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: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending its regulations governing the types of investments that futures commission merchants and derivatives clearing organizations may make with funds held for the benefit of customers engaging in futures, foreign futures, and cleared swap transactions. The Commission is also revising asset-based and issuer-based concentration limits for the investment of customer funds. The Commission is also specifying market risk capital charges that a futures commission merchant must take on new investments added to the list of permitted investments in computing the firm's adjusted net capital. The amendments also revise regulations that require each futures commission merchant 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 eliminating the requirement that each depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the futures commission merchant to treat the funds as customer segregated funds.

DATES: *Effective date:* This Final Rule is effective [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. *Compliance dates:* The compliance dates for the rule amendments are discussed in Section VI of this release.

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I. Introduction

A. Background and Statutory Authority

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

The Commodity Exchange Act ("Act" or "CEA")[1] and the Commission's regulations thereunder[2] establish a framework to safeguard funds of customers engaged in CFTC-regulated derivative transactions. Core elements of this framework are requirements for a futures commission merchant ("FCM") or a derivatives clearing organization ("DCO") to treat customer funds as belonging to customers and not as the property of the FCM or DCO, and for the FCM or DCO to segregate customer funds

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

[2] The Commission's regulations are found in Chapter I of Title 17 of the Code of Federal Regulations, 17 CFR parts 1 through 199.

from its own funds in designated customer accounts maintained at banks, trust companies, FCMs, or DCOs, as applicable.[3] The segregation of customer funds from an FCM's or DCO's own funds is intended to ensure that customer funds are used 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.

Segregated customer funds are classified as either: (i) "futures customer funds;" (ii) "Cleared Swaps Customer Collateral;" or (iii) "30.7 customer funds."[4] The term "futures customer funds" is defined by Commission Regulation 1.3 to mean, in relevant part, all money, securities, and property received by an FCM or DCO from, for, or on behalf of "futures customers"[5] to margin, guarantee, or secure futures and options on futures transactions traded on CFTC-designated contract markets, and all money accruing to futures customers resulting from 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.[6] Section 4d(a)(2) further provides that an FCM may not commingle futures customer funds with the FCM's own funds, provided, however, that the FCM may

[3] 7 U.S.C. 6d.

[4] *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).

[5] The term "futures customer" is defined by Commission 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.

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

commingle the futures customer funds of two or more futures customers and deposit the funds with any bank, trust company, DCO, or other FCM.[7]

Section 4d(b) of the Act establishes obligations for DCOs and other depositories receiving futures customer funds from FCMs pursuant to Section 4d(a)(2) of the Act.[8] Specifically, 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.[9] The Commission adopted Commission Regulations 1.20 through 1.30, and Commission 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.[10]

With respect to cleared swap transactions, Commission Regulations 1.3 and 22.1[11] define the term "Cleared Swaps Customer Collateral" to mean, in relevant part, all money, securities, or other property received by an FCM or DCO from, for, or on behalf of, a "Cleared Swaps Customer" to margin, guarantee, or secure "Cleared Swap" positions.[12] 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

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[7] *Id.*

[8] 7 U.S.C. 6d(b).

[9] *Id.*

[10] 17 CFR 1.20 through 1.30, 17 CFR 1.32, and 17 CFR 1.49, respectively.

[11] 17 CFR 22.1.

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

Swaps Customer.[13] Section 4d(f)(2)(B) of the Act further provides that an FCM may not commingle Cleared Swaps Customer Collateral of a Cleared Swaps Customer with the FCM's own funds.[14] The FCM may, however, 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.[15] Additionally, Section 4d(f)(6) of the Act provides that it is unlawful for any person, including a DCO and any depository institution, that receives 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.[16] The Commission adopted Commission Regulations 22.2 through 22.13, and Commission Regulations 22.15 through 22.17, to implement the segregation requirements for Cleared Swaps Customer Collateral mandated by Section 4d(f) of the Act.[17]

Part 30 of the Commission's regulations govern the requirements imposed on FCMs that carry futures positions for customers trading on foreign markets.[18] Commission Regulation 30.1 defines the term "30.7 customer funds" to mean any money, securities, or other property received by an FCM from, for, or on behalf of a U.S.

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

[14] 7 U.S.C. 6d(f)(2)(B).

[15] 7 U.S.C. 6d(f)(3)(A)(i).

[16] 7 U.S.C. 6d(f)(6).

[17] 17 CFR 22.2 through 22.13, and17 CFR 22.15 through 22.17, respectively. 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) ("Protection of Cleared Swaps Customer Contracts and Collateral").

[18] 17 CFR Part 30.

person or foreign-domiciled person (a "30.7 customer")[19] to margin, guarantee, or secure futures or options on futures positions executed on foreign boards of trade ("foreign futures").[20] Section 4(b)(2)(A) of the Act authorizes the Commission to adopt regulations requiring FCMs to safeguard 30.7 customer funds deposited by 30.7 customers for trading on foreign boards of trade,[21] which the Commission did by adopting Commission Regulation 30.7.[22] As part of the safeguarding requirements, Commission Regulation 30.7(e)(2) requires an FCM to segregate 30.7 customer funds from the FCM's own funds, and Commission Regulation 30.7(b) provides that an FCM may hold 30.7 customer funds only with certain specified depositories, including banks, trust companies, DCOs, foreign brokers, and clearing organizations of foreign boards of trade.[23]

In order to simplify the discussion in this Federal Register release, the terms "futures customer funds," "Cleared Swaps Customer Collateral," and "30.7 customer funds," are used when referring to regulations applicable specifically to futures customers, Cleared Swaps Customers, and 30.7 customers, respectively. In addition, the term "Customer Funds" is used when referring collectively to "futures customer funds," "Cleared Swaps Customer Collateral," and "30.7 customer funds."

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[19] Commission Regulation 30.1 defines the term "30.7 customer" 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 through an FCM. 17 CFR 30.1.

[20] 17 CFR 30.1.

[21] 7 U.S.C. 6(b)(2)(A).

[22] 17 CFR 30.7.

[23] 17 CFR 30.7(b) and 17 CFR 30.7(e)(2).

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

The Act establishes the authority for FCMs and DCOs 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.[24] The Commission's predecessor agency, the Commodity Exchange Authority of the U.S. Department of Agriculture, adopted Commission Regulation 1.25 to implement Section 4d(a)(2) of the Act, and authorized FCMs and DCOs to invest futures customer funds in the instruments enumerated in Section 4d(a)(2) (the "Permitted Investments").[25]

The Commission subsequently expanded the Permitted Investments in 2000 to include certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interests in money market funds.[26] The Commission also authorized FCMs and DCOs to buy the Permitted Investments under agreements to resell the securities

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[24] 7 U.S.C. 6d(a)(2).

[25] *See generally Title 17 – Commodity and Securities Exchanges*, 33 FR 14454 (Sept. 26, 1968), amending Commission Regulation 1.25 and providing that FCMs and clearing organizations may invest futures 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.

[26] *See generally Rules Relating to Intermediaries of Commodity Interest Transactions*, 65 FR 77993 (Dec. 13, 2000) (amending Commission Regulation 1.25 to permit FCMs and DCOs to invest customer funds in certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interest in money market funds); and *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) (collectively, the "2000 Permitted Investments Amendment"). The 2000 Permitted Investments Amendment was adopted pursuant to Section 4(c) of the Act, which 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 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. 7 U.S.C. 6(c)(1). A further discussion of Section 4(c)(1) of the Act is set forth in Section V of this Federal Register release.

("reverse repurchase agreements") and to sell the Permitted Investments under agreements to repurchase the securities ("repurchase agreements").[27] To minimize credit risk, market risk, and liquidity risk to the Permitted Investments, the Commission imposed conditions that are required to be met, including a restriction on the dollar-weighted average of the time-to-maturity of the securities held in segregated portfolios, asset-based and issuer-based concentration limits, and prohibitions on certain investments containing embedded derivatives.[28] More generally, Commission Regulation 1.25 contains an overarching requirement that all Permitted Investments must be "consistent with the objectives of preserving principal and maintaining liquidity."[29] In adopting the 2000 Permitted Investments Amendment, the Commission stated that it was expanding the range of instruments in which FCMs may invest customer funds beyond those listed in Section 4d(a)(2) of the Act to enhance the yield available to FCMs, clearing organizations and their customers without compromising the safety of futures customer funds.[30]

The list of investments that qualify as Permitted Investments has undergone several revisions following the 2000 Permitted Investments Amendment.[31] In its current form, Commission 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

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[27] 2000 Permitted Investments Amendment at 78001-04. Reverse repurchase agreements and repurchase agreements are collectively referred to as "Repurchase Transactions" in this Federal Register release.

[28] 17 CFR 1.25(b).

[29] *Id*.

[30] 2000 Permitted Investments Amendment at 78007.

[31] *E.g., 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").

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.[32] In addition, Commission Regulation 1.25(a)(2) permits FCMs and DCOs to buy and sell the Permitted Investments under Repurchase Transactions.[33]

Section 4(b)(2)(A) of the Act grants the Commission authority to adopt rules and regulations regarding an FCM's safeguarding of 30.7 customer funds.[34] Prior to 2011, an FCM was not subject to a specific regulation defining the investments that the firm could enter into with 30.7 customer funds.[35] In 2011, the Commission determined that the terms of Commission Regulation 1.25 should also apply to an FCM's investment of 30.7 customer funds, and amended Commission Regulation 30.7 to provide that to the extent an FCM invests 30.7 customer funds, the firm must invest such funds subject to, and in compliance with, the terms and conditions of Commission Regulation 1.25.[36]

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[32] 17 CFR 1.25(a)(1).

[33] 17 CFR 1.25(a)(2).

[34] 7 U.S.C. 6(b)(2)(A).

[35] 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.

[36] 17 CFR 30.7. The Commission stated that it was "appropriate to align the investment standards of [Commission] Regulation 30.7 with those of [Commission] Regulation 1.25 because many of the same

The Commission also extended the requirements of Commission Regulation 1.25 to FCMs and DCOs investing Cleared Swaps Customer Collateral.[37] The Commission adopted Commission Regulations 22.2 and 22.3 in 2012[38] pursuant to its authority under Section 4d(f)(4) of the Act, which provides that Cleared Swaps Customer Collateral may be invested by an FCM or 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.[39] 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, that the Commission may prescribe.[40]

In addition to enumerating the Permitted Investments that FCMs and DCOs may enter into with Customer Funds, Commission Regulation 1.25 also imposes several conditions on the investment of Customer Funds. Commission Regulation 1.25(b)(3) contains both asset-based and issuer-based concentration limits applicable to Permitted Investments. The asset-based concentration limits restrict the total amount of Customer Funds that an FCM or DCO may invest in any particular Permitted Investment instrument or asset class to a defined percentage of the total funds held in segregation by the FCM or DCO.[41] The issuer-based concentration limits cap the total amount of Customer Funds

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prudential concerns arise with respect to both segregated customer funds and 30.7 [customer] funds." 2011 Permitted Investment Amendment at 78791.

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

[38] *See generally Protection of Cleared Swaps Customer Contracts and Collateral*.

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

[40] 7 U.S.C. 6d(f)(4).

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

that may be invested in Permitted Investment instruments offered, or managed, by a particular issuer to a defined percentage of the total funds held in segregation by the FCM or DCO.[42]

To limit risk to customers from the investment of Customer Funds, Commission regulations provide that FCMs and DCOs are financially responsible for any losses resulting from Permitted Investments, and explicitly prohibit the allocation of investment losses to customers or clearing FCMs, respectively.[43]

The Commission has previously noted the importance of conducting periodic assessments of Commission 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."[44] In furtherance of these objectives, and in consideration of the requests for amendments to Commission Regulation 1.25 discussed

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[42] 17 CFR 1.25(b)(3)(ii).

[43] Commission 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 clearing FCMs and their customers. 17 CFR 1.29(b).

Commission 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).

Commission 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, Commission Regulation 22.3(d) provides that DCOs may invest Cleared Swaps Customer Collateral in Permitted Investments set forth in Commission Regulation 1.25. The regulation, however, does not provide that a DCO is responsible for investment losses. The Commission proposed to amend Commission 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. *Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations*, 88 FR 81236 at 81238-39, 81259 (Nov. 21, 2023).

[44] 2011 Permitted Investments Amendment at 78777.

in Section II below, the Commission published a notice of proposed rulemaking to amend the list of Permitted Investments in Commission Regulation 1.25 and to adopt several related amendments to its rules governing the investment of Customer Funds by FCMs and DCOs.[45]

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 that the Commission issue an order under Section 4(c) of the Act, or take such other action as the Commission deems appropriate, to expand the list of Permitted Investments that FCMs and DCOs may enter into with Customer Funds.[46] The Petitioners requested an extension of the Permitted Investments to include the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom ("Specified Foreign Sovereign Debt"), subject to the condition that any investment is limited to balances owed by FCMs and DCOs to customers and FCM clearing members, respectively, denominated in the applicable currency of Canada, France, Germany, Japan, or the United Kingdom.[47] The Petitioners further requested that the Commission exempt FCMs and DCOs from the provisions of Commission Regulation 1.25(d)(2) to authorize FCMs and DCOs to enter into

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[45] *Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations*, 88 FR 81236 (Nov. 21, 2023) ("Proposal").

[46] *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.*

[47] Joint Petition at p. 4. The currencies of Canada, France, Germany, Japan, and the United Kingdom are the Canadian dollar, the euro (France and Germany), the yen (Japan), and the British pound (United Kingdom).

Repurchase Transactions involving Specified Foreign Sovereign Debt with foreign banks and foreign securities brokers or dealers, and to deposit Specified Foreign Sovereign Debt in safekeeping accounts at foreign banks.[48]

In support of the request, the Petitioners stated 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 Commission 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.[49] The Petitioners also asserted that the Commission's stated rationale for issuing the 2018 Order and providing an exemption to DCOs also applies to investments made by FCMs and extends to the sovereign debt of Canada, Japan, and the United Kingdom, in addition to France and Germany.

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[48] Joint Petition at p. 5.

Commission Regulation 1.25(d)(2) provides that an FCM or 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, 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. 78c(a)(6). Foreign-domiciled banks and foreign securities brokers or dealers are not authorized counterparties for Repurchase Transactions under Commission Regulation 1.25(d)(2).

