Permitted Investments, in light of the Commission's experience that FCMs and DCOs do not invest Customer Funds in these instruments.[312]

2. Costs

As the Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs, the Proposal may lead to less diversification in the investment of Customer Funds by FCMs and DCOs. FCMs' and DCOs' portfolios may be concentrated in the Permitted Government MMFs, increasing exposure to risks associated with the funds, which might heighten the risk of loss of Customer Funds. Also, given that fewer MMFs would be available as Permitted Investments, FCMs and DCOs would have less flexibility in investing Customer Funds. FCMs and DCOs might thus generate less income and may pass on additional operational costs to customers by increasing their fees.

The Commission notes, however, that the potential risk of concentration of investments in Permitted Government MMFs would be mitigated by the proposed asset-based and issuer-based concentration limits, which are designed to promote diversification among different categories of Permitted Investments and among different individual Permitted Government MMFs.

To meet the proposed concentration limits, FCMs and DCOs may be required to liquidate Government MMFs held in their portfolios and might incur losses. The Commission notes that the risk of loss is likely to be mitigated given that the Government MMFs in which FCMs and DCOs have been permitted to invest Customer Funds since the issuance of Staff Letter 16–68 and Staff Letter 16–69 are presumably highly liquid.[313]

In the Commission's view, the elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP would not result in any costs as the instruments have not been available as Permitted Investments since the 2012 when the TLGP expired. Similarly, the Commission believes that were it to remove banks CDs at a later time, there would be no immediate potential cost because in the Commission's experience FCMs and DCOs do not currently invest Customer Funds in this type of instrument. Eliminating this investment option, however, may lead to potential long-term costs if this option becomes valuable.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

The Proposal would remove from the list of Permitted Investments interests in MMFs whose redemptions may be subject to liquidity fees, including Prime MMFs and Electing Government MMFs. In the Commission's view, the imposition of a liquidity fee is in conflict with provisions in Regulation 1.25 that are designed to reduce Customer Funds' exposure to liquidity risk and to preserve the principal of investments purchased with Customer Funds. As a result, by preventing investments in instruments that pose unacceptable levels of liquidity risk, the Proposal would provide greater protection to customer segregated funds and promote the efficient and safe investment of Customer Funds by FCMs and DCOs.

The Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to Government MMFs as defined by SEC Rule 2a–7. The Commission notes that these types of funds are less susceptible to runs and have seen inflows during periods of market instability.[314] As such, the Proposal, by limiting the scope of eligible MMFs to Government MMFs, would reduce the potential that funds in which Customer Funds are invested may be impacted by run risk and other associated risks. However, given that there would be fewer MMFs available as Permitted Investments, FCMs' and DCOs' investments may be concentrated in fewer MMFs and the investments may be more susceptible to risk associated with the fewer available funds.

The proposed asset-based concentration limits for Government MMFs would ascribe limits according to the size of the funds, with larger funds being subject to a 50 percent limit and smaller funds to a 10 percent limit. These limits recognize that larger funds have capital bases better capable of handling a high volume of redemptions in times of stress. Accordingly, the concentration limits would promote investments in larger funds, which represent a safer investment alternative, while providing for diversification by permitting investments in smaller Government MMFs subject to concentration limits to ensure the safety of Customer Funds. In addition, the proposed issuer-based concentration limits would promote diversification among different individual Government MMFs, thus mitigating the potential risks associated with concentrating investments of Customer Funds with a single fund or family of funds.

The implementation of the proposed concentration limits may require FCMs and DCOs to liquidate their fund holdings, which could lead to losses. The Commission believe that the potential for losses would be mitigated because since the issuance in 2016 of Staff Letter 16–68 and Staff Letter 16–69, FCMs and DCOs have been allowed to invest only in Government MMFs meeting the liquidity standards of Regulation 1.25.

By removing commercial paper and corporate notes or bonds guaranteed under the TLGP from the list of

[311] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 FR 67642, 67644 (Nov. 3, 2010).

[312] In addition to the Commission's general experience in overseeing DCOs and FCMs, Commission staff also reviewed how FCMs invested customer funds as reported in the SIDR Report for the period September 15, 2022 to February 15, 2023 and noted that no FCMs reported investing customer funds in bank CDs.

[313] See 17 CFR 1.25(b)(1).

[314] *See* SEC MMF Reforms at 51417 (noting that investors typically view government MMFs, in contrast to Prime MMFs, as a relatively safe investment during times of market turmoil). *See also* Money Market Fund Reforms, 87 FR 7248 (Feb. 8, 2022) (''SEC MMF Reforms Proposing Release'') at 7250 (recounting that during the 2008 financial crisis there was a run primarily on institutional Prime MMFs after an MMF ''broke the buck'' and suspended redemptions, which motivated many fund sponsors to step in and provide financial support to their funds. The events led to general turbulence in the financial markets and contributed to severe dislocations in short-term credit markets.

Permitted Investments under Regulation 1.25, the Proposal would eliminate instruments that are no longer available given the expiration of the TLGP in 2012. This would streamline the CFTC rules and facilitate their implementation, removing a potential source of confusion and allowing FCMs and DCOs to focus their efforts on more immediate regulatory concerns. If the Commission were to proceed with the removal of bank CDs, a type of instruments that is not used by FCMs and DCOs as an investment of Customer Funds, the elimination would similarly contribute to the effort of streamlining Commission's regulations.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating interests in Prime MMFs and Electing Government MMFs from the list of Permitted Investments, the Proposal would prevent investments of Customer Funds in instruments that might be less liquid in light of the SEC MMF Reforms, thus advancing the objectives of Regulation 1.25 of preserving principal and maintaining liquidity.

As discussed earlier, the elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP would remove instruments that are either no longer available given the expiration of the program or not used as an investment of Customer Funds, allowing FCMs and DCOs to more efficiently allocate their resources and address more immediate regulatory concerns.

(c) Price Discovery

The Proposal, by reducing the selection of Permitted Investments, would lead to fewer investment options available to FCMs and DCOs. As such, FCMs and DCOs might generate less income from their investment of Customer Funds and might pass onto customers the costs of operations by increasing fees. Facing increased costs, customers might cut back on their trading, reducing liquidity, which might hinder price discovery.

(d) Sound Risk Management

By eliminating from the list of Permitted Investments interests in Prime MMFs and Electing Government MMFs, the Proposal would prevent investments of customers funds in certain MMFs, which might be susceptible to increased liquidity risk in light the SEC MMF Reforms, thus promoting sound risk management. Also, the concentration limits that would apply to the Permitted Government MMFs would foster adequate diversification in FCMs' and DCOs' portfolios by encouraging investments of Customer Funds in larger funds expected to have the capacity to withstand significant market stress and increasing redemptions, while making available smaller funds subject to specified concentration limits.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

c. SOFR as a Permitted Benchmark

In March 2021, the U.K. Financial Conduct Authority announced that LIBOR would be effectively discontinued.[315] The Commission is therefore proposing to replace LIBOR with SOFR as a permitted benchmark for variable and floating rate securities that qualify as Permitted Investments under Regulation 1.25.

1. Benefits

Under Regulation 1.25(b)(2)(iv)(A), variable and floating securities qualify as Permitted Investments if, among other things, the interest payments on the securities correlate to specified benchmarks, including LIBOR.[316] As discussed in more detail above, a number of enforcement actions concerning attempts to manipulate the LIBOR benchmark led to a loss of confidence in the reliability and robustness of LIBOR and to the benchmark's discontinuation. The Commission therefore proposes to remove LIBOR as a permitted benchmark and replace it with SOFR. The Commission believes that the unreliability of LIBOR could undermine the value of variable and floating rate securities that reference the benchmark. Accordingly, the replacement of LIBOR with SOFR, which has been identified as a preferred benchmark alternative by the ARRC,[317] would ensure that Customer Funds are invested in securities that reference a reliable and robust benchmark providing greater protection to Customer Funds.

2. Costs

The Commission notes that given the widespread use of LIBOR as a benchmark, FCMs and DCOs that invest Customer Funds in variable and fixed rate securities might incur costs as a result of the transition to SOFR. To the extent that FCMs and DCOs already invest in variable and fixed rate securities benchmarked to LIBOR, they would need to amend the terms of their agreements to incorporate the new benchmark. FCMs and DCOs may also need to adjust their systems and processes to implement and recognize SOFR as a benchmark. However, the Commission believes that transitioning to a more reliable benchmark offsets these associated costs by enhancing security for Customer Funds and removing a potential source of risk to the financial system overall.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

As previously discussed, LIBOR is no longer deemed a reliable and robust benchmark. As such, it could negatively impact the value of variable and floating rate securities that reference the benchmark. By eliminating LIBOR as a permitted benchmark, the Proposal would prevent investments of Customer Funds in securities referencing an unreliable benchmark and would promote the use of a safer benchmark alternative.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By formalizing the use of SOFR as a permitted benchmark for Permitted Investments in which Customer Funds may be invested, the Proposal would promote the transition to SOFR and facilitate the phasing out of LIBOR, a widely used benchmark that is now deemed to be unreliable, removing a potential source of risk to the financial system.[318]

In addition, SOFR is an essential benchmark that helps ensure the stability and integrity of financial markets. As such, formalizing the use of SOFR as a permitted benchmark for permitted investments may enhance the financial integrity of markets.

[315] Staff Letter 21–26 at p. 1.

[316] 17 CFR 1.25(b)(2)(iv)(A).

[317] *See* Staff Letter 21–26 at p. 3.

[318] The replacement of LIBOR as a benchmark for Permitted Investments represents another step in the Commission's efforts to facilitate the transition away from LIBOR, as illustrated by a recent amendment to the clearing requirements. *See* Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 52182 (Aug. 24, 2022) (replacing the requirement to clear interest rate swaps referencing LIBOR and certain other interbank offered rates with the requirement to clear interest rate swaps referencing overnight, nearly risk-free reference rates).

(c) Price Discovery

The proposed amendment to replace LIBOR with SOFR as a permitted benchmark would have no negative impact on price discovery. Permitting SOFR as a benchmark for Customer Funds investments would benefit FCMs and DCOs and their customers. This might increase liquidity in the futures markets and enhance the process of price discovery.

