



By Electronic Mail

December 12, 2022

Clark Hutchison, Director  
Division of Clearing and Risk  
U.S. Commodity Futures Trading  
Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Amanda Olear, Director  
Market Participants Division  
U.S. Commodity Futures Trading  
Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Request for Extension of Time-Limited No-Action Relief for Investments in Securities with an Adjustable-Rate of Interest Benchmarked to SOFR for FCMs and Expansion of Relief to Cover Similar Investments by DCOs**

Dear Directors Hutchison and Olear:

On January 4, 2021, the Market Participants Division (“MPD”) of the Commodity Futures Trading Commission (“Commission”) granted time-limited no-action relief (“No-Action Letter 21-02”) for futures commission merchants (“FCMs”) that invest customer funds pursuant to Commission Regulation 1.25 (“Regulation 1.25”) in certain securities that contain an adjustable rate of interest that is benchmarked to the Secured Overnight Financing Rate (“SOFR”). No-Action Letter 21-02 was issued in response to industry requests for relief, including from the Futures Industry Association (“FIA”),<sup>1</sup> to help facilitate the transition from investments linked to the London Interbank Offered Rate (“LIBOR”) to investments linked to the Secured Overnight Financing Rate (“SOFR”). No-Action Letter 21-02 will expire on December 31, 2022. FIA, on behalf of its FCM members and other similarly situated FCMs, and CME Group Inc. (“CME”; and with FIA, the “Petitioners” or “We”), on behalf of its registered derivatives clearing organization (“DCO”), Chicago Mercantile Exchange, Inc., respectfully request that MPD and the Division of Clearing and Risk (collectively, the “Divisions”) (i) extend the expiration of the relief for FCMs set forth in No-Action Letter 21-02 by two years, to

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<sup>1</sup> FIA submitted a Petition for Order under Section 4(c) of the Commodity Exchange Act on September 4, 2019, requesting that the Commission issue an exemptive order under section 4(c) of the Act, or to issue such other relief as the Commission deems appropriate, to permit FCMs to: (i) invest customer funds in certain specified foreign sovereign debt; (ii) engage in repurchase transactions with certain specified foreign sovereign debt; (iii) engage in repurchase transactions on an internal basis or with affiliates; and, (iv) invest customer funds in certain securities that contain an adjustable rate of interest benchmarked to SOFR. Letter from Walter L. Lukken, President & CEO, FIA, to Christopher J. Kirkpatrick, Secretary, CFTC, dated Sept. 4, 2019, *available at*: <https://www.fia.org/resources/fias-fmc-requests-flexibility-permissible-investments-fcms>.

December 31, 2024, and (ii) expand the terms of the relief to cover DCOs that invest customer funds pursuant to Regulation 1.25 in SOFR-linked securities.

As staff is aware, the United States and other countries in recent years have adopted measures to phase out LIBOR as a global financial benchmark, in favor of nearly risk-free reference rates, such as SOFR. Some of those phase-out measures have taken effect since No-Action Letter 21-02 was published, and more phase-out measures are planned to take effect in 2023. SOFR is increasingly accepted and used as an alternative reference rate to LIBOR.<sup>2</sup> Petitioners expect continued migration to SOFR as future phase-out measures are implemented. Accordingly, FCMs have come to rely on No-Action Letter 21-02's allowance of investments in adjustable-rate securities that correlate to SOFR, consistent with the provisions of Commission Rule 1.25(B)(2)(iv).

DCOs would likewise benefit from flexibility to invest customer funds pursuant to Regulation 1.25 in SOFR-linked securities. Unless the Divisions extend the relief provided in No-Action Letter 21-02 to DCOs, DCOs will effectively be precluded from investing in a substantial category of reliable adjustable-rate securities, as such LIBOR-linked products are now unavailable or are expected to be unavailable in the near future owing to impending phase-out measures.

For the reasons set forth in FIA's previous request for relief and as further set forth herein, Petitioners respectfully ask the Divisions to (i) extend the expiration of the relief for FCMs set forth in No-Action Letter 21-02 by two years, to December 31, 2024, and (ii) expand the terms of the relief to cover DCOs that invest customer funds pursuant to Regulation 1.25 in SOFR-linked securities.<sup>3</sup> We understand that the Commission is considering a rulemaking that would amend Regulation 1.25 to address, among things, the impact of the transition from LIBOR to SOFR on the availability and scope of permissible investments for FCMs and DCOs. We support Commission efforts to update regulations where appropriate and to provide clear rules for market participants, which are not dependent on time-limited no-action relief. We encourage the Commission to codify the relief requested herein for FCMs and DCOs in any such rulemaking to provide regulatory clarity and avoid the need for further extensions of time-limited relief.

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<sup>2</sup> SOFR Takes Over," J.P. Morgan (Mar. 30, 2022), <https://www.jpmorgan.com/solutions/cib/markets/libor-sofr-transition> ("SOFR is now the dominant index used for new transactions in trading and lending markets, having replaced LIBOR in 2021.").

<sup>3</sup> For avoidance of doubt, Petitioners would expect the expanded relief for DCOs to expire on December 31, 2024. As noted below, we encourage the Commission to take steps to codify the relief.

Clark Hutchison and Amanda Olear, Directors

December 12, 2022

Page 3

If you have any questions or need any additional information with regard to the matters discussed herein, please contact Allison Lurton, General Counsel and Chief Legal Officer, FIA, at (202) 772-3057 or Christopher Bowen, Managing Director & Chief Regulatory Counsel, CME at (212) 299-2200.

Respectfully submitted,



Allison Lurton  
General Counsel and Chief Legal Officer  
FIA



Christopher Bowen  
Managing Director & Chief Regulatory Counsel  
CME

cc: Thomas Smith, Deputy Director, MPD  
Eileen Donovan, Deputy Director, DCR

Rule 140.99(c) Certification

We hereby certify that the material facts set forth in this letter are true and complete to the best of our knowledge, information and belief. In addition, we hereby agree that, if at any time prior to issuance of a no-action letter, any material statement made in this letter ceases to be true and complete, we will ensure that staff is informed promptly in writing of all materially changed facts and circumstances.



Allison Lurton  
General Counsel and Chief Legal Officer  
FIA



Christopher Bowen  
Managing Director & Chief Regulatory Counsel  
CME