In addition, Commission Regulation 1.25(d)(7) provides that securities transferred to an FCM or DCO under Repurchase Transactions must be held in safekeeping accounts with certain U.S.-domiciled banks, a Federal Reserve Bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Commission Regulation 1.26.

[49] *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.

The 2018 Order's Section 4(c) exemption for DCOs 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.[50] 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.[51]

The 2018 Order also grants an exemption from Commission 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.[52] A DCO may enter into Repurchase Transactions with a foreign bank or foreign securities broker or dealer provided that the firm qualifies as a permitted depository under Commission Regulation 1.49(d)(3) and is located in a "money center

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

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

[52] Condition 2(a) of the 2018 Order at 35245.

country"[53] or in another jurisdiction that has adopted the euro as its currency.[54] The 2018 Order further grants an exemption from the requirement in Commission Regulation 1.25(d)(7) that securities transferred to an FCM or 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, 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 Commission Regulation 1.49(d)(3).[55]

The Petitioners further requested that FCMs and DCOs be permitted to invest Customer Funds in certain exchange-traded funds ("ETFs") that invest primarily in short-term U.S. Treasury securities ("U.S. Treasury ETFs").[56] In support of their request, the Petitioners stated 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.[57]

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

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[53] Commission Regulation 1.49(a) defines the term "money center country" as Canada, France, Italy, Germany, Japan, and the United Kingdom.

[54] Conditions 2(b) and 3(e) of the 2018 Order at 35245. Commission Regulation 1.49(d)(3) provides that to qualify as a depository for Customer Funds, 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. 17 CFR 1.49(d)(3).

[55] Condition 2(b) of the 2018 Order at 35245. Commission Regulation 1.25(d)(7) provides that securities transferred to an FCM or 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. 17 CFR 1.25(d)(7). A foreign-domiciled bank is currently not an authorized depository for securities transferred to an FCM or DCO under Commission Regulation 1.25(d)(7).

[56] Joint Petition at pp. 8-9.

[57] *Id*.

U.S. Treasury ETF securities to the list of Permitted Investments.[58] Invesco stated that U.S. Treasury ETFs would 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.[59] Invesco further stated that listing U.S. Treasury ETFs as Permitted Investments would be consistent with the public interest and the customer protection regime under the Act and Commission regulations as U.S. Treasury ETFs may only invest in instruments that are otherwise eligible as Permitted Investments for Customer Funds.[60] Invesco further noted that because U.S. Treasury ETFs invest in a sub-set of the same high-quality liquid instruments that are Permitted Investments under Commission Regulation 1.25 (*i.e.*, U.S. government securities), 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. by eliminating the need for FCMs and DCOs to administer direct investments in individual U.S. government securities.[61]

Lastly, the Petitioners also requested that the Commission amend its regulations consistent with CFTC Staff Letter 21-02 and CFTC Staff Letter 22-21,[62] to permit FCMs

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[58] Letter from Anna Paglia, Chief Executive Officer, Invesco Capital Management LLC, dated September 28, 2023 ("Invesco Petition"), available at *https://www.cftc.gov/media/9541/Invesco_CFTCPetition_Regulation125_092823/download*. Invesco is 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.

[59] Invesco Petition at p. 1.

[60] *Id.* at p. 9.

[61] *Id.* at p. 2.

[62] 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*

and DCOs to invest Customer Funds in qualifying Permitted Investments that have adjustable rates of interest that correlate closely to SOFR.[63]

III. Summary of the Proposal

In order to revise Commission Regulation 1.25 to address outdated provisions, and in consideration of the Joint Petition and the Invesco Petition, the Commission proposed to amend the list of Permitted Investments to: (i) add two new asset classes (*i.e.*, Specified Foreign Sovereign Debt instruments and U.S. Treasury 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. The Commission also proposed amendments to FCM financial reporting requirements to reflect the proposed amendments to the list of Permitted Investments. The Commission further proposed changes to the counterparty and depository requirements of Commission Regulation 1.25(d)(2) and (7), and revisions to the concentration limits for Permitted Investments set forth in Commission Regulation 1.25(b)(3). The Commission also specified proposed capital charges that FCMs would have to apply to the proposed new Permitted Investment instruments and proposed a clarifying amendment to Commission Regulation 22.3(d) to specify that DCOs bear the financial responsibility for losses resulting from investment of Customer Funds in

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Secured Overnight Financing Rate (Jan. 4, 2021) ("Staff Letter 21-02") available at the Commission's website: https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=21-02&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All; 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 (Dec. 23, 2022) ("Staff Letter 22-21") available at the Commission's website: www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=22-21&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All.

[63] Joint Petition at p. 4.

Permitted Investments. The Commission further proposed 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 proposed to amend 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.[64] Each of these proposed amendments are discussed in Section IV. below.

The comment period for the Proposal closed on January 17, 2024. The Commission received 17 comment letters from various interested parties, including investor advocacy groups, trade associations, and financial services companies.[65] The majority of commenters expressed support for the Proposal, generally noting that the proposed amendments represent appropriate updates to the list of Permitted Investments. Several commenters specifically supported the inclusion of foreign sovereign debt and U.S. Treasury ETFs as Permitted Investments.[66] Conversely, two commenters opposed allowing FCMs and DCOs to invest Customer Funds in foreign sovereign debt.[67] Many

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[64] *See generally* Proposal.

[65] The following entities submitted comments: Alternative Investment Management Association ("AIMA"); Americans for Financial Reform Education Fund, Consumer Federation of America, Food & Water Watch, Institute for Agriculture and Trade Policy, and Public Citizen (collectively, the "Investor Advocacy Group" and the "Investor Advocacy Group Joint Letter"); Better Markets; BlackRock, Inc. ("BlackRock"); Eurex Clearing AG ("Eurex"); Federated Hermes, Inc. ("Federated Hermes"); Futures Industry Association and CME Group Inc. ("FIA/CME Joint Letter"); The Global Association of Central Counterparties ("CCP Global"); Intercontinental Exchange Inc. ("ICE"); Invesco Capital Management LLC ("Invesco"); Investment Company Institute ("ICI"); Managed Funds Association ("MFA"); National Futures Association (''NFA"); Nodal Clear, LLC ("Nodal"); the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG"); State Street Global Advisors ("SSGA"); and World Federation of Exchanges ("WFE"). The comment letters are available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7453.

[66] Invesco at pp. 2-3; ICI at p. 2; AIMA at pp. 2-3; FIA/CME Joint Letter at pp. 2, 4-15; MFA at pp. 2-6; Nodal at pp. 1-2; SIFMA AMG at pp. 2-8, 12; CCP Global at pp. 2-4 WFE at pp. 3-6.

[67] Better Markets at pp. 3-7; Investor Advocacy Group Joint Letter at pp. 1-2.

commenters also recommended revisions to the proposed conditions underlying the Proposal, including the conditions proposed for investment in certain short-term U.S. Treasury ETFs.[68]

In consideration of the broad public input expressed in the public comments, and the Commission's experience administering the rules that govern investments of Customer Funds by FCMs and DCOs, the Commission is adopting the proposed amendments, subject to the changes discussed below.[69]

IV. Final Rule

A. Investment of Customer Funds

1. Interests in Money Market Funds

a. Proposal

Commission 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.[70] To qualify as a Permitted Investment, a MMF must: (i) be an investment company registered with the SEC under the Investment Company Act of 1940[71] and hold itself out to investors as a MMF in accordance with SEC Rule 2a-7;[72] (ii) be sponsored by a federally-regulated financial institution, a Section 3(a)(6) bank,[73] an investment adviser registered under the Investment Advisers Act of 1940,[74] or a domestic branch of a foreign

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[68] AIMA at pp. 2-3; MFA at pp. 5-6; FIA/CME Joint Letter at pp. 11-16; CCP Global at pp. 3-4; BlackRock at pp. 2-6; Invesco at pp. 3-5; ICI at pp. 2-6 SIFMA AMG at pp. 4-6; SSGA at pp. 2-3; WFE at pp. 5-6.

[69] The final rulemaking is referred to as the "Final Rule" in this Federal Register release.

[70] 17 CFR 1.25(a)(vii).

[71] 15 U.S.C. 80a-1 – 80a-64.

[72] 17 CFR 270.2a-7 ("SEC Rule 2a-7").

[73] For a definition of Section 3(a)(6) bank, *see supra* note 52.

[74] 15 U.S.C. 80b-1 – 80b-21.

bank insured by the FDIC; and (iii) compute, and make available to MMF shareholders, the net asset value ("NAV") of the fund by 9 a.m. of the business day following each business day.[75]

As further described below, the Commission proposed to amend Commission Regulation 1.25(a)(1)(vii) to limit the scope of MMFs whose interests qualify as Permitted Investments in response to two sets of rule amendments adopted by the SEC regarding MMFs, which rendered, in the Commission's view, certain MMFs incompatible with the liquidity requirements of Commission Regulation 1.25.[76] Specifically, the Commission proposed to limit Permitted Investments in MMFs to interests in certain "government money market funds," as defined in SEC Rule 2a-7.[77] 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."[78] 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."[79] Therefore, a "government security" encompasses "U.S. government securities" and "U.S. agency

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[75] 17 CFR 1.25(c).

[76] Proposal at 81240-43.

[77] *Id.* 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.

[78] 17 CFR 270.2a-7(a)(14).

[79] 15 U.S.C. 80a-2(a)(16).

obligations" as defined under Commission Regulation 1.25(a)(1)(i) and (iii), respectively.[80]

As noted above, the Commission proposed to amend Commission Regulation 1.25 to limit the scope of MMFs that qualify as Permitted Investments in response to SEC revisions to its MMF rules. Specifically, in 2014, the SEC amended SEC Rule 2a-7 to authorize a MMF to impose liquidity fees on participant redemptions, or to temporarily suspend participant redemptions, if the MMF's investment portfolio triggered certain liquidity thresholds.[81] 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.[82] The 2014 SEC Redemption Provisions were mandatory for Prime MMFs, and Government MMFs could voluntarily elect to impose the 2014 SEC Redemption Provisions ("Electing Government MMFs").[83]

Commission staff subsequently received inquiries from market participants concerning the permissibility of investing Customer Funds in MMF interests under Commission Regulation 1.25 in light of the 2014 SEC Redemption Provisions. In response, Commission staff issued CFTC Staff Letter 16-68[84] and CFTC Staff Letter 16-

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[80] Commission 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.

[81] *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).

[82] 2014 SEC MMF Final Rule at 47747. *See also* Proposal at 81241-43. The liquidity fees and suspension of redemptions provisions introduced by the 2014 SEC MMF Final Rule are referred to as the "2014 SEC Redemption Provisions" in this document.

[83] 17 CFR 270.2a-7(c)(2)(iii).

[84] 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") available at the Commission's website:

69[85] addressing the 2014 SEC Redemption Provisions and the investment of Customer Funds in MMFs by FCMs and DCOs, respectively. Staff Letter 16-68[86] expresses DSIO's view that the 2014 SEC Redemption Provisions conflict with paragraphs (b)(1)[87] and (c)(5)(i)[88] of Commission Regulation 1.25, as the Redemption Provisions have the effect of potentially reducing the liquidity of Prime MMFs and Electing Government MMFs through the imposition of fees and suspension of redemptions. Therefore, DSIO stated that FCMs may no longer invest Customer Funds in Prime MMFs and Electing Government MMFs.[89]

Staff Letter 16-69 set forth DCR's interpretation that Commission Regulations 39.15(c) and (e)[90] prohibit a DCO from holding funds belonging to clearing members or their customers in Prime MMFs or Electing Government MMFs. Staff Letter 16-69 also

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www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=16-68&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All.

Staff Letter 16-68 was issued by the Commission's Division of Swap Dealer and Intermediary Oversight ("DSIO") (subsequently renamed the Market Participants Division ("MPD")).

[85] 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"). Staff Letter 16-69 was issued by the Commission's Division of Clearing and Risk ("DCR") and is available at the Commission's website: www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=16-69&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All.

[86] *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) available at the Commission's website: https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=16-75&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All.

[87] 17 CFR 1.25(b)(1) (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).

[88] 17 CFR 1.25(c)(5)(i) (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).

[89] Staff Letter 16-68 at p. 2. However, DSIO also states in Staff Letter 16-68 that it would not recommend an enforcement action to the Commission if an FCM invested Customer Funds held in segregation that represents an excess over the firm's targeted residual interest in Prime and Electing Government MMFs. Staff Letter 16-68 at pp. 3-4.

[90] 17 CFR 39.15(c) and (e).

states that the 2014 SEC Redemption Provisions are not consistent with Commission 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. Staff Letter 16-69 further provides that the 2014 SEC Redemption Provisions are inconsistent with Commission 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. FCMs and DCOs have not invested Customer Funds in Prime MMFs or Electing Government MMFs since the issuance of Staff Letters 16-68 and 16-69 in 2016.[91]

In August 2023, the SEC adopted additional amendments to its MMF rules, including amendments revising the 2014 SEC Redemption Provisions discussed above.[92] The 2023 SEC MMF Reforms 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 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

[91] While Staff Letter 16-68 provides that DSIO would not recommend an enforcement action against an FCM that invested Customer Funds in Prime and Electing Government MMFs, provided that the amount invested represents an amount held in customer segregated accounts that exceeds the firm's targeted residual interest amount, staff is not aware of FCMs investing Customer Funds in such MMFs.

[92] *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) ("2023 SEC MMF Reforms"). The 2023 SEC MMF Reforms became effective on October 2, 2023.

intervention to enhance the liquidity of such markets.[93] 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.[94] 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.[95] The SEC also cited evidence suggesting that investors are particularly sensitive to the potential imposition of redemption gates, which restricts MMF share redemption for the duration of the gate.[96] 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

[93] As noted in the 2023 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. 2023 SEC MMF Reforms at 51408.

[94] 2023 SEC MMF Reforms at 51407. 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).

[95] 2023 SEC MMF Reforms at 51407.

[96] *Id*. at 51409.

redemptions from certain MMFs.[97] Thus, the SEC concluded that MMFs needed better functioning tools for managing through stress while mitigating harm to shareholders.[98]

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 2023 SEC MMF Reforms, among other things, amended the 2014 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.[99] The 2023 SEC MMF Reforms 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 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.[100] Government MMFs are not required to implement the mandatory liquidity fee but may choose to rely on the ability to impose discretionary liquidity fees.[101] Such fees, however, are no longer tied to the weekly liquid asset threshold.[102]

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[97] *Id*.

[98] *Id*. at 51408.