(d) Sound Risk Management

By eliminating LIBOR as a permitted benchmark and replacing it with SOFR, the Proposal would ensure that to the extent FCMs and DCOs select variable and floating rate securities as Permitted Investments to invest Customer Funds, these instruments would reference benchmarks that are, in the Commission's view, sound and reliable, thus fostering sound risk management.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

d. Revision of the Read-Only Access Provisions

The Proposal would eliminate the Read-only Access Provisions in parts 1 and 30 of the Commission's regulations,[319] which require depositories to provide the Commission with direct, read-only electronic access to accounts maintained by FCMs that hold Customer Funds.

1. Benefits

Eliminating the Read-only Access Provisions would streamline the CFTC rules, facilitating their implementation and administration, and is consistent with the Commission's anticipation that the existence of alternative methods for obtaining and verifying account balance information would diminish the need to rely on the direct read-only access to accounts. More specifically, by relying on the CME's and NFA's daily segregation confirmation and verification process, the Commission would be able to allocate resources to focus on more immediate regulatory concerns within its jurisdictional purview. In that regard, the Commission notes, as discussed above, that it has encountered numerous practical challenges in the administration of direct access to depository accounts, which unduly burden the Commission's resources, particularly considering that the Commission contemplated that the use of real-time access would be limited, and prevent Commission staff from using the Read-only Access Provisions as intended.

In addition, eliminating the requirement to provide the Commission with direct, read-only access to accounts maintained by FCMs, would reduce costs for depositories, which may motivate these institutions to more readily take FCM Customer Funds on deposit. The Proposal may thus foster competition in the futures market and ultimately reduce costs for FCMs and their customers.

Furthermore, the deletion of the Read-only Access Provisions would eliminate the need for the Commission to keep a log of access credentials and physical authentication devices, thereby reducing the potential cybersecurity risk associated with the maintenance of such credentials and devices.

2. Costs

Withdrawing the requirement that depositories provide the Commission with direct, read-only electronic access to depository accounts holding Customer Funds would deprive the Commission from ongoing, instantaneous access to the accounts for purposes of identifying potential discrepancies between the account balance information reported by the FCMs and the account balance information available directly from the depositories.

The Commission believes, however, that more efficient means for identifying discrepancies in the account balance information exist, namely by obtaining account balance and transaction information through the CME's and NFA's automated daily segregation confirmation system or by requesting the information directly from the depositories.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

As previously noted, if the Commission is no longer required to administer the direct, read-only access to depository accounts, the Commission would eliminate the potential cybersecurity risk associated with the maintenance of access credentials and authentication devices, thus limiting risk for market participants and the public.

The Commission further notes that the CME's and NFA's automated daily segregation confirmation system provides an efficient and effective method for verifying customer accounts balances, which, in conjunction with the Commission's right to request information from the depositories, would ensure an adequate degree of protection for market participants and the public.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating the Read-only Access Provisions, the Commission would dispense with a method for verifying account balance information that imposes technological challenges in its implementation and administration, allowing for Commission staff to direct its efforts to more effective alternative means for verifying the information.

In addition, as noted, the elimination of the requirement to provide the Commission with direct, read-only access to accounts maintained by FCMs would reduce costs for depositories, which may motivate them to more readily take FCM Customer Funds on deposit, potentially fostering competition in the futures market and ultimately reducing costs for FCMs.

(c) Price Discovery

The Proposal, by eliminating the requirement for depositories to provide the Commission with read-only access to accounts maintained by FCMs, may reduce operational costs for depositories, which may ultimately lead to cost reductions that benefit both depositories and FCMs. The FCMs may, in turn, pass those benefits to customers via reduced charges.

(d) Sound Risk Management

As previously noted, CME and NFA have developed a sophisticated system—the automated daily segregation confirmation system—which provides DSROs and the Commission with an efficient tool for detection of potential discrepancies between FCMs' reports and the balances on deposit at various depositories. If the Commission proceeds with the proposed amendment to delete the Read-only Access Provisions, the Commission would continue to rely on CME's and NFA's automated system for

[319] More specifically, the relevant provisions appear in Regulation 1.20, Appendix A to Regulation 1.20, Appendix A to Regulation 1.26, Regulation 30.7 and appendices E and F to Part 30 of CFTC's Regulations. If adopted, the proposed amendments would extend to Regulation 22.5, which requires FCMs and DCOs, before depositing Cleared Swaps Customer Collateral with a depository, to obtain an acknowledgment letter from each depository in accordance with Regulations 1.20 and 1.26. 17 CFR 22.5(a). Regulation 22.5 further requires FCMs and DCOs to adhere to all requirements specified in Regulation 1.20 and 1.26 regarding retaining, permitting access to filing, or amending the written acknowledgment letters. 17 CFR 22.5(a).

oversight purposes. As such, the Commission believes that the proposed amendment would not be detrimental to sound risk management practices.

Furthermore, as noted above, the deletion of the Read-only Access Provisions would eliminate a potential cybersecurity risk associated with the maintenance by the Commission of periodically updated access credentials and physical authentication devices, thus promoting sound risk management.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the Section 15(a) factors described above. Commenters are also invited to submit any data or other information they may have quantifying or qualifying the costs and benefits of the proposed amendments. In particular, the Commission seeks specific comment on the following:

1. Has the Commission accurately identified all the benefits of this Proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.

2. Has the Commission accurately identified all the costs of this Proposal? Are there additional costs to the Commission, market participants and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such costs.

3. Are the regulatory safeguards that are included in the Proposal adequate to address the potential risks that may arise from the Proposal? Are there other regulatory safeguards that the Commission should consider?

4. Does this Proposal impact the Section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

D. Antitrust Laws

Section 15(b) of the Act requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under Section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule or regulation of a contract market or registered futures association established pursuant to Section 17 of this Act.'' [320]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposal to determine whether it is anticompetitive, and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposal is not anticompetitive and has no anticompetitive effects,[321] the Commission has not identified any less competitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed amendments.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 22

Brokers, Clearing, Consumer protection, Reporting and recordkeeping, Swaps.

17 CFR Part 30

Consumer protection.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

[320] 7 U.S.C. 19(b).

[321] In this regard, the Commission has considered whether the proposed concentration limits might have an anti-competitive effect. The Commission is preliminarily of the view that, on balance, issuer-based concentration limits enhance competition by preventing any one MMF or ETF from having too great market power, and thereby fostering competition. Although the asset-based concentration limits might theoretically have an anti-competitive impact, the limits are set at a relatively high level and therefore the Commission preliminarily believes that they are unlikely to have a significant market impact. The Commission invites comments on this analysis.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24 (2012).

§ 1.20 [Amended]

■ 2. Amend § 1.20 by:
■ a. Revising in paragraph (d)(2), the cross-reference to ''appendix A to this part'' to read ''Appendix C to this part'';
■ b. Removing and reserving paragraph (d)(3);
■ c. Revising in paragraph (g)(4)(ii), the cross-reference to ''appendix B to this part'' to read ''Appendix D to this part'';
■ d. Redesignating Appendix A to § 1.20 as Appendix C to Part 1; and
■ e. Redesignating Appendix B to § 1.20 as Appendix D to Part 1.
■ 3. Amend § 1.25 by:
■ a. Republishing paragraph (a) heading and the introductory text of paragraph (a)(1);
■ b. Removing paragraphs (a)(1)(v) and (vi);
■ c. Redesignating paragraph (a)(1)(vii) as paragraph (a)(1)(v);
■ d. Revising newly redesignated paragraph (a)(1)(v);
■ e. Adding new paragraphs (a)(1)(vi) and (a)(1)(vii);
■ f. Republishing the introductory text of paragraph (b) and the paragraph (b)(2) heading;
■ g. Revising paragraph (b)(2)(i) introductory text;
■ h. Republishing paragraph (b)(2)(iv)(A);
■ i. Revising paragraphs (b)(2)(iv)(A)(*1*) and (*2*);
■ j. Removing paragraph (b)(2)(vi);
■ k. Republishing paragraph (b)(3) heading;
■ l. Revising paragraphs (b)(3)(i)(C) and (E);
■ m. Removing paragraph (b)(3)(i)(F);
■ n. Redesignating paragraph (b)(3)(i)(G) as (b)(3)(i)(F);
■ o. Revising newly redesignated paragraph (b)(3)(i)(F), paragraphs (b)(3)(ii)(B) through (E) and (b)(4)(i), paragraph (c) introductory text, paragraph (c)(1), and paragraph (c)(5)(ii) introductory text;
■ p. Revising in paragraph (c)(7), the cross-reference to ''The appendix to this section'' to read ''Appendix E to this part'';
■ q. Adding paragraph (c)(8);
■ r. Republishing the introductory text of paragraph (d);
■ s. Revising paragraphs (d)(2) and (d)(7);

■ t. Adding paragraph (f); and

■ u. Redesignating the Appendix to § 1.25 as Appendix E to Part 1.

The republications, revisions, and additions read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

* * * * *

(v) Interests in government money market funds as defined in § 270.2a–7 of this title, provided that the government money market funds do not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i) of this title (government money market fund);

(vi) Interests in exchange-traded funds, as defined in § 270.6c–11 of this title, which seek to replicate the performance of a published short-term U.S. Treasury security index composed of bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury (U.S. Treasury exchange-traded fund); and

(vii) General obligations of Canada, France, Germany, Japan, and the United Kingdom (permitted foreign sovereign debt), subject to the following:

(A) A futures commission merchant may invest in the permitted foreign sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; and

(B) A derivatives clearing organization may invest in the permitted foreign sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing members that are futures commission merchants denominated in that country's currency.

* * * * *

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

* * * * *

(2) *Restrictions on instrument features.* (i) With the exception of government money market funds and U.S. Treasury exchange-traded funds, no permitted investment may contain an embedded derivative of any kind, except as follows:

* * * * *

(iv)(A) Adjustable rate securities are permitted, subject to the following requirements:

(1) The interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the Secured Overnight Financing Rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(2) The interest payment, in any period, on floating rate securities must be determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the Secured Overnight Financing Rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

* * * * *

(3) *Concentration*—

(i) * * *

(C) Investments in certificates of deposit may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

* * * * *

(E) Investments in government money market funds or U.S. Treasury exchange-traded funds with $1 billion or more in assets and whose management company manages $25 billion or more in assets may not exceed 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(F) Investments in government money market funds or U.S. Treasury exchange-traded funds with less than $1 billion in assets or which have a management company managing less than $25 billion in assets, may not exceed 10 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(ii) * * *

(B) Securities of any single issuer of municipal securities or certificates of deposit held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Interests in any single family of government money market funds or U.S. Treasury exchange-traded funds may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Interests in any individual government money market fund or U.S. Treasury exchange-traded fund may not exceed 5 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(E) For purposes of determining compliance with the issuer-based concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(5) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted government money market fund or U.S. Treasury exchange-traded fund is not deemed to be a security issued by its sponsoring entity.