[99] *Id.* at 51410.

[100] 17 CFR 270.2a-7(c)(2)(i) and (ii) (as amended by the 2023 SEC MMF Reforms). SEC Rule 2a-7(c)(2)(i) provides, in relevant part, that if a Prime MMF's board of directors, including a majority of the directors who are not interested persons of the fund, determines that a liquidity fee is in the best interest of the fund, the fund must institute a liquidity fee that does not exceed two percent of the value of the shares redeemed. In addition, SEC Rule 2a-7(c)(2)(ii) provides, in relevant part, that a Prime MMF must apply a liquidity fee to all shares that are redeemed if the fund experiences total daily net redemptions that exceed 5 percent of the fund's net asset value, or such smaller amount of net redemptions as the board of directors of the fund determines.

[101] 17 CFR 270.2a-7(c)(2)(i)(B) (as amended by the 2023 SEC MMF Reforms). SEC Rule 2a-7(c)(2)(i)(B) permits Government MMFs to elect to impose the discretionary liquidity fees on shareholder redemptions.

[102] 17 CFR 270.2a-7(c)(2)(i) (as amended by the 2023 SEC MMF Reforms).

The SEC's liquidity fee mechanism is designed 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 considered that the potential imposition of a fee would nonetheless potentially reduce the principal of an FCM's or DCO's investment in MMF shares, particularly during periods of market stress and high shareholder redemptions. Such potential loss of principal could have an adverse impact on the ability of an FCM or DCO to fully repay customers, who may need liquidity in their accounts to meet trading losses and/or margin calls. Therefore, consistent with the positions taken in Staff Letter 16-68 and Staff Letter 16-69, the Commission proposed to limit the scope of MMFs whose interests qualify as Permitted Investments to funds that are not subject to a liquidity fee (*i.e.,* Government MMFs that are not Electing Government MMFs (referred to in this release as "Permitted Government MMFs")).[103] As discussed in the Proposal, 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.[104] The Commission's goal in proposing the amendment was to ensure that FCMs and DCOs invest Customer Funds in instruments that are consistent with the objectives of

[103] *See* Proposal at 81240-43 and proposed paragraph (a)(1)(v) of Commission Regulation 1.25.

[104] *See* Proposal at 81240-41.

Commission Regulation 1.25 of preserving principal and maintaining liquidity of the investments.

To eliminate MMFs whose redemptions may be subject to a liquidity fee from the scope of Permitted Investments under Commission Regulation 1.25, the Commission proposed revising Commission Regulation 1.25(a)(1)(vii), which would be redesignated as Commission Regulation 1.25(a)(1)(iv) to accommodate other amendments to Commission Regulation 1.25(a) discussed in the Proposal, by replacing the term "money 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)."[105] The Commission also proposed further conforming changes throughout Commission Regulation 1.25, and the Appendix to Commission Regulation 1.25, by replacing all references to "money market mutual fund" with "government money market fund."[106] In addition, the Appendix to Commission Regulation 1.25 was proposed to 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.[107] Further, the Commission proposed conforming amendments to Commission Regulations 1.26 and 30.7(d), which require an FCM and/or DCO, as applicable, that invests Customer Funds in Permitted Investments, including qualifying MMFs, to obtain and retain in its files a written acknowledgement letter from the

[105] Proposal at 81240-43, proposed Commission Regulation 1.25(a)(1)(v).

[106] Proposal at 81243.

[107] *Id.*

depository holding the instruments stating that the depository was informed that the instruments belong to customers and are being held in accordance with the provisions of the Act and Commission regulations.[108] The Commission also proposed conforming amendments to the appendices setting forth the template acknowledgment letters.[109] Specifically, the Commission proposed to replace the references to "money market mutual fund" with "government money market fund" in Commission Regulation 1.26, Appendix A and Appendix B to Commission Regulation 1.26 (to be redesignated Appendix F and Appendix G to Part 1), Commission Regulation 30.7(d), and Appendix F to Part 30 of Commission's regulations.[110]

The Commission also noted that the proposed amendments removing interests in MMFs whose redemptions may be subject to a liquidity fee from the scope of Permitted Investments would prohibit an FCM from depositing proprietary interests in such MMFs into Customer Funds accounts.[111] The Commission stated that Commission 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.[112] The proprietary securities deposited by FCMs into customer accounts, however, must satisfy the criteria

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[108] *Id.* at 81263.

[109] *Id*.

[110] *Id*.

[111] Proposal at 81242.

[112] 17 CFR 1.23(a)(1), 22.2(e)(3)(i), and 30.7(g)(1). A customer account is "undersegregated" if an FCM holds less funds in the account than is necessary to cover the total amount due to the customer at any given point in time.

of a Permitted Investment as specified in Commission Regulation 1.25.[113] 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.

b. Comments

The Commission received six comments on the proposed limit of the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs.[114] Each of the commenters supported the proposed limitation.[115] AIMA noted that the amendments would appropriately update the list of Permitted Investments in line with sound risk management practices.[116] ICI stated that the proposed amendments are consistent with the regulatory objective of limiting Permitted Investments to safe, short-term instruments.[117] Though supportive of the proposed amendments, BlackRock raised concerns about the Proposal's rationale, asserting that in discussing investor behavior during the March 2020 events, the Commission failed to acknowledge that there was a broader "dash for cash" occurring across asset classes, not just MMFs, at that time period.[118]

In addition to supporting the proposed revisions to the scope of the MMFs, FIA and CME recommended an amendment to the template acknowledgement letters for

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[113] *Id*.

[114] *See* AIMA at p. 3; BlackRock at pp. 2, 6; Federated Hermes at pp. 1-2; FIA/CME Joint Letter at p. 21; ICI at p. 2; MFA at p. 6.

[115] *Id.*

[116] AIMA at p. 3.

[117] ICI at p. 2.

[118] BlackRock at p. 6.

Government MMFs set forth in Appendices A and B to Commission Regulation 1.26 for direct investments by FCMs and DCOs of futures customer funds and Cleared Swaps Customer Collateral in MMFs, and Appendix F to Part 30 for direct investments by FCMs of 30.7 customer funds in MMFs.[119] Specifically, FIA and CME recommended that each template acknowledgment letter include a representation from the Government MMF that the fund does not elect to impose discretionary liquidity fees.[120]

Finally, in response to the Commission's request for comment on whether the Commission should revise Commission Regulation 1.25(b)(5)(ii) to prohibit FCMs and DCOs from investing Customer Funds in a fund affiliated with the FCM or DCO, commenters asserted that no changes were necessary.[121] These commenters noted that "risk posed by affiliates" is a component of the risk management program that FCMs are required to adopt pursuant to Commission Regulation 1.11.[122] The commenters further asserted that because Permitted Investments involving FCM affiliates are already subject to the policies, procedures, and controls of consolidated risk management programs, as

[119] FIA/CME Joint Letter at p. 21. As discussed in the Proposal, Commission Regulations 1.26 and 30.7(d) require an FCM or DCO, as applicable, to obtain, and retain in its files, a written acknowledgment from each depository holding Permitted Investments. Proposal at 81263.

[120] *Id*. The FIA/CME Joint Letter included the following suggested language: "Furthermore, you acknowledge and agree that the Shares are in a fund that holds itself out to investors as a government money market fund, in accordance with 17 C.F.R. § 270.2a-7. In addition, the Shares are in a fund that does not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of 17 C.F.R. § 270.2a-7(c)(2)(i)." FIA/CME Joint Letter at p. 21.

[121] Proposal at 81243, Question 2. Commission Regulation 1.25(b)(5)(ii) provides, in relevant part, that an FCM or DCO may not invest Customer Funds in obligations of an affiliated entity, but permits investments by FCMs and DCOs in interest in funds affiliated with the applicable FCM or DCO.

[122] FIA/CME Joint Letter at p. 19; MFA at p. 6.

well as existing statutory and regulatory requirements, there is no reason to revisit the Commission's previous consideration of this issue.[123]

c. Discussion

The Commission has considered the comments received, and is adopting as proposed the amendments to Commission Regulation 1.25 to limit the scope of MMFs that qualify as Permitted Investments for Customer Funds to Permitted Government MMFs. As stated in the Proposal, the Commission's intent in eliminating Prime MMFs and Electing Government MMFs from the list of Permitted Investments is to ensure that Customer Funds are managed with the objectives of preserving principal of the investments, consistent with the general requirements of Commission Regulation 1.25(b).[124] The requirement for Prime MMFs to impose a liquidity fee on shareholder redemptions when the fund experiences net redemptions that exceed 5 percent of the fund's net assets, and the fund's authority to impose discretionary liquidity fees of up to 2 percent on shareholder redemptions if the board of directors determines that such a fee is in the best interest of the fund, is not consistent with the obligation of FCMs and DCOs to preserve the principal of Customer Funds invested in Permitted Investments. The imposition of mandatory or discretionary liquidity fees on an FCM's or DCO's

[123] *Id*. (referencing the Commission's final rule *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 78 FR 68506 at 68520 Nov. 14, 2013) ("2013 Protections of Customer Funds Release"), which notes that an FCM's risk management policies and procedures under Commission Regulation 1.11 must include procedures for assessing the appropriateness of investing customer funds in accordance with Commission Regulation 1.25, and "must take into consideration the market, credit, counterparty, operational, and liquidity risks associated with the investments.")

[124] Proposal at 81242. Commission Regulation 1.25(b) provides, in relevant part, that an FCM or DCO is required to manage its Permitted Investments consistent with the objectives of preserving principal and maintaining liquidity of the Customer Funds. 17 CFR 1.25(b).

redemption request from a Prime MMF or an Electing Government MMF may result in an FCM or DCO not realizing the full principal value of its investment upon its redemption request. The inability of the FCM or DCO to receive the full principal value of its investment of Customer Funds presents potential financial risk to the FCM or DCO as it may not have sufficient funds to fully repay the account balances of each customer. Thus, the Commission is revising the list of Permitted Investments to remove Prime MMFs and Electing Government MMFs.

The Commission is also maintaining current Commission Regulation 1.25(b)(5)(ii), which provides that an FCM or DCO may invest Customer Funds in a fund affiliated with that FCM or DCO. Consistent with its views expressed in connection with the risk management program mandated by Commission Regulation 1.11,[125] the Commission expects that FCMs will assess the appropriateness of investing Customer Funds in affiliated funds in accordance with this program.[126] Similarly, because DCO Core Principle F and Commission Regulation 39.15(e) require a DCO to hold Customer Funds only in instruments with minimal credit, market, and liquidity risks, the Commission expects that DCOs will assess the risk of investing Customer Funds in affiliated funds before doing so. In addition, investment advisers that act as investment managers of a fund have fiduciary duties to their client, the fund, under the Investment Adviser Act of 1940.[127] In this context, the investment adviser has a duty to eliminate, or

[125] 2013 Protections of Customer Funds Release at 68519-20.

[126] Commission Regulation 1.11(e)(1)(ii) provides that an FCM's risk management program must consider risks posed by affiliates, all lines of business of the FCM, and all other trading activity engaged in by the FCM. 17 CFR 1.11(e)(1)(ii).

[127] *See Commission Interpretation Regarding Standard of Conduct for Investment Adviser*, SEC, 84 FR 33669 (July 12, 2019) at 33670.

disclose and mitigate, conflicts of interest that may impact the advisory relationship.[128] Therefore, as investors in a fund that qualifies as a Permitted Investment, FCMs and DCOs should not receive either preferential or disadvantageous treatment compared to other investors in the fund.

Lastly, in response to the comment asserting that the Commission failed to acknowledge the broader "dash for cash" that occurred across assets classes in March 2020,[129] the Commission was recounting the SEC's rationale for adopting the 2023 SEC MMF Reforms. The Commission's own rationale for revising the scope of MMFs whose interests qualify as Permitted Investments is the potential reduced liquidity of Prime MMFs and Electing Government MMFs resulting from the implementation of liquidity fees by such funds under the SEC's regulatory framework.

To eliminate MMFs whose redemptions may be subject to a liquidity fee from the scope of Permitted Investments under Commission Regulation 1.25, the Commission is revising Commission Regulation 1.25(a)(1)(vii), which is redesignated Commission Regulation 1.25(a)(1)(iv) to accommodate other amendments to Commission Regulation 1.25(a) discussed in this Final Rule, by replacing the term "money 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 is also adopting further conforming changes throughout Commission Regulation 1.25 and the Appendix to Commission Regulation 1.25 by replacing all references to "money market

[128] *Id*. at 33677.

[129] Blackrock at p. 6.

mutual fund" with "government money market fund." In addition, the Appendix to Commission Regulation 1.25 is 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.

To reflect the Final Rule's amendments to the scope of MMFs that qualify as Permitted Investments, the Commission is also adopting conforming amendments to Commission Regulation 1.26, Appendices A and B to Commission Regulation 1.26, Commission Regulation 30.7(d), and Appendix F to Part 30 of the Commission's regulations, as proposed. Specifically, the Commission is adopting conforming amendments to paragraphs (a) and (b) of Commission Regulation 1.26 to replace the term "money market mutual fund" with the term "government money market fund." Paragraph (b) of Commission Regulation 1.26 is further revised to reflect the redesignation of Appendices A and B to Commission Regulation 1.26 as "Appendices F and G to Part 1 of the Commission's regulations" and to reflect the redesignation of Appendices A and B to Commission Regulation 1.20 as "Appendices C and D to Part 1."[130] The Commission is also amending Appendices A and B to Commission Regulation 1.26 (redesignated appendices F and G to Part 1) to replace the term "Money Market Mutual Fund" with "Government Money Market Fund."

In addition, the Commission is making conforming changes to Commission Regulation 30.7(d)(2) and 30.7(l)(5)(iii)(G) (redesignated Commission Regulation

[130] Commission Regulation 1.26 currently refers to "appendix A or B to this section" and "appendix A or B to § 1.20." Appendix A and Appendix B to Commission Regulation 1.26 are being redesignated Appendix F and Appendix G to Part 1, and Appendix A and B to Commission Regulation 1.20 are being redesignated Appendix C and D 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.

30.7(l)(5)(iii)(F)) to replace the term "money market mutual fund" with "government money market fund." The Commission is also implementing changes to Appendix F to Part 30, to replace the term "money market mutual fund" with "government money market fund."

In response to FIA/CME Joint Letter, the Commission is also adopting additional conforming changes to the template acknowledgement letters set forth in Appendices A and B to Commission Regulation 1.26 (redesignated as Appendices F and G to Part 1) and in Appendix F to Part 30 to reflect the changes to the scope of MMFs that qualify as Permitted Investments.[131] Specifically, the Commission is including a template representation that the Government MMF does not elect to impose discretionary liquidity fees. The Commission understands that including language to memorialize the representation in the template acknowledgement letter may create efficiencies for registrants seeking to ascertain that the MMF meets the eligibility conditions of Commission Regulation 1.25. Thus, the Commission is including the following statement after the second full paragraph of the template acknowledgment letters in Appendices A and B to Commission Regulation 1.26 (redesignated Appendices F and G to Part 1 for FCMs and DCOs, respectively) and Appendix F to Part 30: "Furthermore, you acknowledge and agree that the Shares are in a fund that holds itself out to investors as a government money market fund, in accordance with 17 C.F.R. § 270.2a-7. In addition, you acknowledge and agree that the Shares are in a fund that does not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of 17 C.F.R. § 270.2a-7(c)(2)(i)."

[131] FIA/CME Joint Letter at p. 21.

As discussed below in Section E regarding the removal of read-only electronic access, FCMs do not need to obtain new acknowledgment letters for existing accounts at depositories holding Customer Funds reflecting this new language regarding government money market funds. Instead, revised acknowledgment letters must be obtained only for accounts opened after the effective date of this Final Rule or if the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the addition of the government money market fund language after the effective date of this Final Rule.

2. Foreign Sovereign Debt

a. Proposal

The Commission authorized FCMs and DCOs to invest futures customer funds in foreign sovereign debt as part of the 2000 Permitted Investments Amendment.[132] The investments were subject to specified conditions, including that investments in the debt of a particular foreign sovereign were limited to balances owed by FCMs or DCOs to customers denominated in the currency of the applicable sovereign debt.[133]

The Commission subsequently proposed to eliminate foreign sovereign debt as a Permitted Investment in 2010 citing an interest in simplifying the regulation and safeguarding futures customer funds in light of economic crises experienced by a number of foreign sovereigns.[134] Specifically, the 2010 Proposed Permitted Investments Amendment cited a Division of Clearing and Intermediary Oversight ("DCIO") 2007

[132] 2000 Permitted Investments Amendment at 78003.

[133] *Id.*

[134] *Investment of Customer Funds and Funds Held in Account for Foreign Futures and Foreign Options Transactions,* 75 FR 67645 (Nov. 3, 2010) at 67645 ("2010 Proposed Permitted Investments Amendment").

review of the investment of futures customer funds and 30.7 customer funds.[135] The 2007 Review revealed that only three of the total 87 active FCMs invested futures customer funds in foreign sovereign debt at any time during that year, and that only one FCM invested 30.7 customer funds in foreign sovereign debt.[136]

The Commission subsequently eliminated foreign sovereign debt as a Permitted Investment in 2011.[137] In eliminating foreign sovereign debt as a Permitted Investment, the Commission 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 investments in certain sovereign debt may be consistent with the objective of preserving principal and maintaining liquidity of investments entered into with Customer Funds specified in Commission Regulation 1.25.[138] The Commission expanded on this view by stating that it was amenable to considering requests for Section 4(c) exemptions to permit FCMs and DCOs to invest futures customer funds in foreign sovereign debt upon a demonstration that the investment is appropriate in light of the objectives of Commission Regulation 1.25, and the issuance of the exemption satisfies the criteria set forth in Section 4(c).[139] Specifically, the Commission stated that it would consider permitting futures 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

[135] *Id.* at 67643 ("2007 Review"). MPD is a successor division to DCIO. The 2007 Review was conducted to further staff's understanding of FCM investment strategies and practices for customer funds, and to assess whether any changes to the Commission's regulations would be appropriate.

[136] *Id.* at 67645.

[137] 2011 Permitted Investments Amendment at 78780-82.

[138] *Id.* at 78782.

[139] *Id.*

to customers denominated in that country's currency; and (ii) the foreign sovereign debt serves to preserve principal and maintain liquidity of futures customer funds as required for all other investments of Customer Funds under Commission Regulation 1.25.[140]

As discussed in Section II. above, the Commission issued an order in 2018 pursuant to Section 4(c) granting DCOs a limited exemption from the prohibition on the investment of customer funds in foreign sovereign debt consistent with its views and the criteria expressed in the 2011 Permitted Investments Amendment.[141] Specifically, the 2018 Order authorizes DCOs to invest euro-denominated futures customer funds and Cleared Swaps Customer Collateral in euro-denominated sovereign debt issued by France or Germany.[142] The 2018 Order also contains conditions designed to ensure that the investments preserve the principal and maintain the liquidity of customer funds. Specifically, the conditions provide that: (i) investments of futures customer funds and Cleared Swaps Customer Collateral in the sovereign debt of France and Germany is limited to investments made with euro customer cash; (ii) if the two-year credit default spread of France or Germany, as applicable, exceeds 45 BPS, a DCO must not make any new direct investments in the relevant debt using futures customer funds or Cleared Swaps Customer Collateral, and a DCO must discontinue investing futures customer funds and Cleared Swap Customer Collateral in the relevant debt instruments through Repurchase Transactions as soon as practicable under the circumstances; (iii) the dollar-weighted average of the time-to-maturity of a DCO's portfolio of investments in each of

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[140] *Id.*

[141] 2018 Order.

[142] 2018 Order at 35244-45. The petitioners of the 2018 Order did not request any relief with respect to the investment of 30.7 customer funds, which are held by FCMs for 30.7 customers are trading on foreign contract markets that are not Commission designated contract markets.

France or Germany's sovereign debt may not exceed 60 days; (iv) a DCO may not make a direct investment in the sovereign debt instruments of France or Germany that have a remaining time-to-maturity of greater than 180 calendar days; (v) a DCO may use futures customer funds or Cleared Swaps Customer Collateral to enter into Repurchase Transactions for French or German sovereign debt with a counterparty that is a foreign bank that qualifies as a permitted depository under Commission Regulation 1.49(d)(3) and that is located in a money center country (as defined in Commission Regulation 1.49(a)(1)) or in another jurisdiction that has adopted the euro as it currency, a securities dealer located in a money center country as defined in Commission Regulation 1.49(a)(1) that is regulated by a national financial regulator, or the European Central Bank, The Deutsche Bundesbank, or the Banque de France; and (vi) a DCO may hold the sovereign debt of France or Germany purchased under Repurchase Transactions with a foreign depository only if the depository meets the location and qualification requirements contained in Commission Regulation 1.49(c) and (d) and if the account complies with the requirements of Commission Regulation 1.26.[143]

As stated in Section II. above, the FIA and CME submitted a joint petition requesting that the Commission expand the scope of the 2018 Order by permitting both DCOs and FCMs to invest Customer Funds (*i.e.*, futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds, as applicable) in the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom (*i.e.*, the Specified Foreign Sovereign Debt).[144] In support of the Joint Petition, the Petitioners asserted that the

[143] Conditions 3(a)-(f) of the 2018 Order at 35245.

[144] *See generally* Joint Petition.

Commission's justification for issuing the 2018 Order to permit DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in French and German sovereign debt is also applicable to FCMs. Specifically, the Petitioners stated that FCMs face the same challenges in assuring the protection of foreign currencies received from customers to margin cleared transactions as DCOs.[145] In this regard, the Petitioners noted that, in issuing the 2018 Order, the Commission stated that cash held in unsecured deposit accounts at commercial banks is exposed to the credit risk of the banks.[146] The Petitioners asserted that this credit risk can be effectively eliminated if an FCM or DCO is permitted to invest Customer Funds denominated in Canadian dollars ("CAD"), euros ("EUR"), Japanese yen ("JPY"), or Great Britain pounds ("GBP") in the sovereign debt of Canada, France, Germany, Japan, or the UK (*i.e.*, Specified Foreign Sovereign Debt).[147] The Petitioners further stated that although investments through Repurchase Transactions involve exposure to a commercial counterparty, an FCM or DCO would receive the additional added benefit of receiving securities as collateral against that counterparty's credit risk.[148]

After considering the Joint Petition, and assessing changes to the holding of non-U.S. dollar currencies by FCMs and DCOs since the 2007 Review, the Commission proposed to permit both FCMs and DCOs to invest Customer Funds in Specified Foreign

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[145] Joint Petition at p. 2.

[146] *Id*.

[147] *Id.*

[148] *Id.* Consistent with arguments presented in connection with the 2018 Order, the Petitioners further argued that "in the event a securities custodian enters insolvency proceedings, [a DCO or FCM] would have a claim to specific securities rather than a general claim against the assets of the custodian." *Id. See also* 2018 Order at 35242.

Sovereign Debt securities.[149] Specifically, the Commission proposed revising Commission Regulation 1.25 to include Specified Foreign Sovereign Debt instruments as Permitted Investments, subject to conditions that are consistent with the conditions specified in the Commission's 2018 Order. As detailed in the Proposal, an FCM or DCO: (i) would be permitted to invest Customer Funds in the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom (*i.e.*, the Specified Foreign Sovereign Debt);[150] (ii) may only invest Customer Funds in the Specified Foreign Sovereign Debt of a particular country to the extent that the FCM or DCO has balances in accounts owed to customers denominated in such country's currency;[151] (iii) would not be permitted to make new investments of Customer Funds in the Specified Foreign Sovereign Debt of a particular country if such country's two-year credit default spread exceeded 45 BPS; and, (iv) would be required to discontinue investing Customer Funds in the Specified Foreign Sovereign Debt of a particular country through Repurchase Transactions as soon as practicable under the circumstances if such country's two-year credit default spread exceeded 45 BPS.[152]

The Commission also proposed to limit the time-to-maturity of investments in Specified Foreign Sovereign Debt.[153] Specifically, the Commission proposed that an

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[149] Proposal at 81243-48.

[150] Proposal at 81244 and proposed Commission Regulation 1.25(a)(1)(vii). The proposed condition defining the Specified Foreign Sovereign Debt is consistent with clause (1) of the 2018 Order, which provides that the Commission's order is limited to the sovereign debt of France and Germany.

[151] Proposal at 81244-45 and proposed Commission Regulation 1.25(a)(1)(vii)(A) and (B). The proposed condition is consistent with condition 3(a) of the 2018 Order, which limits a DCO's investment in French or German sovereign debt to the extent the DCO owes balances owed to customers denominated in euros.

[152] Proposal at 81245 and proposed Commission Regulations 1.25(f)(3). The proposed conditions are consistent with condition 3(b) of the 2018 Order.

[153] Proposal at 81245-46.

FCM or 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 SEC Rule 2a-7 under the Investment Company Act of 1940 ("SEC Rule 2a-7")[154] on a country-by-country basis, does not exceed 60 calendar days.[155] The Proposal further provided that if the portfolio includes Specified Foreign Sovereign Debt securities acquired under a reverse repurchase agreement, the FCM or DCO shall use the maturity of the reverse repurchase agreement to compute the dollar-weighted average time-to-maturity of the portfolio as opposed to the remaining time-to-maturity of the securities.[156] This approach takes into account the contractual obligation to resell the securities within one business day or on demand as required by Commission Regulation 1.25(d)(6).[157] Conversely, if the FCM or DCO sells Specified Foreign Sovereign Debt securities under a repurchase agreement, the FCM or DCO shall include the debt securities in the calculation of the dollar-weighted average based on the remaining time-to-maturity of each security sold, to account for the contractual obligation to repurchase such securities.[158] In addition, an FCM or DCO would not be permitted to make direct

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[154] 17 CFR 270.2a-7.

[155] Proposed Commission Regulation 1.25(f)(1). The proposed condition is consistent with condition 3(c) of the 2018 Order.

[156] 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 Commission Regulation 1.25(f)(1).

[157] 17 CFR 1.25(d)(6).

[158] Proposal at 81245-46 and proposed Commission Regulation 1.25(f)(1). In addition, under the Proposal, the dollar-weighted average of the time-to-maturity of the portfolio would be computed pursuant to SEC Rule 2a-7 (17 CFR 270.2a-7), consistent with the general time-to-maturity provision in Commission Regulation 1.25(b)(4)(i). Commission Regulation 1.25(b)(4)(i) provides that except for investments in MMFs, the dollar-weighted average time-to-maturity of an FCM's or DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a-7, may not exceed 24 months. 17 CFR 1.25(b)(4)(i). The Commission also proposed to amend Commission Regulation 1.25(b)(4)(i) to exclude Specified Foreign

investments in Specified Foreign Sovereign Debt securities with a remaining time-to-maturity greater than 180 calendar days.[159]

The Commission also proposed to expand the permissible Repurchase Transaction counterparties and depositories under Commission Regulations 1.25(d)(2) and (7) to include certain foreign entities to effectively permit FCMs and DCOs to engage in Repurchase Transactions with Specified Foreign Sovereign Debt securities pursuant to Commission Regulation 1.25(a)(2).[160] Currently Commission Regulation 1.25(d)(2) limits counterparties with whom an FCM or DCO may enter into Repurchase Transactions involving Customer Funds or Permitted Investments to a Section 3(a)(6)[161] 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.[162] Additionally, Commission Regulation 1.25(d)(7) further requires an FCM or DCO to hold the securities transferred to the FCM or DCO under a reverse repurchase agreement in a safekeeping account with a bank as referred to in Commission Regulation 1.25(d)(2), a Federal Reserve Bank, a DCO, or the Depository Trust Company.[163]

Sovereign Debt, which, as discussed, would be subject to its own dollar-weighted average time-to-maturity limit.

[159] Proposed Commission Regulation 1.25(f)(2). The proposed condition is consistent with condition 3(d) of the 2018 Order.

[160] Proposal at 81246-47. Commission Regulation 1.25(a)(2)(i) provides that FCMs and DCOs may engage in Repurchase Transactions with Permitted Investments provided the transactions are in accordance with the provisions of Commission Regulation 1.25(d). 17 CFR 1.25(a)(2)(i).

[161] For a definition of Section 3(a)(6) bank, *see supra* note 52.

[162] Pub. L. 99–571, 100 Stat. 3208 (Oct. 28, 1986).

[163] 17 CFR 1.25(d)(7).