* * * * *

(4) *Time-to-maturity.* (i) Except for investments in government money market funds, U.S. Treasury exchange-traded funds, and permitted foreign sovereign debt subject to the requirements of paragraph (f) of this section, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

* * * * *

(c) *Government money market funds and U.S. Treasury exchange-traded funds.* The following provisions will apply to the investment of customer funds in government money market funds or U.S. Treasury exchange-traded funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a government money market fund, in accordance with § 270.2a–7 of this title, or an exchange-traded fund, in accordance with § 270.6c–11 of this title.

* * * * *

(5) * * *

(ii) *Exception.* A government money market fund may provide for the postponement of redemption and payment due to any of the following circumstances:

* * * * *

(8) Interests in U.S. Treasury exchange-traded funds will qualify as permitted investments under paragraph (a) of this section if:

(i) The interests are redeemable in cash by a futures commission merchant

or a derivatives clearing organization in its capacity of an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of this title, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(ii) The U.S. Treasury exchange-traded fund invests at least 95 percent of its assets in securities comprising the short-term U.S. Treasury index whose performance the fund seeks to replicate; and

(iii) The interests are acceptable as performance bond by a derivatives clearing organization.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the securities (agreements for repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

* * * * *

(2) Permitted counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, a government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986. In addition, with respect to agreements to repurchase or resell permitted foreign sovereign debt, the following entities are also permitted counterparties: a foreign bank that qualifies as a depository under § 1.49(d)(3) and that is located in a money center country as the term is defined in § 1.49(a)(1) or in another jurisdiction that has adopted the currency in which the permitted foreign sovereign debt is denominated as its currency; a securities broker or dealer located in a money center country as the term is defined in § 1.49(a)(1) and that is regulated by a national financial regulator; and the Bank of Canada, the Bank of England, the Banque de France, the Central Bank of Japan, the Deutsche Bundesbank, or the European Central Bank.

* * * * *

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a Federal Reserve Bank, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26. Securities transferred to the futures commission merchant or derivatives clearing organization under an agreement related to permitted foreign sovereign debt may also be held in a safekeeping account that complies with the requirements of § 1.26 at a foreign bank that meets the location and qualification requirements in § 1.49(c) and (d).

* * * * *

(f) *Permitted foreign sovereign debt.* The following provisions will apply to investments of customer funds in permitted foreign sovereign debt.

(1) The dollar-weighted average of the remaining time-to-maturity of the portfolio of investments in permitted foreign sovereign debt, as that average is computed pursuant to § 270.2a–7 of this title on a country-by-country basis, may not exceed 60 calendar days. Permitted foreign sovereign debt instruments acquired under an agreement to resell shall be deemed to have a maturity equal to the period remaining until the date on which the resale of the underlying instruments is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the resale of the securities. Permitted foreign sovereign debt instruments sold under an agreement to repurchase shall be included in the calculation of the dollar-weighted average based on the remaining time-to-maturity of each instrument sold.

(2) A futures commission merchant or a derivatives clearing organization may not invest customer funds in any permitted foreign sovereign debt that has a remaining maturity greater than 180 calendar days.

(3) If the two-year credit default spread of an issuing sovereign of permitted foreign sovereign debt is greater than 45 basis points:

(i) The futures commission merchant or derivatives clearing organization shall not make any new investments in that sovereign's debt using customer funds.

(ii) The futures commission merchant or derivatives clearing organization must discontinue investing customer funds in that sovereign's debt through agreements to resell as soon as practicable under the circumstances.

§ 1.26 [Amended]

■ 4. Amend § 1.26 by:

■ a. Redesignating Appendix A to § 1.26 as Appendix F to Part 1 and Appendix B to § 1.26 as Appendix G to Part 1; and

■ b. In the table below, for each paragraph indicated in the left column, removing the words indicated in the middle column from wherever they appear in the paragraph, and adding the words indicated in the right column:

Paragraph	Remove	Add
(a)	"money market mutual funds"	"government money market funds and U.S. Treasury exchange-traded funds."
(b)	"the money market mutual fund"	"the government money market fund or U.S. Treasury exchange-traded fund."
(b)	"appendix A or B to this section"	"Appendix F, G, H or I to this part."
(b)	"appendix A or B to § 1.20"	"appendix C or D to this part."

■ 5. Revise newly redesignated Appendix C to part 1 to read as follows:

Appendix C to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property

(collectively the ''Funds'') of customers who trade commodities, options, swaps, and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulations, including Regulation § 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s). We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 6. Revise the heading of newly redesignated Appendix E to part 1 to read as follows:

Appendix E to Part 1—Government Money Market Fund Prospectus Provisions Acceptable for Compliance With § 1.25(c)(5)

* * * * *

■ 7. Revise newly redesignated Appendix F to part 1 to read as follows:

Appendix F to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account

[Date]
[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or

''our'') on behalf of our customers in shares of [Name of Government Money Market Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products (''Commodity Customers''), as required by Commodity Futures Trading Commission (''CFTC'') Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Government Money Market Fund]
By:

Print Name:
Title:
Contact Information: [Insert phone number and email address]
Date:

■ 8. Revise newly redesignated Appendix G to part 1 to read as follows:

Appendix G to Part 1—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account

[Date]
[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (''we'' or ''our'') on behalf of customers in shares of [Name of Government Money Market Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']
Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Government Money Market Fund]
By:
Print Name:

Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 9. Add Appendix H to part 1 to read as follows:

Appendix H to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account

[Date]
[Name and Address of U.S. Treasury Exchange-Traded Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or ''our'') on behalf of our customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products (''Commodity Customers''), as required by Commodity Futures Trading Commission (''CFTC'') Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws

of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of U.S. Treasury Exchange-Traded Fund]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
Date:

■ 10. Add Appendix I to part 1 to read as follows:

Appendix I to Part 1—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account

[Date]
[Name and Address of U.S. Treasury Exchange-Traded Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (''we'' or ''our'') on behalf of customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the Director of the Division of Clearing and Risk of the CFTC or the Director of the Market Participants Division of the CFTC, or any successor divisions, or such Directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Division of Clearing and Risk of the CFTC or the Director of the Market Participants Division of the CFTC, or any successor divisions, or such Directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the

event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of U.S. Treasury Exchange-Traded Fund]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 11. In § 1.32, revise paragraphs (f)(3)(v), (vi), and (vii) to read as follows:

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds.

* * * * *

(f) * * *

(3) * * *

(v) Permitted foreign sovereign debt by country:

(A) Canada;

(B) France;

(C) Germany;

(D) Japan;

(E) United Kingdom;

(vi) Interests in U.S. Treasury exchange-traded funds; and

(vii) Interests in government money market funds.

* * * * *

PART 22—CLEARED SWAPS

■ 12. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1a, 6d, 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 13. In § 22.2, revise paragraphs (g)(5)(iii)(E), (F), and (G) to read as follows:

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral.

* * * * *

(g) * * *
(5) * * *
(iii) * * *

(E) Permitted foreign sovereign debt by country:
(*1*) Canada;
(*2*) France;
(*3*) Germany;
(*4*) Japan;
(*5*) United Kingdom;

(F) Interests in U.S. Treasury exchange-traded funds; and

(G) Interests in government money market funds.

* * * * *

■ 14. In § 22.3, revise paragraph (d) to read as follows:

§ 22.3 Derivatives clearing organizations: Treatment of cleared swaps customer collateral.

* * * * *

(d) *Exceptions; Permitted investments.* Notwithstanding the foregoing and § 22.15, a derivatives clearing organization may invest the money, securities, or other property constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter. A derivative clearing organization shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to a futures commission merchant.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 15. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

■ 16. In § 30.7, revise paragraphs (d)(2) and (3) and (l)(5)(iii)(E) through (G) to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(d) * * *

(2) The written acknowledgment must be in the form as set out in Appendix E to this part; *Provided, however,* that if the futures commission merchant invests funds set aside as the foreign futures or foreign options secured amount in government money market funds or U.S. Treasury exchange-traded funds as a permitted investment under paragraph (h) of this section and in accordance with the terms and conditions of § 1.25(c) of this chapter, the written acknowledgment with respect to such investment must be in the form as set out in Appendix F to this part or in Appendix G to this part, respectively.

(3)(i) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to provide the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, with account balance information for 30.7 customer accounts.

(ii) The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide account balance information to the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, without further notice to or consent from the futures commission merchant.

* * * * *

(l) * * *
(5) * * *
(iii) * * *

(E) Permitted foreign sovereign debt by country:
(*1*) Canada;
(*2*) France;
(*3*) Germany;
(*4*) Japan;
(*5*) United Kingdom;

(F) Interests in U.S. Treasury exchange-traded funds; and

(G) Interests in government money market funds.

* * * * *

■ 17. Revise Appendix E to part 30 to read as follows:

Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation § 30.7 Customer Secured Account

[Date]
[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Depository] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 30.7 Customer Secured Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively ''Funds'') of customers who

trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation § 30.1, as amended); that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us, in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 30 of the CFTC's regulations, as amended; that the Funds may not be commingled with our own funds in any proprietary account we maintain with you; and that the Funds must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulation § 30.7.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not § 30.7 customer funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Depository]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 18. Revise Appendix F to part 30 to read as follows:

Appendix F to Part 30—Acknowledgment Letter for CFTC Regulation § 30.7 Customer Secured Government Money Market Fund Account

[Date]
[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or ''our'') on behalf of our customers in shares of [Name of Government Money Market Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 30.7 Customer Secured Government Money Market Fund Account under Section 4(b) of the Commodity Exchange Act [and, if applicable,

'', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation § 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 30 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulations §§ 1.25 and 30.7.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such reasonable and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Government Money Market Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

■ 19. Add Appendix G to part 30 to read as follows:

Appendix G to Part 30—Acknowledgment Letter for CFTC Regulation § 30.7 Customer Secured U.S. Treasury Exchange-Traded Fund Account

[Date]

[Name and Address of U.S. Treasury Exchange-Traded Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (''we'' or ''our'') on behalf of our customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation § 30.7 Customer Secured U.S. Treasury Exchange-Traded Fund Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation § 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and part 30 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulations §§ 1.25 and 30.7.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format

and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of U.S. Treasury Exchange-Traded Fund]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
Date:

Issued in Washington, DC, on November 3, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

A fundamental tenet of the Commission's customer protection framework is the safeguarding and investment of customer funds deposited by customers with futures commission merchants (''FCMs'') and derivatives clearing organizations (''DCOs'') to margin futures, foreign futures, and cleared swaps transactions. This proposal to revise the Commission's regulations for the safeguarding and investment of customer funds by FCMs and DCOs in Commission regulations §§ 1.20, 1.25, 1.26, 1.32, 22.2, 22.3, and 30.7 along with the relevant appendices does not change this foundational principle. This proposal embodies a prudent, periodic reassessment of these requirements to ensure that this framework remains appropriately calibrated to preserve principal and maintain liquidity. Therefore, I support the Commission issuing this proposal for public comment.

Modernizing the List of Permitted Investments of Customer Funds

Regulation § 1.25 currently permits FCMs and DCOs to invest customer funds in, among other things, U.S. government securities, municipal securities, and U.S. agency obligations. The Commission's proposal would expand the list of permitted investments to add the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, and add interests in certain short-term U.S. Treasury exchange-traded funds. These investments would be subject to various restrictions based on credit default spreads, time-to-maturity, concentration limits, and liquidity conditions that limit FCMs and DCOs to investing customer funds in safe investments. The Commission's proposal to add these instruments follows a detailed staff analysis of these instruments' liquidity, volatility, and credit characteristics. To the extent the proposal refines regulations in response to a decade of market developments including, but not limited to, the LIBOR transition to SOFR, changes to the broader U.S regulatory framework, and lessons learned from the implementation of the electronic access requirement, the amendments exemplify good government.

FCM and DCO Permitted Investments Parity

FCMs and DCOs operate in tandem as the backbone of our cleared markets. Given that the number of FCMs that offer customer clearing has significantly decreased in the past decade, alignment of the types of investments permitted for FCMs and DCOs is an essential component to maintaining market continuity and resiliency for customer clearing. The proposal would permit FCMs and DCOs to invest customer funds in the same narrowly-tailored set of foreign sovereign debt to the extent that FCMs and DCOs hold balances owed to customers in the currency of the issuing sovereign and subject to certain eligibility, credit, and time-to-maturity conditions. This addition to the list of permitted investments would not only minimize FCMs' exposure to foreign currency risk fluctuations, but also incorporate the exact same conditions currently in place for CFTC registered DCOs to *uneventfully* invest customer funds in French and German sovereign debt—conditions that have been in place for the past five years. Simply put, a level playing field across agency registrants.

Stay Strong

The proposal would not undermine or weaken any of the safeguards that the Commission has had in place since 2011. In fact, the Commission recognized in the 2011 final rule release ''that the safety of sovereign debt issuances of one country may vary greatly from those of another, and that investment in certain sovereign debt may be consistent with the objectives of preserving principal and maintaining liquidity, as required by Regulation 1.25.'' [1] The Commission not only anticipated, but ''invite[d] FCMs and DCOs that seek to invest customer funds in foreign sovereign debt to petition the Commission pursuant to Section 4(c).'' [2] This proposal incorporates the section 4(c) order and its conditions that the Commission provided to DCOs in 2018.

[1] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions Final Rule, 76 FR 78776, 78782 (Dec. 19, 2011).

[2] *Id.*

Welcome Public Comment

I look forward to hearing the public's comments for further guidance on how to strengthen Regulation § 1.25 and the related regulations, while also making the derivatives markets more resilient and less concentrated.

I want to thank Abigail Knauff, and staff in the Market Participants Division, Division of Clearing and Risk, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Statement of Commissioner Kristin N. Johnson

Preserving Trust and Preventing the Erosion of Customer Protection Regulation

Introduction

The Commodity Exchange Act (CEA) tasks the Commodity Futures Trading Commission (CFTC or Commission) with developing, adopting, and implementing rules that effectively protect customer funds or property held by market participants that serve as custodians. Preserving the value of customer funds and property held by a third-party is a central, critical, and foundational role of the CFTC.

Retail participation in our markets is growing. The regulation advanced today is only part of our broader framework to preserve customer assets.

As we examine the matter before us today, I strongly advocate for the Commission to carefully consider (among other issues outlined below) and implement:

- appropriate parallel rules to protect retail customer assets, funds, and property across our markets;
- a regulatory metric that acknowledges the challenges of relying on credit default swap (CDS) spreads calculated by an increasingly concentrated market to inform our understanding of the likelihood of foreign sovereign debt default risk; and
- forthcoming rules governing the clearing of U.S. treasuries.

Preserving Customer Assets Is Our Mission

Successful preservation of customer assets directly impacts transaction costs and, in periods marked by significant losses of customer funds, may impact market integrity.

For decades, the CFTC and other market and prudential regulators have introduced and enforced important rules governing the preservation of customer funds and property. Notwithstanding prudential and market regulators' best efforts, markets and customers have experienced remarkable losses. We have witnessed customer losses in heavily regulated markets as well as markets where there are regulatory gaps and regulators may have limited visibility.

FTX and Billions in Missing Customer Funds

Last year, we witnessed a series of bankruptcies in the $1 trillion cryptocurrency markets. Several of the failed firms were among the largest global retail customer trading platforms in the digital asset marketplace.

A year ago today, media accounts began reporting that FTX Trading or FTX.com

(FTX) could not account for more than $10 billion in customer funds.[1] Yesterday, in a federal courtroom in the Southern District of New York, jurors found Sam Bankman-Fried, former chief executive officer (CEO) of FTX, guilty of misappropriating and embezzling billions of dollars in customer funds deposited with and held in the custody by FTX in connection with crypto-trading transactions at FTX.

An ounce of prevention is worth a pound of cure. When customers entrust their resources and assets to registered participants in our markets, regulation offers the first-best method of preserving customers funds or property. Consequently, creating and enforcing effective, well-tailored rules governing the custody, investment, and preservation of customer funds must be among the Commission's highest priorities. Without these rules and rigorous enforcement, our markets would lack the foundation of trust upon which every transaction is built.

Commission Regulation § 1.25

A recent report indicates that futures commission merchants (FCMs) may hold approximately $500 billion of customer funds in segregated accounts—a number that is the equivalent of the gross domestic product of certain medium-sized countries.

Today, the Commission seeks to refine a foundational rule governing the investment of funds by FCMs and derivatives clearing organizations (DCOs) in our markets. FCMs and DCOs, alongside several other registered futures and swaps market participants, are entrusted with customer funds.

I commend the Market Participants Division (Division) for its willingness to incorporate comments from my office in the Proposed Rule.[2] I applaud the effort of the proposed amendments to Regulation § 1.25 and related matters (Proposed Rule) advanced today, which seeks to introduce greater protections for customer funds, yet, regrettably I find that the Commission has missed an important opportunity.

Over the term of my service as a Commissioner, I have continuously advocated for enhanced protection of customer funds. While I support the adoption of the Proposed Rule, I find that the Commission has missed an opportunity to effectively address gaps in a parallel market that has had exponential growth in recent years due, in part, to the introduction of cryptocurrency or digital assets.

Understanding and Applying Our Regulatory Authority

Before reaching the impact of the Proposed Rule, it is important to consider the scope of the Commission's authority to act to refine existing rules governing the investment of customer funds as well as a broader intervention that addresses evolving market structures.

The Commission is proposing to amend Regulation § 1.25 pursuant to its public interest exemptive authority under section 4(c) of the CEA. The Commission may exercise this power to provide certain exemptions from the requirements of the CEA and regulations promulgated thereunder, if the Commission determines that such an exemption would be consistent with the public interest.[3]

The Commission may grant a public interest exemption by engaging in the rulemaking process for the Proposed Rule. In a formal rulemaking process, we benefit from careful review and development of the proposed rule text and the heightened discourse and public exchanges that are characteristic of the notice and comment period. As a financial market regulator, the Commission must continuously engage in careful and deliberative analyses to ensure the adoption and implementation of robust regulatory processes. Our efforts to achieve these goals ensure the continued stability and integrity of our derivatives markets.

However, as noted in the legislative history of section 4(c) of the CEA, the Commission must be vigilant to ensure that the exercise of its exemptive power does not ''prompt a wide-scale deregulation of markets falling within the ambit of the [CEA].'' [4]

Origins of the Commission's 4(c) Authority

Section 4(c) of the CEA was adopted in the context of the evolution of the derivatives market from traditional agricultural derivatives to financial derivatives. In the 1980s, market participants developed a new OTC derivatives or swaps market featuring instruments that shared characteristics with existing futures contracts and had similar economic purposes. While some questioned the CFTC's jurisdiction over the novel swap agreements, the Commission's jurisdiction over futures contracts was clearly established. Congress has long concluded that the CFTC has jurisdiction over contracts that are ''in the character of'' futures contracts.[5]

In 1992, in response to regulatory uncertainty, Congress adopted section 4(c) of the CEA—codified in the Futures Trading Practices Act (1992 Act). Rather than resolving the appropriate classification for OTC swap agreements, Congress deferred to the Commission to exempt exchange-traded and OTC derivatives instruments from the CEA where such exemptions are consistent with the public interest. Congress granted the CFTC this exemptive authority to ensure ''certainty and stability'' for ''existing and emerging markets'' and to enable ''financial innovation and market development'' and competition.[6]

Roughly a year later, consistent with the authority granted by Congress in the 1992 Act, the CFTC adopted an exemptive regulation (1993 Exemptive Regulation).[7] Relying on section 4(c)(3)(K) of the CEA, the Commission limited the market participants permitted to trade in these products to ''eligible swap participants,'' a group that includes sophisticated individuals with assets over $10 million.[8] To further enhance customer protection, the CFTC mandated that an eligible swap participant could only trade unregulated swaps on its own behalf or on behalf of another eligible swap participant.[9]

Seven years later as the swaps market grew exponentially, Congress enacted the Commodity Futures Modernization Act and addressed the product classification issue head-on. By law, Congress exempted financial OTC derivatives from the scope of the CEA, subject to certain conditions that generally excluded small businesses and individual investors from participating in the unregulated swaps market.