The Commission noted in the Proposal that, absent amendment to the counterparty and depository provisions of Commission Regulations 1.25(d)(2) and (7), an FCM's and DCO's ability to buy and sell Specified Foreign Sovereign Debt pursuant to Repurchase Transactions would be restricted given that participants in such markets are predominantly non-U.S. entities.[164] The Commission, therefore, proposed to add foreign banks and foreign securities brokers or dealers meeting certain requirements discussed below, 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 for Repurchase Transactions.[165] To be deemed a permitted counterparty, the Proposal provided that a foreign bank would have to qualify as a depository under Commission Regulation 1.49(d)(3) by maintaining regulatory capital in excess of $1 billion, and would also have to be located in a money center country as defined in Commission Regulation 1.49(a)(1) (*i.e.*, Canada, France, Italy, Germany, Japan, or the United Kingdom) or in another jurisdiction that adopted the currency of the permitted foreign sovereign debt.[166] Similarly, a foreign securities broker or dealer would have to be located in a money center country and be regulated by a national financial regulator.[167] The proposed provisions were designed to ensure that counterparties would be regulated entities comparable to counterparties currently permitted under Commission Regulation

[164] Proposal at 81246-47.

[165] *Id.,* and proposed Commission Regulation 1.25(d)(2).

[166] *Id.*

[167] *Id.*

1.25(d)(2) and are consistent with the Repurchase Transaction counterparty conditions specified in the 2018 Order.[168]

The Commission also proposed to permit Specified Foreign Sovereign Debt securities transferred to an FCM or DCO under a reverse repurchase agreement to be held with a foreign bank that qualifies as a permitted depository under Commission Regulation 1.49 by maintaining in excess of $1 billion in regulatory capital.[169] The Commission noted 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.[170] The proposed amendment to permit a foreign bank that satisfies the requirements of current Commission Regulation 1.49 was designed to ensure that any additional foreign depositories authorized to hold Specified Foreign Sovereign Debt securities would be comparable to those currently permitted under Commission Regulation 1.25(d)(7), and is consistent with the conditions of the 2018 Order.[171]

Lastly, the Commission proposed to amend Commission 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 DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a-7, may not exceed 24 months.[172] The proposed amendment would exclude Specified Foreign Sovereign Debt from the calculation of the dollar-weighted

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[168] Condition (e) of the 2018 Order.

[169] Proposed Commission Regulation 1.25(d)(7).

[170] Proposal at 81247.

[171] *Id.* And Condition (f) of the 2018 Order.

[172] Proposal at 81246.

average time-to-maturity of the portfolio specified under Commission Regulation 1.25(b)(4)(i).[173] The Commission proposed to exclude Specified Foreign Sovereign Debt as such debt would be subject a separate 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 Commission Regulation 1.25(b)(4)(i).

b. Comments

The Commission received 12 comments in response to the proposed addition of Specified Foreign Sovereign Debt to the list of Permitted Investments for Customer Funds. Ten commenters supported the Proposal.[174] Two commenters opposed the Proposal.[175]

Several commenters expressing support for the Proposal stated that permitting investment in the Specified Foreign Sovereign Debt provides FCMs and DCOs with a risk management tool to effectively manage foreign currency risk from holding Customer Funds denominated in non-U.S. dollars.[176] In this regard, MFA stated that Commission Regulation 1.25 currently requires an FCM holding excess non-U.S. dollar Customer Funds to first convert such currency to U.S. dollars before investing the funds in Permitted Investments, thereby exposing the FCM and customers to foreign currency risk.[177] MFA further stated that a more prudent risk management approach would be for

[173] Proposed Commission Regulation 1.25(b)(4)(i).

[174] AIMA; CCP Global; Eurex; FIA/CME Joint Letter; ICE; MFA; NFA; Nodal; SIMFA AMG; and WFE.

[175] Investor Advocacy Group Joint Letter and Better Markets.

[176] AIMA at p. 2; FIA/CME Joint Letter at p. 2; MFA at pp. 1-2; CCP Global at p. 1; WFE at p. 4.

[177] MFA at pp. 3-4.

an FCM to invest excess CAD, EUR, GBP, and JPY in corresponding Specified Foreign Sovereign Debt securities, which eliminates the foreign currency exposure to the FCM and customers.[178] Similarly, AIMA asserted that allowing FCMs and DCOs to invest foreign-denominated Customer Funds in short-term sovereign bonds of the same currency would reduce the currency risk associated with investing those funds in U.S. dollar-denominated investments.[179] FIA and CME echoed these comments, stating that the Proposal expands the risk management tools available to FCMs and DCOs to manage risk associated with holding Customer Funds by mitigating foreign currency risk resulting from converting foreign currencies into U.S. dollars in order to invest in U.S. dollar-denominated Permitted Investments.[180]

Several commenters also observed that the ability to invest foreign currency balances owed to customers in Specified Foreign Sovereign Debt securities reduces potential credit risk that FCMs and DCOs would otherwise be exposed to by depositing the foreign currencies in unsecured commercial bank accounts.[181] CCP Global stated that, consistent with the Joint Petition, the ability of FCMs and DCOs to invest customer foreign currencies in Specified Foreign Sovereign Debt securities effectively eliminates the credit risk of commercial banks that FCMs and DCOs are exposed to, while holding such funds in unsecured deposit accounts.[182] AIMA noted that investing foreign currencies belonging to customers, particularly non-U.S. clients, in Specified Foreign

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[178] *Id.*

[179] AIMA at p. 2.

[180] FIA/CME Joint Letter at pp. 2, 6-7.

[181] AIMA at p. 2; Eurex at p. 2; WFE at p. 4; MFA at pp. 2-5; FIA/CME Joint Letter at pp. 2-11; CCP Global at p.1; Nodal at p. 2; NFA at p. 1.

[182] CCP Global at p. 1.

Sovereign Debt is a more prudent option than depositing funds with a foreign depository institution that provides less insolvency protection, as such deposits would be at greater risk of being treated as unsecured claims compared to securities held in custody.[183] FIA and CME stated that in the event of a foreign depository's insolvency, claims to uninsured cash balances are at greater risk of being treated as unsecured claims against the depository estate than claims to specific securities held in custody.[184] FIA and CME further stated that FCMs, DCOs, and customers are in a better risk posture when FCMs and DCOs are able to diversify non-U.S. dollar exposures by leveraging both permitted non-U.S. depositories for cash as well as Permitted Investments in Specified Foreign Sovereign Debt securities.[185]

FIA and CME further commented that the significant growth in the holding of foreign currencies, particularly CAD, EUR, JPY, and GBP, which comprise the currencies of the Specified Foreign Sovereign Debt securities, provides compelling evidence demonstrating the risk management rationale for expanding the list of Permitted Investments to include Specified Foreign Sovereign Debt securities.[186] Specifically, FIA and CME referenced the Proposal, where the Commission stated that as of August 15, 2023, FCMs collectively held an aggregate U.S. dollar equivalent of $51 billion of Customer Funds denominated in the currencies of the Specified Foreign Sovereign Debt, which represented approximately 10 percent of the total $490 billion of Customer Funds

[183] AIMA at p. 2.

[184] FIA/CME Joint Letter at p. 7.

[185] *Id.*

[186] *Id.*

held in segregated accounts on that date.[187] FIA and CME stated that the increase in foreign currency-denominated Customer Funds is attributable primarily to the growth in cleared swaps, which only commenced when the Commission issued the 2011 Permitted Investments Amendment eliminating foreign sovereign debt as a Permitted Investment.[188] In FIA and CME's view, it would be impractical – and unfair to Cleared Swaps Customers – to continue incentivizing FCMs to manage currency fluctuation risk by refusing margin deposits not denominated in U.S. dollars or requiring customers depositing such balances to assume the foreign currency risk.[189]

FIA and CME also observed that as non-U.S. dollar customer funds balances have increased, so has the customer demand for FCM flexibility in servicing multi-currency accounts.[190] The commenters explained that many customers, particularly Cleared Swaps Customers, deposit non-U.S. dollar cash and rely on FCMs to manage those deposits to satisfy margin calls on their behalf denominated in one or more other currencies. They further asserted that since several of the Commission-registered DCOs clearing swaps are located in the United Kingdom and the European Union, the complexity of single-currency margining processes is compounded by the operational complexity of Cleared

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[187] *Id.* *See also* Proposal at 81243-44.

[188] FIA/CME Joint Letter at p. 7. FIA and CME stated that Cleared Swaps Customers deposit initial margin in foreign currency to a much greater extent than do futures customers or 30.7 customers. Specifically, FIA and CME stated that based on a survey of members, the growth of CAD, EUR, GBP and JPY customer balances (measured by the total equity value of accounts holding cash, securities, and positions denominated in those currencies, expressed in U.S. dollar-equivalent basis) between November 30, 2018 and November 30, 2023 has been most pronounced for the Cleared Swaps origin. FIA and CME stated that for members surveyed, CAD/EUR/GBP/JPY Cleared Swaps Customer Collateral balances totaled USD 1.6 billion in 2018 and USD 9.8 billion in 2023, a 600 percent increase. FIA/CME Joint Letter at pp. 7-8, note 37.

[189] FIA/CME Joint Letter at pp. 7-8.

[190] FIA/CME Joint Letter at p. 8.

Swap Customer Collateral segregation and "residual interest" requirements.[191] In particular, FIA and CME stated that to comply with Commission Regulation 22.2(f)(4), which requires that an FCM maintain in segregation, at all times, "an amount equal to the sum of any credit balances that the Cleared Swaps Customers of the [FCM] have in their accounts," FCMs may need to source non-U.S. dollar assets to cover deficits in advance of settlement with DCOs outside of U.S. banking hours.[192] In this regard, FIA and CME asserted that having the ability to convert non-cash balances into Specified Foreign Sovereign Debt and to use Specified Foreign Sovereign Debt instruments to cover deficits incurred outside of U.S. banking hours would assist FCMs to control the higher level of operational risk associated with single-currency margining and Cleared Customer Collateral-specific segregation compliance processes.[193]

Commenters also supported the Proposal by noting that the credit, liquidity, and volatility characteristics of Specified Foreign Sovereign Debt securities are comparable to those of U.S. Treasury securities.[194] Specifically, FIA and CME stated that if measuring liquidity by the bid-ask spread, "the short-term Specified Foreign Sovereign Debt instruments in scope of the Proposed Regulation all demonstrate abundant market

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[191] *Id.*

[192] *Id*. and 17 CFR 22.2(f)(4). Commission Regulation 22.2(e)(3) further states that an FCM may deposit in the Cleared Swaps Customer Accounts its own money, securities, or other property to ensure that it is always in compliance with the segregation requirements of Commission Regulation 22.2(f), provided, that the proprietary funds deposited are cash or unencumbered Permitted Investments. 17 CFR 22.2.

[193] FIA/CME Joint Letter at p. 8, citing as an example an FCM transferring proprietary funds in the form of Specified Foreign Sovereign Debt instruments to a Cleared Swaps Customer Collateral Account to cover a deficit and ensure compliance with its segregation requirements outside of U.S. banking hours.

[194] *E.g.,* Eurex at p. 2; ICE at p. 2. *See also* MFA at p. 3 and FIA/CME Joint Letter at p. 5 (noting that if liquidity is measured by bid-ask spread *(i.e.*, the difference between the lowest ask price and the highest bid price), the short-term Specified Foreign Sovereign Debt instruments referenced in the Proposal are all highly liquid and comparable from a liquidity perspective to U.S. government securities with the same tenors).

liquidity; they are comparable to, if not identical with, bid-ask spreads in U.S. government securities of the same tenors."[195] WFE further emphasized the low risk of default associated with these instruments.[196]

Better Markets and the Investor Advocacy Group opposed the proposed addition of Specified Foreign Sovereign Debt to the list of Permitted Investments, stating that such investments could compromise the protection of Customer Funds and put customers at undue financial risk.[197] Specifically, Better Markets stated that investments in foreign sovereign debt can exhibit variable degrees of liquidity, affected by factors such as market conditions, geopolitical stability, and economic policies.[198] Better Markets further stated that in times of financial stress or market volatility, foreign sovereign debt instruments may not be readily convertible to cash without significant loss of value. Better Markets argued that the reduced liquidity could hinder the ability of DCOs and FCMs to promptly meet withdrawal requests or margin calls, potentially compromising their operational efficiency and financial stability.[199] Better Markets further stated that the increased exposure to credit and market risks could lead to situations where losses from investments in foreign sovereign debt impact DCOs' and FCMs' financial health to the extent of potentially limiting DCOs' and FCMs' ability to return Customer Funds. Better Markets also asserted that the proposed conditions to investing in Specified Foreign Sovereign Debt, such as the 45 BPS cap on the two-year credit default swap

[195] FIA/CME Joint Letter at p. 5.

[196] WFE at p. 4 (referencing available credit ratings for the relevant foreign sovereign debt instruments).

[197] Better Markets at p. 3; Investor Advocacy Group Joint Letter at p. 1.

[198] Better Markets at pp. 5-6.

[199] *Id*.

spread and the limits on the time-to-maturity of investments, may not be sufficient to mitigate the underlying liquidity concerns.[200] Better Markets also criticized the use of credit default swap spreads as an indicator of the creditworthiness of the issuing sovereign, noting that the reliability of credit default swap spreads depends heavily on the health and liquidity of the credit default swaps market.[201]

Better Markets also asserted that allowing investments of Customer Funds in foreign sovereign debt would constitute a relaxation of regulatory enhancements introduced following the failures of MF Global Inc. ("MF Global") and Peregrine Financial Group ("Peregrine").[202] Specifically, Better Markets stated that the failures of both MF Global and Peregrine resulted from misuse of customer funds and fraud, which caused significant customer losses.[203] In addition, the Investor Advocacy Group noted that the failure of MF Global resulted, at least in part, due to risky investments in foreign sovereign debt.[204]

More generally, Better Markets and the Investor Advocacy Group contended that the Commission lacks a compelling, public interest-focused rationale for expanding the list of Permitted Investments to include Specified Foreign Sovereign Debt.[205] In particular, these commenters criticized the Commission's consideration of the potential

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[200] *Id*. at p. 6.

[201] *Id*.

[202] *Id.* at p. 2.

[203] *Id.*

[204] Investor Advocacy Group Joint Letter at p. 1 (the expansion of Permitted Investments to include foreign debt instruments of France, Germany, Canada, Japan, and the United Kingdom could put customers at undue financial risk and asserting that avoiding such risk was the rationale for prohibiting investments in foreign sovereign debt in 2011 after the MF Global meltdown).