The deregulation of the swaps market directly and markedly contributed to the global financial crisis, which caused significant stress and contagion in global financial markets. Certain of the proposed amendments will weaken many of the regulations adopted pursuant to the Dodd-Frank Act, and it is imperative that we not make the same mistake as the Commission amends its customer protection regime.

Explanation of the Customer Protection Framework

Pursuant to its authority under section 4(c) of the CEA, the Commission proposes to expand the range of instruments in which FCMs and DCOs may invest customer funds beyond those specifically enumerated in the CEA under section 4d. The stated benefit is to enhance the yield available to FCMs, DCOs and their customers, without compromising the safety of customer funds.

The Commission has established a comprehensive customer protection regime, designed to ensure that customer funds are segregated from the proprietary funds of FCMs and DCOs, used only to support customer positions, and available for return to customers in the event of the insolvency of the FCM or DCO. Customer funds are classified into one of three account classes based on the specific type of customer position. The categories are futures customer funds, cleared swaps collateral, or 30.7 customer funds in respect of domestic futures, cleared swaps, and foreign futures, respectively—all of which are referred to as customer funds.

[1] FTX Demonstrates Need for More Oversight: CFTC's Johnson (Bloomberg TV Nov. 9, 2022), *https://www.bloomberg.com/news/videos/2022-11-09/ftx-demonstrates-need-for-more-oversight-cftc-s-johnson.*

[2] I thank the Division for carefully considering and agreeing to include a question in the Proposed Rule evaluating Regulation § 1.25(b)(5)(ii), which currently provides that an FCM or a DCO may invest customer funds in a fund affiliated with that FCM or DCO, and they have introduced several questions in the Proposed Rule. Additionally, at my request, the Commission is exploring whether we should provide greater certainty and clarity as to the acceptable benchmark in light of the various types of Secured Overnight Financing Rates (SOFR) that are available, the permissible investments that are likely to have a floating interest rate calculated on SOFR, and the recommendations of the Alternative Reference Rates Committee.

[3] 7 U.S.C. 6(c).

[4] H.R. Rep. No. 102–978, at 3213 (1992) (Conf. Rep.).

[5] 7 U.S.C. 2(a).

[6] H.R. Conf. Rep. No. 102–978, at 3213.

[7] Exemption for Certain Swap Agreements, 58 FR 5587 (Jan. 22, 1993). The 1993 Exemptive Regulation for swaps was a revision to the exemption the CFTC had previously issued in 1989 in a Statement of Policy.

[8] *Id.* at 5589–5590.

[9] *Id.*

The CEA and Commission Regulation § 1.25 are foundational provisions that set the framework and scope for FCMs' and DCOs' investment of customer funds and are fundamentally interconnected with the requirements to segregate customer funds.[10] Section 4d of the CEA permits FCMs to invest futures customer funds in a prescribed list of instruments—obligations of U.S. government, obligations fully guaranteed as to principal and interest by the U.S., and general obligations of any State or any political subdivision.[11] The regulation permits FCMs and DCOs to invest customer funds in each account class in a limited set of permitted investments consistent with the prudential objectives of preserving customer funds and mitigating credit risk, market risk, and liquidity risk. The CEA and Regulation § 1.25 reinforce the long-held view of the Commission that customer funds, entrusted to an FCM or a DCO, must be invested in a manner that preserves the availability to customers of FCMs and DCOs.

However, the investment of customer funds may threaten the preservation of such funds, and I have diligently and consistently called for Commission regulation to protect the funds of retail clients that might not fall within the definition of "customer funds." Some DCOs do not have an intermediated market structure. As a result, the protections that exist for customers of FCMs in the context of an intermediated DCO are not extended to direct clients of a DCO in the context of a non-intermediated market structure.

Overview of the Proposed Amendments

Since the Commission first authorized FCMs and DCOs to invest futures customer funds in these limited permitted instruments in 1968, the Commission has engaged in a series of critical expansions and subsequent restrictions of the provisions of Commission Regulation § 1.25.[12] This evolution is largely in response to failures of large FCMs and major financial crises and economic stresses.

In its current form, Commission Regulation § 1.25 applies to all three account classes and lists seven categories of investments that qualify as permitted investments—obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S.; general obligations of any State or political subdivision of a State; obligations of any U.S. government corporation or enterprise sponsored by the U.S.; certificates of deposit issued by a bank; commercial paper fully guaranteed by the U.S. under the Temporary Liquidity Guarantee Program (TLGP) as administered by the Federal Deposit Insurance Corporation; corporate notes and bonds fully guaranteed as to principal and interest by the U.S. under the TLGP; and interests in money market mutual funds (MMFs).[13]

The Commission's authority to introduce and enforce regulations that ensure the preservation of customers' assets, particularly in instances where FCMs and DCOs may experience liquidity crises, is foundational to protecting market participants from fraudulent and other abusive conduct and the misuse of customer assets. Effectively exercising this authority is equally central to the Commission's role in supporting sound risk management practices and ensuring the stability of the broader financial system.

In the Proposed Rule, the Commission proposes to take several significant actions: add specified foreign sovereign debt to the list of permitted investments; add short-term U.S. treasury exchange-traded funds (ETF) to the list of permitted investments; limit the scope of MMF whose interest qualify as permitted investments; eliminate commercial paper and corporate notes and bonds as permitted investments; request comment on the potential elimination of certificates of deposit issued by banks; replace the London Interbank Offered Rate (LIBOR) with SOFR as a permitted benchmark for adjustable rate securities; revise concentration limits for certain permitted investments; establish capital charges for specified foreign sovereign debt and qualified ETFs; propose to eliminate the read-only, access provisions; and clarify that DCOs are financially responsible for any losses resulting from investments of cleared swap customer collateral in permitted investments.

I appreciate the importance of the Commission's engagement in the continual reassessment of Regulation § 1.25 and related matters and revising regulatory requirements as and when appropriate. In this case, the proposed amendments are in response to specific petitions by market participants; but the Commission must ensure that its regulations are robust and responsive to our evolving market structure.

Regulatory Gap for Non-Intermediated DCOs

The Proposed Rule does not consider the prudential principles of Regulation § 1.25 in the context of a non-intermediated clearing model where the DCO offers direct client access to its clearing services, without the FCM as an intermediary. The derivatives market structure is significantly evolving, and it is imperative that the Commission's regulations evolve in parallel.

Formal Rules Governing Custody for Retail Investors Across Our Markets

In 2022, the Commission received a request from LedgerX, which was withdrawn last year when LedgerX's parent company, FTX, filed for bankruptcy protection. The request aimed to amend its order of registration as a non-intermediated DCO to clear margined products for retail participants.

Five years earlier, LedgerX solicited and the Commission granted an order permitting the firm to offer fully-collateralized derivatives contracts as a DCO. The Commission's order, amended in September 2020, imposed a number of important conditions, including requiring LedgerX to "at all times maintain funds of its clearing members separate and distinct from its own funds." [14] The conditions were necessary and important for the preservation of customer property.

Our current regulations do not reach the issues addressed by the conditions in the LedgerX order. The Commission should consider regulation that closes this gap and ensures parallel retail customer protection for trading through intermediaries and non-intermediated DCOs.

LedgerX's obligation to comply with the Commission's conditions contributed to the preservation of customer property after FTX acquired LedgerX. When FTX, filed for bankruptcy, LedgerX remained solvent, a non-debtor. The LedgerX order serves as an important precedent for the framework the Commission should consider when adopting parallel protections for direct clients, particularly retail clients, in the non-intermediated context.

It is imperative that the Commission consider an equivalent application of Regulation § 1.25 in the context of a non-intermediated DCO's investment of the property of retail customers.[15]

Earlier Evidence of the Need To Enhance Customer Protections Rules

Long before crypto markets, however, we witnessed significant FCM bankruptcies under then-existing rules that failed to prevent losses to customers. Refco collapsed in 2005; Sentinel Management Group shuttered its doors in 2007; MF Global failed in 2012; and Peregrine Financial Group filed for bankruptcy protection in 2012. The substantial amount of customer funds entrusted to FCMs and the long history of FCM failures underscore the critical relationships between FCMs and customers as well as the FCM's role, responsibility, and accountability in serving as a custodian of customer funds.

Elimination of Read-Only, Electronic Access to Customer Accounts

As historic and current events demonstrate, the Commission's customer protection framework, though exceptionally

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[10] Kristin N. Johnson, Commissioner, CFTC, Statement on Extension of Staff No-Action Letter Regarding Investments in Securities with Adjustable Rate of Interest Benchmarked to SOFR (Dec. 23, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement122322.*

[11] Section 4(b)(2)(A) of the CEA grants the Commission the plenary authority to adopt rules and regulations regarding an FCM's safeguarding of 30.7 customer funds. In 2011, the Commission extended the requirements of Regulation § 1.25 to an FCM's investment of 30.7 customer funds for trading foreign futures positions. Section 4d(f)(4) of the CEA prescribes a list of instruments that cleared swaps customer collateral may be invested in and further provides that the investments must be made in accordance with the rules and regulations, and subject to any conditions, as the Commission prescribes. In 2012, the Commission extended the requirements of Regulation § 1.25 to an FCM's investment of cleared swaps customer collateral.

[12] *Title 17—Commodity and Securities Exchanges,* 33 FR 14454 (Sept. 26, 1968).

[13] 17 CFR 1.25(a)(1).

[14] *See* Press Release No. 8230–20, CFTC Approves LedgerX, LLC to Clear Fully-Collateralized Futures and Options on Futures (Sept. 2, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8230-20.*

[15] Kristin N. Johnson, Commissioner, CFTC, Keynote Speech at the Salzburg Global Finance Forum (June 29, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson4;* Kristin N. Johnson, Commissioner, CFTC, Keynote Address at the World Federation of Exchanges Annual Meeting (Sept. 21, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson5.*

consequential and significant, does not guarantee against losses of customer funds. Following several infamous bankruptcies, the Commission tightened existing regulations including to improve oversight of FCM activities and verify customer funds. The Commission is reevaluating certain aspects of those regulations, which is important. But we should be careful not to forget the unprecedented events that led to the implementation of more stringent oversight of FCMs and necessitate the extension of strict oversight to non-intermediated DCOs.

The Failure of MF Global and Peregrine

MF Global, a prominent FCM and broker-dealer, is an example of a firm that unraveled during the financial crisis. Jon Corzine, a former investment banking executive and former Governor and Senator of New Jersey, adopted a proprietary trading strategy involving the investment in the sovereign debt (bonds) of certain European nations through repurchase-to-maturity transactions. MF Global structured a portfolio of ''repurchase to maturity'' bonds, bonds that paid large coupon rates. Later the bonds were posted as ''collateral for short-term borrowing'' and purportedly delayed any risk to the firm's balance sheet until maturity.

A steep decline in sovereign debt markets triggered demands for increased margin, and MF Global had insufficient liquidity to maintain positions. In an attempt to stave off a ''run on the bank'' by customer withdrawals, creditors' demands, efforts to unwind repo counterparty positions, and attempts to liquidate proprietary positions at fire sale prices, MF Global made the unacceptable and catastrophic decision to misappropriate customer funds in violation of the Commission's customer segregation requirements.[16]

The failure of futures trading firm Peregrine also created a need for stronger customer protection tools. Russell Wasendorf Sr. was the founder and former CEO of Peregrine, and he was sentenced to 50 years in prison because he siphoned off more than $215 million from customers of Peregrine. The National Futures Association (NFA), the self-regulatory organization (SRO) and Peregrine's auditor, was heavily criticized for failing to catch the shortfall in customer funds.

After the collapse of MF Global and Peregrine Financial Group, the Commission supplemented the protections embedded in Commission regulations to enhance customer protections and transparency at the FCM level.[17]

Dated Efforts To Enhance Customer Protection

In November 2013, the Commission adopted a rule that afforded greater assurances to market participants that customer funds are protected.[18] The Commission required depositories holding customer funds for FCMs to provide the Commission with direct, read-only electronic access to customer fund accounts while acknowledging that the Commission did not intend to access FCM accounts on a regular basis but would use that information when necessary to obtain account balance and other information that staff could not obtain via the designated auditors, either CME Group Inc. (CME) or NFA.

The Division notes that the Commission and depositories are experiencing significant operational and resource-intensive challenges in implementing and administering the provision and the CME and NFA have provided alternative means of obtaining transaction and account balance information.

Although the Commission is proposing to remove the ''direct access'' requirement, the Commission should be confident that the private sector auditing features that exist at the relevant designated self-regulatory organization (DSRO) are considered in the context of non-intermediated DCOs where there is an absence of an FCM.

Whether it is a traditional market structure or new market structure, the Commission needs to be comfortable that liabilities to customers will be satisfied. I also expect that the Commission and relevant DSRO would impose on non-intermediated market infrastructures the same segregation investment reporting obligations imposed on traditional infrastructures. There is a continuous need to revisit whether measures to protect customer funds are adequate.

Consideration of Other Important Factors

Although I support the Proposed Rule, a few discrete aspects of the Proposed Rule merit additional discussion.

• *Inclusion of Foreign Sovereign Debt as Permitted Investments*

The Commission plans to use the CDS spread to determine whether certain permitted foreign sovereign debt should qualify as ''permitted investments.'' The Commission needs to carefully consider the conditions that apply to each permitted foreign sovereign debt by establishing strong guardrails so that history does not repeat itself.

On August 15, 2023, FCMs held the U.S. dollar equivalent of $51 billion of customer funds denominated in Canadian, European, Japanese, and UK currencies. Given the significant non-U.S. dollar customer transactions intermediated by FCMs, the Commission's proposal expands the list of permissible investments to add the debt of countries that represent the largest economies, are members of the Group of 7, and a money center country—Canada, France, Germany, Japan, and the UK.

De-Regulatory Decisions and the Recent Financial Crisis

The recent global financial crisis is a cautionary tale. A series of deregulatory decisions created significant vulnerabilities in financial markets. More specifically, an exemption from regulation for bespoke OTC swaps trading in bilateral markets obscured excessive risk-taking and undermined the integrity of global markets. According to the U.S. Government Accountability Office, the 2007–2009 financial crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to $10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost output (value of goods and services).[19]

Traditionally, customer funds have been invested in U.S. treasury securities. The Commission amended Regulation § 1.25 in 2000 to expand the list of investments to include all foreign sovereign debt, subject to a ratings requirement.[20] Following the 2007–2009 global financial crisis, in December 2011, the Commission unanimously approved a final rule amending Regulation § 1.25 to eliminate all foreign sovereign debt as permitted investments in light of the economic crisis but remained open to the possibility of reintroducing specific foreign debt.[21] The Commission tightened the definition of permissible investments.

History has demonstrated that certain sovereign debt instruments may be risky. The financial crisis was closely intertwined with the sovereign debt crisis, which is characterized by the economic collapse in—and a deterioration in the credit quality of—Iceland, Portugal, Italy, Ireland, Greece, and Spain. It is helpful that sovereign debt from those countries are not proposed to be permitted investments.

The Commission should reintroduce foreign sovereign debt as a permitted investment with caution and sufficient guardrails. The Commission is using the CDS spread of the sovereign issuer as a proxy for default risk, such that the relevant sovereign is disqualified if the issuer's two-year credit default spread exceeds 45 basis points. The CDS spread is the spread on protection pursuant to a CDS against the default of the issuer of a debt instrument, and an increase in the spread reflects a market perception that the creditworthiness of the issuer has

[16] Investing customer funds in foreign sovereign debt is distinguishable from the investments of MF Global made for its own account, and the issue with MF Global is that funds were transferred out of the segregated account and used for other purposes. But MF Global highlights the need for strong enforcement of segregation requirements in times of unusual market conditions, such as a run. *See* Rena S. Miller, Cong. Rsch. Serv., R42091, The MF Global Bankruptcy, Missing Customer Funds, and Proposals for Reform (2013), *https://sgp.fas.org/crs/misc/R42091.pdf*.

[17] Kristin N. Johnson, Commissioner, CFTC, Keynote Address at Digital Assets @Duke Conference, Duke's Pratt School of Engineering and Duke Financial Economics Center (Jan. 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson2.*

[18] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

[19] U.S. Gov't Accountability Off., GAO–13–180, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (2013), *https://www.gao.gov/assets/files.gao.gov/assets/gao-13-180.pdf.*

[20] *See* Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (Dec. 13, 2000); Investment of Customer Funds, 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating the effective date of the final rules from February 12, 2001 to December 28, 2000).

[21] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

deteriorated, implying an increased risk of non-payment on the debt investment.

We must not forget that the CDS market came under heavy scrutiny during the financial crisis. Warren Buffett infamously called CDS ''financial weapons of mass destruction.'' Since the adoption of the Dodd-Frank Act, there has been significant contraction in a number of important segments of the CDS market.

Given the nature of this specific market-based metric, I encourage market participants, in responding to the request for comment, to consider whether the use of the CDS spread, which is dependent on a functioning CDS market, is (and the circumstances under which it would be) an appropriate indicator of whether a foreign sovereign debt is ''consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements.'' [22]

• Interaction With Proposed U.S. Treasury Clearing Requirement

Financial markets are closely interconnected and correlated. Consequently, we need a comprehensive and holistic approach to U.S. treasury obligations. The Securities and Exchange Commission (SEC) has announced a proposed rule that seeks to address the clearing of certain repurchase or reverse repurchase agreements involving U.S. treasury securities.

Our registrants, FCMs and DCOs, may buy and sell permitted investments, including U.S. treasury obligations, pursuant to repurchase and reverse repurchase transactions with permitted counterparties, subject to certain conditions.

Upon the finalization of the SEC proposed rule, the Commission may need to revisit Regulation § 1.25 accordingly.

Conclusion

For the reasons above, I support the adoption of the Proposed Rule. I look forward to the thoughtful contributions of market participants.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

The CFTC's Sacrosanct Responsibility To Safeguard Customer Funds To Protect Customers and Avoid Systemic Risk

Proposed Changes to Regulations Governing the Investment of Customer Funds

The CFTC has a sacrosanct responsibility to safeguard customer funds held by brokers and clearinghouses. For our markets to work well, customers must have confidence that their funds will be safe. Safe from a broker or clearinghouse who misuses customer money for their own purposes or decides on their own to use customer funds to make risky bets chasing their own profits.

The Importance of Customer Confidence and Public Confidence for Markets to Work Well

History has shown that a loss of customer confidence in the safety of their funds often has immediate negative consequences on markets. Vulnerability to runs, increased customer redemption requests, significant market volatility, and rapid and steep drop in prices, can signal a loss of confidence. And given how interconnected our markets are, this can happen very fast, and can cause contagion. We saw an example earlier this year with Silicon Valley Bank.

Promoting public and customer confidence in our markets is one of the CFTC's most important regulatory responsibilities. There is a disconnect between regular people and what goes on on Wall Street and in Washington. That's a message from the late CFTC Commissioner Bart Chilton at the open meeting the last time the CFTC took up this same regulation in 2011.[1] He was speaking with the backdrop of MF Global's bankruptcy weeks before, where there were concerns of misuse of customer funds. Commissioner Chilton said that we cannot get disconnected, and sometimes it's just a matter of explaining what we're doing. He said that we have to do the best we can to explain to people what our job is, what our responsibilities are, and that the first responsibility is to protect customer funds.

Well put, and I agree. Today we meet with the backdrop of the conviction on all counts of the founder of FTX, counts that included misuse of customer funds.[2] It's not the same as MF Global. Regular people may not realize that those missing FTX customer funds were in an entity not regulated by the CFTC. But we have to stay connected to regular people who might be concerned about the safety of their funds in our markets. We have to explain how we are part of the solution to safeguard customer funds. This is particularly important because we have seen a rise of retail customers in our markets associated with trading in cryptocurrency and event contracts—retail customers who may not have the same ability as an institutional customer to withstand losses or delays if a broker or clearinghouse goes bankrupt.

We have to send a message and show through our actions that the CFTC is doing all that we can to protect customer funds.

Protecting Customer Funds by Limiting What They Can Be Invested In

One way the CFTC protects customer funds is by limiting what they can be invested in. In section 4(d) of the Commodity Exchange Act, Congress limited investments of customer funds to U.S. government and other municipal securities, and obligations fully guaranteed by the U.S.

The CFTC can make an exemption to section 4(d) to allow other investment types if they meet certain carefully designed factors established by Congress in section 4(c). From 2000 to 2005, the CFTC used this exemptive authority to considerably loosen Regulation § 1.25 to allow brokers (FCMs) and clearinghouses (DCOs) to invest customer funds in all kinds of investments.