[205] Better Markets at p. 6; Investor Advocacy Group Joint Letter at pp. 1-2.

increase in profits for DCOs and FCMs as a benefit of the proposed expansion of the list of Permitted Investments.[206] Better Markets also argued that higher profits for DCOs and FCMs do not inherently guarantee reduced customer charges.[207] Instead, Better Markets stated that the current financial landscape, characterized with high interest rates, has generated substantial additional revenue for FCMs, reportedly amounting to hundreds of millions of dollars, and has led to an expectation of an expansion of the number of FCMs entering the market.[208]

Separately, four commenters responded to the Commission's request for comment on whether the Commission should impose a "cooling-off" period, following an exceedance of the 45 BPS limit on the two-year credit default swap spread of the issuing foreign sovereign, during which investments in Specified Foreign Sovereign Debt would remain prohibited.[209] FIA and CME stated that a "cooling-off" period was not necessary because, in their view, an exceedance of the 45 BPS limit would most likely be related to broader market volatility conditions, the improvement of which itself constitutes a cooling-off period.[210] CCP Global agreed with the Commission that there should be a mechanism to exclude a sovereign's debt in the event of an increased credit risk, but advocated for a phased "cooling-off" period and flexibility in terms of the number of

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[206] Investor Advocacy Group Joint Letter at p. 1.

[207] Better Markets at p. 4. Better Markets states that there is substantial historical evidencing that benefits accruing at the higher end of the economic spectrum (*e.g.*, DCOs and FCMs) do not "trickle down" effectively to lower levels (*e.g.*, customers), citing *50 years of tax cuts for the rich failed to trickle down, economics study says*, CBS News Money Watch (December 17, 2020), available at https://www.cbsnews.com/news/tax-cuts-rich-5-years-no-trickel-down/

[208] *Id.* Better Markets, citing *Futures Commission Merchants Target Expansion*, Traders Magazine (June 26, 2023), available at https://www.tradersmagazine.com/departments/clearing/fcms-target-expansion/

[209] Proposal at 81247, Question 4. Comments in response to Question 4 were submitted by CCP Global at pp. 2-3; FIA/CME Joint Letter at pp. 10-11; ICE at p. 3; and WFE at p. 4.

[210] FIA/CME Joint Letter at p. 11.

breaches before investments are limited.[211] CCP Global also warned against potential "cliff-edge" effects due to the use of hard limits, which could aggravate volatility in the underlying bond market.[212] CCP Global further noted that given the limited maturity of investments in reverse repurchase agreements (*i.e.*, reverse repurchase agreements must be limited to an overnight maturity or reversible upon demand), imposing an immediate limitation on new investments would have the effect of requiring a large proportion of all FCM and DCO investments in reverse repurchase agreements collateralized by the relevant debt to be re-allocated within one business day.[213] WFE similarly recommended that the Commission consider a minimum period of time or number of times that this limit is breached before investment in the applicable Specified Foreign Sovereign Debt security is prohibited.[214] ICE stated that requiring DCOs to discontinue investment in Specified Foreign Sovereign Debt securities due to fluctuations in credit default swap spreads could be disruptive.[215] In ICE's view, this restriction is not necessary given the jurisdictions involved.[216]

FIA and CME also observed that the Commission did not indicate whether the calculation of the 45 BPS credit default spread condition should be based on the bid, offer or mid-level.[217] FIA and CME proposed that the 45 BPS credit default spread condition

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[211] CCP Global at p. 2.

[212] *Id*.

[213] *Id*.

[214] WFE at p. 4.

[215] ICE at p. 3.

[216] ICE at p. 3. FIA and CME also noted that immediate divestment should not be required after a change in credit default spread. *See* FIA/CME Joint Letter at p. 10.

[217] FIA/CME Joint Letter at p. 10.

be determined using mid-level pricing.[218] FIA and CME stated that mid-level pricing is a widely accepted pricing convention, including for sovereign debt.[219]

In addition, FIA and CME reiterated their request, originally expressed in the Joint Petition, that the Commission set a six-month dollar-weighted average time-to-maturity limit for the portfolio of Specified Foreign Sovereign Debt, and a maximum two-year remaining time-to-maturity condition for individual instruments.[220] Although FIA and CME agreed with the Commission's observation in the Proposal that the new issuance supply of Specified Foreign Sovereign Debt meeting the proposed restrictions appears "adequate to satisfy the demand for investments of Customer Funds in the relevant instruments," FIA and CME asserted that the time-to-maturity restrictions "may be safely expanded, thereby enhancing liquidity (with the attendant additional benefit of enhanced price stability and diversification across currencies and tenors), without increasing credit risk."[221]

Commenters also supported the Commission's proposal to revise Commission Regulations 1.25(d)(2) and (7) by expanding the eligible counterparties for Repurchase Transactions for Specified Foreign Sovereign Debt securities to include foreign banks, foreign securities brokers and dealers, and the central banks of Canada, France, Germany, Japan, and the United Kingdom, and by including foreign banks as eligible custodians for

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[218] *Id*.

[219] *Id.*

[220] FIA/CME Joint Letter at pp. 9-10. 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).

[221] FIA/CME Joint Letter at pp. 9-10.

securities received by FCMs and DCOs under agreements to resell the securities.[222] ICE stated that the principal custodians for foreign sovereign debt securities are located outside of the U.S., and that custody through a U.S. institution as required under Commission Regulation 1.25 would be impractical or involve an indirect custodial relationship through a foreign bank or dealer in the relevant jurisdiction. ICE also requested that the Commission revise Commission Regulation 1.25(d)(7) to explicitly include the central banks of Canada, France, Germany, Japan, the United Kingdom, and the European Central Bank as eligible custodians for Specified Foreign Sovereign Debt securities.[223]

Separately, three commenters asserted that the Proposal's goals of increasing investment vehicles for DCOs, while minimizing credit risk, market risk, and liquidity risk could be effectively met if DCOs were allowed to deposit Customer Funds at the Federal Reserve Banks.[224] The commenters thus recommended that the Commission advocate for Federal Reserve deposit access for all DCOs.[225]

BlackRock also requested that the Commission amend Commission Regulation 1.25(d)(2) to allow FCMs and DCOs to invest Customer Funds pursuant to Repurchase Transactions cleared by a covered clearing agency registered with the SEC under section 17A of the Securities Exchange Act.[226]

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[222] ICE at p. 3; FIA/CME Joint Letter at p. 9; WFE at p. 4. *See also* Proposal at 81246-47 and proposed Commission Regulation 1.25(d)(2) and (7).

[223] ICE at p. 3.

[224] Eurex at p. 2, CCP Global at p. 2, Nodal at p. 2.

[225] *Id*.

[226] BlackRock at p. 7-8 (referring to the recommendation made by the Global Market Structure Subcommittee of the Commission's Global Markets Advisory Committee on November 6, 2023). *See* Proposal by FICC to add CCPs as Permitted Repo Counterparties under CFTC Rule 1.25 Recommendation, November 6, 2023, available at https://www.cftc.gov/PressRoom/Events/opaeventgmac110623.

c. Discussion

The Commission is amending Commission Regulation 1.25 to add Specified Foreign Sovereign Debt to the list of Permitted Investments as proposed, subject to certain clarifications and revisions to address comments. The amendments incorporate and expand upon the exemptive relief provided by the Commission in the 2018 Order by authorizing DCOs to invest Customer Funds in the sovereign debt of Canada, Japan, and the United Kingdom in addition to the sovereign debt of France and Germany. The amendments also expand upon the 2018 Order by authorizing FCMs to invest Customer Funds in the Specified Foreign Sovereign Debt.[227]

After considering the public comments, the Commission continues to believe that adding Specified Foreign Sovereign Debt securities as a Permitted Investment provides FCMs and DCOs with an option to manage the potential foreign exchange risk that may arise in their administration and investment of Customer Funds. Specifically, absent the ability to invest Customer Funds in identically-denominated sovereign debt securities, an FCM or 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.[228] If the U.S. dollar

[227] Final Commission Regulation 1.25(a)(1)(vi). The Final Rule thus supersedes the 2018 Order.

[228] In reaching 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 noted 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 adopted foreign sovereign debt as a Permitted Investment in 2000 to mitigate the potential foreign currency fluctuation risk facing FCMs and DCOs in converting foreign currencies to U.S. dollars for investment purposes. 2000 Permitted Investments Amendment at 78003.

decreases in value relative to the particular foreign currency, the FCM or DCO may not receive sufficient foreign currency to cover the full amount owed to its customers upon the conversion of the U.S. dollar-denominated investment back to the applicable foreign currency. This may further impact an FCM's or DCO's obligation under Commission Regulation 1.25(b)(1) to preserve the principal of Customer Funds invested in Permitted Investments. Thus, to provide FCMs and DCOs with an investment option that allows them to manage potential foreign exchange risk, while staying consistent with the general objectives set forth in Commission Regulation 1.25 of preserving principal and maintaining liquidity of Permitted Investments,[229] the Commission is adopting the conditions discussed above as proposed. These conditions are consistent with the criteria specified in the 2011 Permitted Investments Amendment[230] and the conditions set forth in the Commission's 2018 Order.[231]

First, an FCM or DCO will be permitted to invest in the foreign sovereign debt of only Canada, France, Germany, Japan, and the United Kingdom. The Commission's determination to include the foreign sovereign debt to these five countries is based on various factors. As a preliminary matter, each of these countries, including the U.S., is 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

[229] 17 CFR 1.25(b).

[230] 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 Commission Regulation 1.25).

[231] 2018 Order at 35245.

Commission Regulation 1.49(a)(1).[232] 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. FCMs collectively held an aggregate of a U.S. dollar equivalent of $64 billion of Customer Funds denominated in CAD, EUR, JPY, and GBP on August 13, 2024.[233] The $64 billion represented approximately 12 percent of the total $511 billion of Customer Funds held by FCMs in segregated accounts on August 13, 2024.[234]

In addition, prior to proposing to allow FCMs and DCOs to invest in the sovereign debt of the enumerated countries, the Commission analyzed the credit, liquidity, and volatility characteristics of Specified Foreign Sovereign Debt. In particular, the Commission considered data provided by the Petitioners in support of the Joint Petition's statement 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 U.S.[235] To assess the liquidity of Specified Foreign Sovereign Debt,

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[232] 17 CFR 1.49(a). In the absence of customer instructions to the contrary, Commission 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. *Denomination of Customer Funds and Location of Depositories*, 68 FR 5551 (Feb. 4, 2003) at 5546.

[233] Based on data provided by CME. The amount has increased compared to the amount the Commission considered in the Proposal (*i.e.*, $51 billion, representing approximately 10 percent of the Customer Funds held in segregation, on August 15, 2023). Proposal at 81243-44.

[234] The $511 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 17 billion; EUR 19 billion; GBP 7 billion; and JPY 21 billion. Some of these funds may have also been posted by the FCMs to DCOs as customer margin collateral.

[235] Proposal at 81244, note 110 (referencing Joint Petition at pp. 6-7). Data provided in the Joint Petition, subsequently clarified by the Supplement to Joint Petition, indicates that in the period between April 2018 and April 2023, the average 2-year credit default swap spreads of Canada, France, Germany, Japan, and the UK were 13.9 BPS, 9.6 BPS, 5.3 BPS, 7.4 BPS, and 12.2 BPS, respectively, whereas the average 2-year

the Commission also considered the amounts of outstanding marketable Canadian, French, German, Japanese, and United Kingdom debt instruments with time-to-maturity of two years or less.[236]

With regard to the volatility characteristics of Specified Foreign Sovereign Debt, the Commission concluded that expanding the list of Permitted Investments to include the sovereign debt of these five G7 countries is warranted based on available data that the price risk of the relevant foreign sovereign debt is comparable to that of U.S. Treasury securities that are already included in the list of Permitted Investments. Specifically, using one-year sovereign debt instruments yield data for the period September 21, 2018 to September 20, 2023, the Commission observed 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.[237] The Commission's determination that the price risk of Specified Foreign Sovereign Debt instruments is comparable to that of U.S. Treasury securities, and therefore merits inclusion in the list of Permitted Investments, is based on

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credit default swap spread of the U.S. was 15.1 BPS. Joint Petition at p. 7 and Supplement to Joint Petition at p. 1.

[236] *Id*. note 111 (referencing Appendix A to Joint Petition and Supplement to Joint Petition at p. 1, which indicate 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; Bank of International Settlements' Debt Securities Statistics, available here: https://www.bis.org/statistics/secstats_to180923.htm; 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, which confirms that Specified Foreign Sovereign Debt instruments presented good liquidity characteristics in 2021).

[237] 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.

data from an inquiry including the more recent period of September 20, 2023 to September 5, 2024, using the standard deviation of daily yield change for one-year debt instruments.[238] Finally, in proposing to add Specified Foreign Sovereign Debt to the list of Permitted Investments, the Commission surmised 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.[239]

Second, an FCM or DCO is permitted to invest in the Specified Foreign Sovereign Debt of a country only to the extent that the FCM or DCO has balances in accounts owed to customers denominated in the country's currency.[240] This restriction takes into account both the need to ensure the safety of Customer Funds and the Commission's desire to provide a degree of investment flexibility to FCMs and DCOs.[241]

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[238] The Commission reviewed one-year sovereign debt instruments yield data, available through Bloomberg, for the period from September 21, 2018 to September 5, 2024. During this period, the standard deviation of daily yield change for U.S. Treasury bills was approximately 9 BPS, whereas the same measure for Canadian, French, German, Japanese, and United Kingdom one-year debt instruments ranged from approximately 1 to approximately 6 BPS.

[239] 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. 2018 Order at 35245-46.

[240] Final Commission Regulation 1.25(a)(1)(vi).

[241] As discussed above, prior to 2011, the Commission permitted an FCM or 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 the Commission 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 reinstating certain foreign sovereign debt consistent with the Commission's 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

As noted in the Proposal, an FCM or DCO seeking to invest deposits or amounts owed to customers denominated in 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.[242] Commenters did not raise concerns regarding this condition, and as such, the Commission is adopting this requirement as proposed.

Third, the Commission proposed 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.[243] As discussed in the Proposal, the 45 BPS limit is consistent with the conditions specified in the 2018 Order.[244] 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").[245] Forty-five BPS was, at the time, approximately two standard deviations above the mean U.S. Spread over the preceding eight years.[246] 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

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liquidity of Customer Funds. *Id*. at 78782. The Final Rule 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.

[242] 2011 Permitted Investments Amendment at 78003.