Then there was the financial crisis, the Dodd Frank Act, and the MF Global scandal. In 2011, the CFTC under Chairman Gary Gensler, eliminated exemptions for certain investments that could pose an unacceptable level of risk to customer funds.[3] One investment type eliminated in a 5–0 vote in 2011 was foreign sovereign debt. That investment type is before us again today at the request of the same groups (CME and FIA) who opposed the CFTC's elimination of foreign sovereign debt as a permitted investment in 2011. While the Commission subsequently made a limited exception for clearinghouses in the debt of France and Germany in 2018, at that time, it declined to apply that exception to brokers as requested by FIA.

We need to be very cautious about revisiting post-crisis CFTC reforms, particularly reforms that only came after substantial public engagement and careful CFTC deliberation. In good economic times like we are in today, we have to keep the lessons learned from the past in mind, while we look to the future. One of those lessons learned is that things can change quickly when it comes to risk.

We have to always keep sacrosanct our responsibility to protect customer funds and avoid systemic risk. Holding customer funds is not intended to be a way for brokers and clearinghouses to maximize profits through investments that could prove risky. Customer funds must only be invested in a way that minimizes exposure to credit, liquidity, and market risk, not just now, but in the future. This would preserve customer funds, and enable investments to be quickly converted to cash at a predictable value, which is necessary to avoid systemic risk. This has to be one of our top priorities.

That's why I support prohibiting investments of customer funds in: (1) commercial paper; (2) corporate notes and bonds; (3) bank certificates of deposit; (4) adjustable rate securities that reference LIBOR; and (5) money market funds that are not government money market funds or that charge a liquidity fee for customer redemptions. I also support the concentration limits on money market funds to protect customer funds from potential risk of loss from a cyber-attack.

Proposed Expansion of How Brokers and Clearinghouses Can Invest Customer Funds

The proposal before us would also make two exemptions under section 4(d),[4] allowing investments of customer funds in: (1) ETFs that invest in primarily short-term U.S. Treasury securities; and (2) sovereign debt of

[22] 17 CFR 1.25(b).

[1] *See* CFTC, *Transcript of December 5, 2011 Open Commission Meeting, https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfsubmission/dfsubmission12_120511-trans.pdf.*

[2] *See* United States Attorney Southern District of New York, *Statement Of U.S. Attorney Damian Williams On The Conviction Of Samuel Bankman-Fried, https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-conviction-samuel-bankman-fried* (Nov. 2, 2023).

[3] *See* 76 FR 78776 (Dec. 19, 2011) (''In issuing these final rules, the Commission is narrowing the scope of investment choices in order to eliminate the potential use of portfolios of instruments that pose an unacceptable level of risk to customer funds.'').

[4] In addition to Regulation § 1.25, the proposal also applies to Regulation § 30.7 that governs a broker's treatment of customer funds associated with positions in foreign futures and options. Additionally, the proposal applies to customer swaps funds (cleared swaps customer collateral) held by brokers and clearinghouses. *See generally* 17 CFR part 22 (implementing section 4d(f) of the Commodity Exchange Act).

five G7 countries (Canada, France, Germany, Japan, and the United Kingdom) and expanding the list of counterparties to foreign banks, brokers and dealers, and central banks.

Section 4(c)(2) sets a high bar for exemptions. The CFTC is required to show:

1. It is in the public interest;
2. It is consistent with the purposes of the Act;
3. The agreements, contracts or transactions have to be between appropriate persons; and
4. The exemption cannot have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory responsibilities.

I would have liked to see more independent CFTC analysis of these factors in this proposal.

Public Interest Factor: I am concerned about the proposal's discussion of the public interest factor:

> The expanded selection of Permitted Investments is expected to also permit FCMs and DCOs to remain competitive globally and domestically and maintain safeguards against systemic risk. A wider range of alternatives to invest futures customer funds may provide more profitable investment options, allowing FCMs and DCOs to generate more income for themselves and their customers. This, in turn, may motivate FCMS and DCOs to increase their presence in the futures markets and other relevant markets, thus increasing competition. Increased revenue to FCMs and DCOs from the investment of Customer Funds also may benefit customers in the form of lower commission charges of direct interest payments on funds on deposit with the FCM or DCO, which may lead to greater market participation by customers and increased market liquidity. In light of the foregoing, the Commission believes that the adoption of the proposed amendments would promote responsible economic and financial innovation and fair competition, and would be consistent with the objective of Regulation 1.25 and with the ''public interest.''

We should be very careful about drawing the *dangerous* conclusion that increased profits is a sufficient justification to satisfy the public interest factor. This conclusion could justify granting every requested exemption, which is surely not what Congress had in mind or the message that we should send. It is important to remember that broker and clearinghouse profit is not the goal for the CFTC, the Commodity Exchange Act or the public. Chasing profits could lead to risky investments, potentially putting customer funds at risk.

We should not draw an unsupported conclusion that if brokers and clearinghouses make more profit, that the benefits will flow to customers, as opposed to being kept for those companies or their shareholders. There was also no independent supportive analysis that additional profits would increase competition or innovation. I would also have liked to see analysis on the avoidance of systemic risk, not just a conclusory, unsupported statement that this change will permit brokers and clearinghouses to ''maintain safeguards against systemic risk.''

An independent CFTC analysis of whether a Commission action is in the public interest is the important responsibility given to us by Congress. The proposal discusses without supporting data or analysis that the proposal could reduce foreign currency risk and result in diversification of investments. However, those were the same considerations that were not persuasive to the Commission in 2011. I encourage public interest groups and customers of brokers and clearinghouses to let the CFTC know if they think these exemptions are in the public interest. Should we go forward in the future with a final rule, I would expect to see an independent and supported CFTC analysis.

I would encourage the CFTC to engage in more data analysis, as well as more roundtables and requests for comment, before proposing rules or exemptions that revise post-crisis reforms. We may also be able to use public interest analysis conducted by other federal agencies. I would also encourage greater engagement with public interest groups before proposing changes to rules, just as we engage with industry.

Consistent with the Purposes of the Act: The purposes of the Act are to deter and prevent price manipulation or other disruptions to market integrity; to ensure the financial integrity of all transactions and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.[5]

The proposal contains a thorough and independent CFTC analysis of conditions necessary to protect against the misuse of customer assets. But the proposal's discussion of fair competition, responsible innovation, and systemic risk is conclusory, without supporting analysis. I encourage commenters and the public to let us know if these exemptions are consistent with the purposes of the Act.

Appropriate Persons Factor: I did not see discussion of this important factor. The proposal would expand counterparties for foreign sovereign debt, including foreign brokers and dealers, with certain conditions. I would have liked to see an analysis of how this factor is met. We should not assume that it is met, that no analysis is needed or that Commissioners do not have views on meeting this test. I look forward to commenters' views on this. Should we go forward in the future with a final rule, I would expect to see an independent supported CFTC analysis of this factor.

Discharge of Regulatory Responsibilities Factor: The CFTC's regulatory responsibility in Regulation § 1.25 is to preserve principal and maintain liquidity. I commend the staff for the depth and comprehension of this analysis, and appreciate the thorough calibration of conditions to address future risk with sovereign debt. I agree that investments in certain sovereign debt might be consistent with preserving principal and maintaining liquidity. This analysis found that government ETFs and sovereign debt in these countries appear to be similar to existing permitted investments. Commenters will tell us whether we have conducted the correct analysis.

While I am supporting putting this out for public comment, I also believe that we should be very cautious in overturning post-crisis reforms. In 2011, the CFTC considered all of the same concerns raised before us today, but decided unanimously to ban investments in sovereign debt. The Commission in 2011 said that although it appreciated the risk of foreign currency exposure, not all sovereign debt, in all situations, is sufficiently safe. The Commission said then that global and regional crises illustrated that circumstances may quickly change, leaving a broker or clearinghouse unable to timely liquidate the investment, and potentially only after a significant mark-down.

At that time, the CFTC said it would consider exemption requests. The staff explained that when considering such a request, they would ask the petitioner why they need the exemption and to explain why it is in the public interest, and analyze liquidity. The record shows only one request in 12 years. In 2018, after notice and receiving only supporting comments, the Commission approved a limited exemption for clearinghouses to invest customer funds in the sovereign debt of France and Germany, finding comparable credit, liquidity and volatility characteristics to U.S. Government securities.

In the proposal before us, the staff's analysis reflects that the debt of these countries is similar to current permitted investments, but may be less liquid than U.S. government securities. The proposal asks whether these investments would raise any liquidity or other concerns. I am interested in commenters' views on this and on whether the expansion of counterparties will expose customers to unacceptable levels of risk.

Given that we know that circumstances can change very quickly, I often say that we should expect the unexpected. One alternative would be to leave in place the current process of considering any exemptive request, rather than change the rule, particularly if there are concerns over liquidity or counterparties. This should not be unduly burdensome given there was only one request in 12 years. The Commission could consider the conditions at that time, the reason for the request, the public interest, and liquidity. The flexibility to conduct this type of analysis at the specific time of the request, and after notice and comment, would be more targeted to avoid systemic risk. And should circumstances change quickly, an exemptive order could be much easier and faster to revisit than a rule. I look forward to commenters' views on this alternative compared to rewriting the rule.

Finally, I would urge CFTC staff to look for other safeguards for customer funds in other Commission rules. Additional safeguards would allow us to fulfill our sacrosanct responsibility to protect customer funds, and promote public confidence.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the Notice of Proposed Rulemaking on Investment of Customer

[5] 7 U.S.C. 5(b).

Funds by Futures Commission Merchants and Derivatives Clearing Organizations (Proposed Amendments to Regulation § 1.25 or NPRM) because, importantly, it provides regulatory clarity by codifying outstanding no-action relief, and promotes good government by providing a timely response to a petition from market participants. I would like to thank Tom Smith, Warren Gorlick, Liliya Bozhanova, and Jeff Burns for their work on the NPRM.

Regulatory clarity has a number of key aspects: transparency, simplicity, and significantly, unambiguity. In turn, regulatory clarity promotes compliance, market integrity, and confidence. As regulators, in everything we do, we must remember that regulatory clarity enables businesses to effectively comply with our regulations, thereby reducing the likelihood of non-compliance issues. It's why I have made regulatory clarity a guiding principle of my commissionership.

Good government has a number of key aspects that overlap with those of regulatory clarity: transparency and simplicity, for instance. However, responsiveness is an aspect unique to good government. In serving the public, we must be mindful that we are here to be responsive to the concerns and needs of our constituents—in our case, market participants. Good government, in turn, promotes economic growth and progress. It's why I have made good government something I am always striving to encourage as Commissioner.

Background

Regulation § 1.25 is the primary CFTC rule setting forth safeguards for the investment of customer funds held by futures commission merchants (FCMs) and derivatives clearing organizations (DCOs). As the Commission has said in the past, customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks, both to preserve their availability to customers and DCOs and to enable investments to be quickly converted to cash at a predictable value to avoid systemic risk.[1] These safeguards are vital in maintaining confidence in our markets.

The requirement for a FCM or DCO to treat customer funds as belonging to the customers, and for the FCM or DCO to segregate customer funds from its own funds, is a critical component of this framework. The Commodity Exchange Act (CEA) and CFTC regulations provide three regulatory frameworks based on the market in which customers are transacting: (i) futures customer funds; (ii) cleared swaps customer collateral; or (iii) 30.7 customer funds.[2]

CEA section 4d(a)(2) covers futures customer funds, setting forth the framework for requiring FCMs to treat futures customer funds as belonging to the futures customer.[3] CEA section 4d(b) addresses the duties imposed on DCOs and other depositories receiving futures customer funds from FCMs pursuant to section 4d(a)(2).[4] Regulations §§ 1.20 through 1.30, and Regulations §§ 1.32 and 1.49 implement sections 4d(a)(2) and 4d(b).[5]

CEA section 4d(f)(2)(A) covers cleared swaps customer collateral, setting forth a framework for requiring FCMs to treat cleared swaps customer collateral as belonging to the cleared swaps customer.[6] Regulations §§ 22.2 through 22.13, and Regulations §§ 22.15 through 22.17, implement CEA section 4d(f).[7] And CEA section 4(b)(2)(A) covers 30.7 customer funds, setting forth a framework for requiring FCMs to safeguard 30.7 customer funds deposited by 30.7 customers for trading on foreign boards of trade (FBOTs).[8] Regulation § 30.7 implements CEA section 4(b)(2)(A).[9]

A cornerstone of these frameworks is the ability of FCMs and DCOs to invest customer funds. CEA section 4d(a)(2) authorizes FCMs to invest futures customer funds in: (i) obligations of the U.S.; (ii) obligations fully guaranteed as to principal and interest by the U.S.; and (iii) general obligations of any State or of any political subdivision of a State.[10] Regulation § 1.25 was initially adopted to implement section 4d(a)(2), and authorized FCMs and DCOs to invest futures customer funds in the instruments set forth in section 4d(a)(2) of the Act (the Permitted Investments).[11]

Over time, the Commission has changed the Permitted Investments: in 2000, for instance, expanding the list to include certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interests in money market funds. Currently, Regulation § 1.25 lists seven categories of investments that qualify as Permitted Investments.[12] In addition, the Commission extended Regulation § 1.25 to apply to an FCM's investment of 30.7 customer funds for trading foreign futures positions, and to FCMs and DCOs investing cleared swaps customer collateral.[13]

When looking at Regulation § 1.25, the Commission always has to balance the need to safeguard customer funds, against retaining an appropriate degree of flexibility for FCMs and DCOs to invest funds and attain capital efficiency. I believe the Proposed Amendments to Regulation § 1.25 continue to strike the right balance, though I encourage commenters to comment on that facet.

How the Commission Does, and Should Continue to, Promote Regulatory Clarity and Good Government

I would like to highlight two aspects of the Proposed Amendments to Regulation § 1.25 that provide examples of regulatory clarity and good government.

The NPRM endeavors to promote regulatory clarity by codifying outstanding CFTC staff no-action relief, proposing to replace LIBOR with SOFR as a permitted benchmark for adjustable rate securities.

Regulation § 1.25(b)(2)(iv)(A) provides that permitted investments may contain variable or floating rates of interest provided, among other things, that: (i) the interest payments on variable rate securities correlate closely, and on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed permitted investment under Regulation § 1.25(a);[14] and (ii) the interest rate, in any period, on floating rate securities is determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed permitted investment under Regulation § 1.25(a).[15]

As we all know, it was announced in March 2021 that LIBOR would cease to be published and would effectively be discontinued.[16] In response to the Alternative Reference Rate Committee (ARRC) identifying SOFR as the preferred alternative benchmark to USD LIBOR for certain new USD derivatives and financial contracts,[17] CFTC staff issued Staff Letter 21–02 in January 2021,[18] permitting FCMs to invest customer funds in permitted investments that contain adjustable rates of interest benchmarked to SOFR. A later CFTC Staff letter 22–21 extended the effective date of the no-action position to December 31, 2024, and expanded the scope of the no-action position to include permitted investments made by DCOs.[19]

Given the discontinuation of LIBOR and the increasing use of SOFR, the Commission is proposing to amend Regulation § 1.25(b)(2)(iv)(A) by replacing LIBOR with SOFR as a permitted benchmark for

[1] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

[2] See, 17 CFR 1.20 (segregation framework for futures customer funds); 17 CFR 22.2 and 22.3 (segregation framework for cleared swaps customer collateral); and 17 CFR 30.7 (segregation framework for 30.7 customer funds).

[3] 7 U.S.C. 6d(a)(2).

[4] 7 U.S.C. 6d(b).

[5] 17 CFR 1.20 through 17 CFR 1.30, 17 CFR 1.32, and 17 CFR 1.49.

[6] 7 U.S.C. 6d(f)(2)(A).

[7] 17 CFR 22.2 through 17 CFR 22.13, 17 CFR 22.15 through 17 CFR 22.17.

[8] 7 U.S.C. 6(b)(2)(A).

[9] 17 CFR 30.7.

[10] 7 U.S.C. 6d(a)(2).

[11] *See* Title 17—Commodity and Securities Exchanges, 33 FR 14454 (Sept. 26, 1968).

[12] 17 CFR 1.25(a)(1).

[13] *See* 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

[14] 17 CFR 1.25(b)(2)(iv)(A)(1).

[15] 17 CFR 1.25(b)(2)(iv)(A)(2).

[16] *See* CFTC Staff Letter No. 21–26, Revised No-Action Positions to Facilitate an Orderly Transition of Swaps from Inter-Bank Offered Rates to Alternative Benchmarks (Dec. 20, 2021).

[17] ARRC, ''The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,'' June 22, 2017, available at *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf.*

[18] *See* CFTC Staff Letter No. 22–21, CFTC Regulation 1.25—Investment of Customer Funds in Securities with an Adjustable Rate of Interest Benchmarked to [SOFR]—Extension of Time-Limited No-Action Position Concerning Investments by [FCMs] and No-Action Position Concerning Investments by [DCOs], Dec. 23, 2022.

[19] *See id.*

permitted investments that contain an adjustable rate of interest. To give effect to this revision, paragraphs (b)(2)(iv)(A)(1) and (2) of Regulation § 1.25 would be amended to replace the phrase ''one-month or three-month LIBOR rate'' with the phrase ''SOFR rate.''

This is important to me for three reasons. First, I have been vocal that the Commission must not get stuck in a never-loop of extending staff no-action relief.[20] To be sure, no-action relief has its place in our regulatory framework.[21] But the Commission should seek to find pragmatic solutions to fixing unworkable rules.

Second, I appreciate the Commission is taking action in advance of the relief expiration date of December 2024. Firms expend considerable resources to come into compliance with our requirements. To the extent our requirements are changing (*e.g.,* staff no-action relief is expiring), waiting on the part of the Commission only unnecessarily increases the risks and costs to firms for implementation.

And third, I am pleased the NPRM does not propose to impose any additional conditions beyond the relief contained in CFTC staff letter 22–21. Conditions may have their place, but the Commission needs to avoid a ''kitchen sink'' approach when applying them.

All of this comes together to provide an example of what regulatory clarity needs to entail. Extraneous changes, unworkable conditions, and waiting too long to act all inhibit regulatory clarity by introducing ambiguity, unnecessary burdens, and wasted time.

The NPRM also endeavors to promote good government by providing a timely, thorough response to a petition submitted by market participants.

The Futures Industry Association (FIA) and CME Group Inc. (CME) submitted a joint petition requesting the Commission to expand investments that FCMs and DCOs may enter into with Customer Funds.[22] The Petitioners requested that the Commission permit FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, subject to the condition that the investment in the foreign sovereign debt is limited to balances owed by FCMs and DCOs to customers and FCM clearing firms, respectively, denominated in the applicable currency of Canada, France, Germany, Japan, or the United Kingdom.[23] The Petitioners further request that the Commission exempt FCMs and DCOs from the provisions of Regulation § 1.25(d)(2) to authorize FCMs and DCOs to enter into Repurchase Transactions involving Specified Foreign Sovereign Debt with foreign banks and foreign securities brokers or dealers and to hold Specified Foreign Sovereign Debt in safekeeping accounts at foreign banks.[24]

The Petitioners further request that FCMs and DCOs be permitted to invest Customer Funds in certain ETFs that invest primarily in short-term U.S. Treasury securities (U.S. Treasury ETFs),[25] because U.S. Treasury ETFs have characteristics that may be consistent with those of other Permitted Investments and may provide FCMs and DCOs with an opportunity to diversify further their investments of customer funds.[26]

This is important to me for two reasons. First, the Commission is providing a timely response to the petition. Not only does every market participant deserve a response to a request to the Commission, but they deserve a response in a reasonable amount of time. Second, the NPRM does not propose additional conditions beyond what was requested in the Joint Petition. Instead, and admirably, the Commission requests comment where it is unsure about conditions, after a careful and thorough analysis of its proposed actions.

In conclusion, I am pleased to support the NPRM because multiple aspects set an example for how the Commission can promote regulatory clarity and good government in all areas of its regulation and oversight. Thank you again to the staff for their hard work, and I look forward to the comments on the Proposed Amendments to Regulation § 1.25.

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[20] *See* Statement of Commissioner Caroline D. Pham on Conditional Order of SEF Registration (July 20, 2022).

[21] *See e.g.,* Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc. (June 16, 2023).

[22] Petition for Order under Section 4(c) of the Commodity Exchange Act, dated May 24, 2023 (the Joint Petition). The Joint Petition and a Supplement are available on the Commission's website.

[23] Joint Petition at p. 4.

[24] Joint Petition at p. 5.

[25] Joint Petition at pp. 8–9.

[26] *Id.*