[243] Proposed Commission Regulation 1.25(f)(3).

[244] Proposal at 81245.

[245] 2018 Order at 35243.

[246] 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.

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.[247]

During the more recent period of September 21, 2018 to September 20, 2023 preceding the issuance of the Proposal, the U.S. Spread had a mean of approximately 16.4 BPS,[248] 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. Thus, based on these U.S. Spread and Specified Foreign Sovereign Debt data, the Commission is maintaining the cap of 45 BPS established in the 2018 Order.[249]

Consistent with the Proposal, if the credit default spread of the issuing sovereign exceeds the 45 BPS cap, FCMs and DCOs will not be permitted to make further investments, but neither will they be required to immediately divest their current investments in Specified Foreign Sovereign Debt. The prohibition on new investments will 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, FCMs and DCOs will hold Customer Funds denominated in foreign currency in cash or

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[247] *See* 2018 Order at 35243.

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

[249] 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 5, 2024, 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 has determined to adopt a threshold of 45 BPS for countries whose debt may qualify as a Permitted Investment under Commission Regulation 1.25.

invest the foreign currency in U.S. dollar-denominated Permitted Investments rather than Specified Foreign Sovereign Debt. In addition, the requirement that the dollar-weighted average time-to-maturity of the portfolio of Specified Foreign Sovereign Debt not exceed 60 calendar days helps mitigate price risks to the Customer Funds that might arise from a country's two-year credit default spread exceeding the 45 BPS limit.

In addition, in response to a comment stating that the Commission did not specify how the 45 BPS limit should be calculated, the Commission is clarifying that the 45 BPS credit default spread must be determined using mid-level pricing, rather than the bid or ask price.[250] The mid-price is the average of the bid and ask prices, representing a midpoint between what buyers are willing to pay (bid) and what sellers are asking for (ask). This mid-point price provides a more balanced view of the security's credit risk, without the skew of immediate buy or sell pressures.

The Commission also requested comments as to whether it was appropriate to impose a "cooling-off" period before an FCM or DCO could invest Customer Funds in the Specified Foreign Sovereign Debt of a particular country once the two-year credit default spread of the country exceeded 45 BPS.[251] As commenters noted, market conditions based on broader volatility will self-resolve and result in a market driven "cooling-off" period.[252] Moreover, because FCMs and DCOs will not be able to make new investments in Specified Foreign Sovereign Debt until the credit default spread is back within the required limits, any "cooling-off" period promulgated by the Commission

[250] FIA/CME Joint Letter at p. 10 (recommending that the spread be determined using the mid-level and asserting that mid-level pricing is a widely accepted pricing convention for a wide range of asset classes including sovereign debt).

[251] Proposal at 81247, Question 4.

[252] FIA/CME Joint Letter at pp. 10-11.

could potentially be arbitrary and inconsistent with the market's assessment that the increased credit risk that resulted in the exceedance of the 45 BPS cap no longer exists. Thus, the Commission is not specifying a "cooling-off" period during which FCMs and DCOs may not engage in investment in the applicable Specified Foreign Sovereign Debt.

However, the Commission has determined to immediately halt the purchase of additional Specified Foreign Sovereign Debt once the 45 BPS cap is exceeded. Specifically, the Commission does not agree with commenters who suggested that there should be "flexibility" with respect to the number of breaches of the 45 BPS cap before investments are limited,[253] because the breach of the 45 BPS cap indicates the market's assessment of an increased likelihood of credit risk. The Commission acknowledges those comments cautioning that there is a potential for unintended consequences such as "cliff-edge effects,"[254] but it is for that reason that the Commission is taking a measured and balanced approach to such situations where the 45 BPS limit has been exceeded. Therefore, the Commission is not requiring that FCMs and DCOs sell Specified Foreign Sovereign Debt that has already been purchased because it could increase volatility and the potential for procyclical impacts. The Commission, however, maintains its position that FCMs and DCOs must stop making direct investments in, or engaging in Repurchase Transactions involving, Specified Foreign Sovereign Debt of a country whose credit default swap spread on two-year debt instruments has exceeded 45 BPS.

[253] *See* CCP Global at p. 2; WFE at p. 4-5.

[254] *See* CCP Global at p. 2.

The Commission is also adopting the 60-calendar-day dollar-weighted average time-to-maturity of investments in Specified Foreign Sovereign Debt, as proposed.[255] As discussed in the Proposal, the restrictions on time-to-maturity will 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.[256] The short time-to-maturity requirement is intended 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 foreign sovereign debt securities to maturity during periods of market stress and price volatility rather than selling the securities at potentially significant discounts. The option to hold the debt securities to maturity may be particularly valuable to FCMs and DCOs from a risk management perspective during periods of significant interest rate movements, which could exacerbate market risk in sovereign debt markets. Thus, the Commission has determined to adopt a 60-calendar-day dollar-weighted average time-to-maturity requirement for Specified Foreign Sovereign Debt securities, computed on a portfolio of securities on a country-by-country basis, and a 180-calendar-day maximum remaining time-to-maturity requirement for each individual Specified Foreign Sovereign Debt security.

In addition, data regarding the new issuances of short-term Specified Foreign Sovereign Debt supports the lower 60-day dollar-weighted average time-to-maturity requirement and the 180-day maximum remaining time-to-maturity requirement

[255] Final Commission Regulation 1.25(f)(1) and (2).

[256] Proposal at 81245-46.

proposed.[257] Therefore, the proposed time-to-maturity conditions more effectively account for liquidity needs with the market and credit risk management considerations than the six-month dollar-weighted portfolio average and two-year individual remaining time-to-maturity limits recommended by FIA and CME. Furthermore, as discussed in the Proposal, using the maturity of reverse repurchase agreements in calculating the dollar-weighted average of the portfolio of investments in Specified Foreign Sovereign Debt will reduce the average time-to-maturity of the portfolio as a whole. This approach takes into account the expected resale of the instruments, which must be contractually scheduled to occur within one business day or on demand as required by Commission Regulation 1.25(d)(6).[258] Conversely, if the FCM or DCO sells Specified Foreign Sovereign Debt instruments under a repurchase agreement, the FCM or DCO is 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.[259]

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[257] 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 2024, Canada auctioned approximately USD 35 billion, France auctioned approximately $26.2 billion, Germany auctioned approximately $8.2 billion, Japan auctioned approximately $12.5 billion, and the United Kingdom auctioned approximately $41 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/*).

[258] 17 CFR 1.25(d)(6).

[259] Final Commission Regulation 1.25(f)(1).

In addition, as discussed in the Proposal, with the adoption of the 60-day dollar-weighted portfolio average time-to-maturity requirement, the Commission is also amending Commission 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 FCM's or DCO's full portfolio of investment of Customer Funds.[260] This amendment reflects that Specified Foreign Sovereign Debt will be subject to its own dollar-weighted average time-to-maturity limit.

The Commission acknowledges the request of Eurex, CCP Global, and Nodal in their public comments[261] that the Commission work with the Federal Reserve Board to permit all DCOs to deposit Customer Funds at the Federal Reserve Banks. The Commission supports DCOs having deposit accounts at Federal Reserve Banks;[262] however, granting access to such accounts is not within the jurisdiction of the Commission.

Consistent with the Proposal, the Commission is also amending Commission Regulations 1.25(d)(2) and (7) to expand permissible counterparties and depositories that can be used in connection with Repurchase Transactions to include certain foreign entities. Without amendment to these counterparty and depository provisions, an FCM's and DCO's ability to buy and sell Specified Foreign Sovereign Debt securities pursuant to Repurchase Transactions would be restricted because participants in the foreign market are predominantly non-U.S. entities. The Commission is therefore adding foreign banks

[260] Proposal at 81246.

[261] Eurex at p. 2, CCP Global at p. 2, Nodal at p. 2.

[262] *See, e.g., Behnam urges wider CCP access to Fed deposit accounts*, Risk.net (Apr. 1, 2022), available at https://www.risk.net/regulation/7945026/behnam-urges-wider-ccp-access-to-fed-deposit-accounts.

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.[263] To be deemed a permitted counterparty, a foreign bank must qualify as a depository under Commission Regulation 1.49(d)(3) by holding regulatory capital in excess of $1 billion, and must be located in a money center country as defined in Commission 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 must be located in a money center country and be regulated by a foreign financial regulator or a provincial financial regulator with respect to a Canadian securities broker or dealer.[264] The newly adopted provisions are designed to ensure that the counterparties to an FCM's or DCO's Repurchase Transactions are regulated entities comparable to those counterparties already permitted under Commission Regulation 1.25(d)(2). The final revisions to Commission Regulation 1.25(d)(2) are also consistent with the counterparty conditions set forth in the 2018 Order.[265]

In response to Better Markets' assertion that allowing investments in Specified Foreign Sovereign Debt is relaxing some of the stringent requirements put in place after the collapse of MF Global,[266] the Commission notes that the impetus for eliminating

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[263] Final Commission Regulation 1.25(d)(2). ICE requested in its comment letter that the Commission explicitly include the central banks of Canada, France, Germany, Japan, the United Kingdom, and the European Central Bank. *See* ICE at p. 3. The Commission is including these recommendations in the terms of the Final Rule.

[264] The Commission is revising the Final Rule to provide that Canadian securities brokers or dealers may be subject to applicable provincial financial regulators in recognition of the Canadian regulatory structure vests supervisory authority with provincial regulators. Final Commission Regulation 1.25(d)(2).

[265] 2018 Order, Condition (e) at 35245.

[266] Better Markets at p. 3.

foreign sovereign debt from the list of Permitted Investments in 2011 was not the bankruptcy of MF Global. Under the 2000 Permitted Investments Amendment, FCMs and DCOs were permitted to invest in the foreign sovereign debt of any foreign sovereign provided that the FCM or DCO owed balances denominated in that currency to customers. The Commission eliminated foreign sovereign debt in the 2011 Permitted Investments Amendment primarily due to its concerns with the varying degree of financial stability of different issuers as well as because it was not persuaded that foreign sovereign debt was used with sufficient frequency to justify commenters' claims that such debt assisted with the diversification of Customer Funds.[267] However, as previously stated, with respect to concerns regarding the economic stability of certain countries, the Commission recognized that the safety of sovereign debt issuances of one country may vary greatly from those of another. In this context, the Commission stated that it was amenable to considering applications for exemptions with respect to investments in certain foreign sovereign debt instruments upon a demonstration that the investment in the sovereign debt of one or more countries is appropriate in light of the objectives of Commission Regulation 1.25 and that the issuance of the exemption satisfies the criteria set forth in Section 4(c) of the Act.[268]

The Commission continues to recognize that the safety of sovereign debt issuances of one country may vary greatly from the sovereign debt issuances of another country. Because of this, the Commission finds that investment in Specified Foreign Sovereign Debt that meets the tightly circumscribed risk characteristics set forth in the

[267] 2011 Permitted Investments Amendment at 78781.

[268] *Id*. at 78782.

2018 Order and restated in the Final Rule is consistent with the objectives of preserving principal and maintaining liquidity of investments specified in Commission Regulation 1.25.[269] In light of the varying liquidity and credit risk associated with foreign sovereign debt, the Commission is recognizing jurisdictions whose short-term debt instruments meet the general objectives set forth in Commission Regulation 1.25 of preserving principal and maintaining liquidity, subject to the conditions discussed above that are consistent with the conditions specified in the 2018 Order.

In addition, MF Global's trading losses, which Better Markets references in asserting that FCMs' and DCOs' investments in Specified Foreign Sovereign Debt might compromise the protection of Customer Funds,[270] were undertaken as speculative proprietary investments and not as investments of Customer Funds. MF Global engaged in, among other speculative investments, proprietary repurchase-to-maturity transactions collateralized with sovereign debt issued by various European countries that were experiencing economic distress.[271] As the value of the European sovereign debt positions deteriorated in the summer of 2011, and as MF Global's credit ratings were downgraded in the fall of 2011, MF Global was required to pay additional variation and initial margin on its proprietary transactions.[272] To satisfy the firm's liquidity needs and, more generally, to support the firm's proprietary transactions and the operations of the firm's

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[269] *Id.* at 78782.

[270] Better Markets at p. 3.

[271] Another MF Global affiliate was also involved in the transactions, but MF Global held the economic risk of ownership. First Report of Louis J. Freeh, Chapter 11 Trustee of MF Global Holdings LTD., *et al*., for the Period of October 31, 2011 through June 4, 2012 ("MF Global Trustee Report") at p. 33, available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/h0711reportoflouisjfreeh060412.pdf.

[272] *Id*. at pp. 36-37.

affiliates, MF Global unlawfully used Customer Funds.[273] The firm's misuse of Customer Funds violated the Act and Commission regulations and would have been impermissible regardless of the type of investments involved in such malfeasance.[274]

Peregrine's failure was also the result of the misappropriation of Customer Funds and violations of the Commission segregation requirements for Customer Funds.[275] Peregrine's owner and Chief Executive Officer plead guilty to the embezzlement of customer funds and making false statements to the Commission.[276] These unlawful actions have no bearing on the types of Permitted Investments authorized by the Commission.

Moreover, the Commission adopted major revisions to its rules to enhance the protection of Customer Funds in response to the MF Global and Peregrine bankruptcies. Specifically, the Commission adopted Commission Regulation 1.11,[277] which requires each FCM carrying customer accounts to establish a risk management program designed to monitor and manage risks associated with the activities of the FCM, including risks associated with the segregation of Customer Funds, FCM operations, and capital

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[273] CFTC Release No. 7508-17, Consent Order: Jon S. Corzine (Jan. 5, 2017) at p. 6.

[274] Moreover, MF Global had invested not in the sovereign debt of Canada, France, Germany, Japan and the United Kingdom, which meet the liquidity, volatility, and credit characteristics that are consistent with the overall objectives set forth in Commission Regulation 1.25 of preserving principal and maintaining liquidity of Customer Funds, but rather, such Customer Funds were ultimately used to support high-risk transactions involving the sovereign debt of Belgium, Ireland, Italy, Portugal, and Spain. None of these jurisdictions are on the list of allowable foreign sovereign debt that is being added to the list of Permitted Investments. *See* MF Global Trustee Report at p. 40.

[275] CFTC Release No. 7116-15.

[276] U.S. Attorney's Office Northern District of Iowa, Press Release, Peregrine Financial Group CEO Sentenced To 50 Years For Fraud, Embezzlement, And Lying To Regulators [Court's Sentence Is The Maximum Allowed By Law]. January 31, 2013. Available at https://www.justice.gov/usao-ndia/pr/peregrine-financial-group-ceo-sentenced-50-years-fraud-embezzlement-and-lying.

[277] 17 CFR 1.11.

resources.[278] Commission Regulation 1.11 requires an FCM to establish written policies and procedures that are reasonably designed to ensure that Customer Funds are separately accounted for and segregated as belonging to customers as required by the Act and Commission regulations. Furthermore, the written policies and procedures must, at a minimum, include or address: (i) a process for assessing the appropriateness of specific investments of Customer Funds in Permitted Investments, including the consideration of the market, credit, counterparty, operational, and liquidity risks associated with the investments, and an assessment of whether the investments are managed consistent with the objectives of preserving principal and maintaining liquidity of Customer Funds; (ii) a process for the evaluation of depositories of segregated funds, including, at a minimum, documented criteria addressing the depository's capitalization, creditworthiness, operational reliability, and access to liquidity; (iii) an account opening process for depositories, including documented authorization requirements, procedures to ensure that customer segregated funds are not deposited with a depository prior to the FCM receiving a written acknowledgment letter, and procedures to ensure that the account is properly titled as a customer segregated account under the Act and Commission regulations; and (iv) a program to monitor an approved depository on an ongoing basis to assess its continued satisfaction of the FCM's established criteria, including a thorough due diligence review of each depository at least annually.[279]

The Commission also revised Commission Regulation 1.10 to require, among other things, an FCM to report and maintain a targeted amount of residual interest (*i.e.*,

[278] 2013 Protections of Customer Funds Release at 68517-68521. *See also* 17 CFR 1.11.

[279] 17 CFR 1.11(e)(3).

excess segregated funds above the full balance owed to customers) that the FCM seeks to hold in segregated accounts as a buffer to prevent the accounts from becoming undersegregated.[280] Additionally, the Commission amended Commission Regulation 1.16 to ensure the high quality of annual audits of the FCM's financial statements by public accountants. The amendments to Commission Regulation 1.16 require public accountants to be registered with, and examined by, the Public Company Accounting Oversight Board ("PCAOB"), and further require that the public accountant's audit report state whether the audit was conducted in accordance with auditing standards established or adopted by the PCAOB.[281]

The Commission further revised Commission Regulation 1.12 to enhance reporting by FCMs to the Commission. Specifically, Commission Regulation 1.12 was amended to define several additional reportable events that require an FCM to file a notice with the Commission and with the FCM's designated self-regulatory organization.[282] Among other changes, the revisions included a requirement for FCMs to provide immediate notice whenever the FCM discovers or is informed that it has invested Customer Funds in investments that do not qualify as Permitted Investments, or if the FCM holds Permitted Investments in a manner that is not in compliance with the provisions of Commission Regulation 1.25.[283]

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[280] 2013 Protections of Customer Funds Release at 68513-16.

[281] *Id.* at 68577.

[282] *Id*. at 68521-22.

[283] *Id*. at 68522.

The additional Customer Funds safeguards adopted in 2013 are not affected by the amendments adopted in this Final Rule.[284] In light of the enhanced safeguards that are now in place with respect to the segregation of Customer Funds,[285] and the limitation of investment in foreign sovereign debt to jurisdictions whose debt meets certain liquidity, volatility, and credit characteristics consistent with the overall objectives set forth in Commission Regulation 1.25 of preserving principal and maintaining liquidity of Customer Funds, concerns regarding the past failures of MF Global and Peregrine are already addressed.

The Commission is not addressing BlackRock's request for amendments to Commission Regulation 1.25(d)(2) to allow FCMs and DCOs to invest Customer Funds pursuant to Repurchase Transactions cleared by a covered clearing agency registered with the SEC because this requested change was not proposed and discussed as part of the Proposal.[286] Any potential amendment to effectuate such change would be addressed separately from this Final Rule.

Finally, as discussed previously, some commenters raised concerns about the profits of FCMs and DCOs and whether increased profits were in line with the public interest language in the Act to justify these changes to the list of Permitted

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[284] The Commission acknowledges, as discussed further below in Section IV.E. of this Final Rule, that the read-only electronic access to account information provisions are being removed. However, the same information will be accessible through CME and NFA 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. This will allow the same information to be accessible to the Commission without the current difficulties involved in the read-only access currently maintained.

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

[286] BlackRock at p. 7-8 (referring to the recommendation made by the Global Market Structure Subcommittee of the Commission's Global Markets Advisory Committee on November 6, 2023). *See generally* Proposal by FICC to add CCPs as Permitted Repo Counterparties under CFTC Rule 1.25 Recommendation, November 6, 2023, available at https://www.cftc.gov/PressRoom/Events/opaeventgmac110623.

Investments.[287] In assessing the public interest as part of its analysis of the conditions of Section 4(c) of the Act, the Commission has considered more than just the potential profits of FCMs and DCOs.[288] As discussed above, the use of foreign sovereign debt provides FCMs and DCOs with an effective risk management tool for foreign currency exchange risk. By investing customers' foreign currency deposits in the sovereign debt of the applicable foreign currency, an FCM or DCO avoids the need to convert the foreign currency deposits into U.S. dollar-denominated assets and reduces potential foreign currency fluctuation risk associated with such transactions. The ability to manage foreign currency fluctuation risk benefits FCMs, DCOs, customers, and the markets. In addition, as discussed above, holding Customer Funds in foreign sovereign debt securities with custodians may provide enhanced protections to the funds relative to holding the funds as unsecured deposits with commercial banks.

Furthermore, permitting investments in Specified Foreign Sovereign Debt facilitates FCMs' and DCOs' overall risk management in recognition of how the market has evolved since the 2007 Review.[289] As previously noted, the 2007 Review revealed that only three of the total 87 active FCMs invested futures customer funds in foreign sovereign debt at any time during that year, and that only one FCM invested 30.7

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[287] *See* Investor Advocacy Group Joint Letter at p. 1 (arguing that "[t]he CFTC must not embed revenues and profits of exchanges and brokers into the fabric of its definition of the public interest."); Better Markets at p. 4 (asserting that "[i]n the context of FCMs, higher profits do not inherently guarantee reduced customer charges. The dynamics of profit allocation within businesses, market competition, and economic realities often complicate the direct correlation between increased profits and reduced costs for customers.").

[288] 7 U.S.C. 6(c). With respect to investments of futures customer funds, the Commission is changing the list of Permitted Investments pursuant to authority under Section 4(c) of the Act.

[289] 2010 Proposed Permitted Investments Amendment at 67643.

customer funds in foreign sovereign debt.[290] This contrasts sharply to the $64 billion U.S. dollar equivalent of Customer Funds held in CAD, EUR, GBP, and JPY by FCMs today.

The Commission has also determined that it is in the public interest to allow FCMs and DCOs to invest in foreign sovereign debt because there will be increased resources for financial stability and responsible innovation. Any increase in profits by FCMs and DCOs as a result of these expanded investment options would generate income and potentially increase their presence in the futures market and other relevant markets to support greater competition. This is particularly important because the futures industry has experienced considerable consolidation, with the number of FCMs declining from over 400 in the late 1970s,[291] to 177 FCMs in January 2004,[292] to just 64 as of May 2024.[293] Over approximately the same period, however, there has been a dramatic increase in Customer Funds held at FCMs to support derivatives trading, with client margin requirements increasing by about 700 percent in the past 20 years, from approximately $60 billion to over $500 billion in 2023.[294] Such a significant reduction in the number of FCMs concentrates risk related to Customer Funds in fewer firms, thereby increasing the possibility of systemic risk, particularly as the decline in the number of

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[290] *Id.* at 67645.

[291] *See* Statement of CFTC Commissioner Giancarlo to the Market Risk Advisory Committee ("MRAC"), June 1, 2015.

[292] Selected FCM Financial Data as of January 31, 2004, COMMODITY FUTURES TRADING COMM'N (2004), available at https://www.cftc.gov/sites/default/files/files/tm/fcm/tmfcmdata0401.pdf.

[293] Emm, E., Gay G., Shen, M., *Futures commission merchants, customer funds and capital requirements: An organizational analysis of the futures industry*, Journal of Commodity Markets 18 (2020) 100093; Financial Data on FCMs as of February 29, 2024, available at https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.

[294]Transcript, MRAC, April 9, 2024, p. 78, available at https://www.cftc.gov/sites/default/files/2024/07/1721936529/mrac_transcript040924.pdf.

FCMs creates challenges in porting customer positions to another firm in the event of an FCM failure. Therefore, the changes in this Final Rule that could potentially increase revenue generated by FCMs could serve to increase entrants to the FCM market by making entrance more attractive and mitigate forces that would result in further consolidation of the market, thereby supporting both institutional and retail customers' access to FCMs and reducing concentration and potential systemic risk.[295]

There is no guarantee that the potential for additional profits will benefit customers directly at all times; however, as described above, the increased investment options may potentially reduce concentration in the FCM industry, mitigate foreign currency risk, and facilitate FCMs' ability to answer margin calls in foreign currency, all of which directly benefit FCM customers.

In consideration of comments received, the Commission is amending Commission Regulation 1.25(a)(1) to add Specified Foreign Sovereign Debt to the list of Permitted Investments, subject to the conditions as described above. The Commission is adding Commission Regulation 1.25(a)(vi), as redesignated to accommodate other amendments

[295] Better Markets questioned the need for any "regulatory change aimed at further increasing profitability." Better Markets at p. 4. In support of its assertion, Better Markets cited a Traders Magazine article that references a 2023 study by Acuiti asserting that rising interest rates and higher trading volumes could potentially increase the number of FCM registrants. *See* A. Lyudvig, Futures Commission Merchants Target Expansion (June 26, 2023) available at https://www.tradersmagazine.com/departments/clearing/fcms-target-expansion/ ("Traders Magazine Article"); *see also* Acuiti, The Growing Opportunity in Derivatives Clearing, (2023), available at https://www.acuiti.io/wp-content/uploads/2023/06/The-Growing-Opportunities-in-Derivatives-Clearing.pdf (" 2023 Acuiti Study"). However, the Acuiti study also found that "[t]he market needs more FCMs," and that for some firms, such as proprietary trading and smaller hedge funds, the "reliance on a smaller number of providers presents a major risk to their operational models." 2023 Acuiti Study at 13. In addition, the Acuiti study was nuanced in its prediction of new entrants, finding that "[o]pinion was more mixed on whether increased interest rates were likely to attract new FCMs to market." *Id.* at 6.In the Commission's view, the Acuiti study shows further support for the Commission's interest in providing additional avenues for FCMs to generate revenue to potentially reduce costs to clients, rather than the alternative perspective articulated by Better Markets that such regulatory changes are not in the public interest.

to the list of Permitted Investments pursuant to this Final Rule. Subparagraph (vi) reflects the addition of general obligations of Canada, France, Germany, Japan, and the United Kingdom as a Permitted Investment.

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

a. Proposal

As part of its periodic reassessment of the list of Permitted Investments of Customer Funds, and as a result of its consideration of industry input provided in the Joint Petition and the Invesco Petition, the Commission proposed to include shares in certain U.S. Treasury ETFs to the list of Permitted Investments under Commission Regulation 1.25. ETFs are collective investment vehicles that issue redeemable securities that are also traded at the market price on national securities exchanges.[296] 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. Each share of an ETF represents an undivided fractional interest in the underlying assets of the ETF.[297] 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.[298]

[296] *See generally Exchange-Traded Funds*, 84 FR 57162 (Oct. 24, 2019) ("SEC ETFs Release").

[297] *Id*. at 57164.

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

Other ETFs are actively managed, with portfolio managers buying and selling securities in accordance with an investment strategy.[299]

As an open-end investment company,[300] similar to a mutual fund,[301] 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."[302] Authorized participants play a key role for ETF shares as they are the only investors that are allowed to transact directly with the ETF.[303] An authorized participant 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 into an

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[299] *Id*.

[300] An "open-end company" is defined as a "management company which is offering for sale or has outstanding any redeemable security of which it is the issuer." 15 U.S.C. 80a-5. Some ETFs may also be structured as unit-investment trusts (*e.g.,* SPDR® S&P 500® ETF Trust and SPDR® Dow Jones Industrial Average ETF Trust), which have characteristics of both open-end and closed-end companies. 15 U.S.C. 80a-4 (defining unit investment trusts); Unit Investment Trusts (UITs), Glossary, available at https://www.investor.gov/introduction-investing/investing-basics/glossary/unit-investment-trusts. The regulatory framework set forth by SEC Rule 6c-11, however, applies only to ETFs that are organized as open-end investment companies. 17 CFR 270.6c-11.

[301] A "mutual fund" is a type of open-end investment company, meaning that investors can purchase and redeem shares in the fund on a continuous basis at the NAV of the shares. *See generally* Securities and Exchange Commission, *Mutual Funds and ETFs, A Guide for Investors*, available at https://www.sec.gov/investor/pubs/sec-guide-to-mutual-funds.pdf. Mutual funds pool the money of many investors to purchase a range of securities and other assets to meet specified investment objectives. *Id.*

[302] *See* 17 CFR 270.6c-11 (defining "exchange-traded fund").

[303] Invesco Petition at p. 5.

authorized participant agreement with the ETF (and potentially other parties, such as the ETF's sponsor, distributor, or transfer agent).[304]

An authorized participant may act as a principal for its own account or as an agent for others when purchasing or redeeming creation units.[305] 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.

In assessing the potential expansion of the list of Permitted Investments, the Commission considered statements emphasizing the liquidity of U.S. Treasury ETF shares and the diversification opportunity that such ETFs provide for Customer Funds.[306] In particular, as discussed in the Proposal, the Petitioners stated that U.S. Treasury ETFs have characteristics that they believe are consistent with those of current Permitted Investments and may provide FCMs and DCOs with an opportunity to diversify their investments of Customer Funds.[307] 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 Commission Regulation 1.25 (*i.e.*, U.S. government securities).[308] Invesco also noted that ETFs, as registered investment companies whose shares are registered under the Securities Act and Exchange Act, must comply with a

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[304] *Id*.

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

[306] Proposal at 81248.

[307] *Id.* and Joint Petition at pp. 8-9.

[308] Proposal at 81248 and Invesco Petition at p. 2.

number of SEC financial reporting requirements and liquidity risk management program requirements.[309] Finally, Invesco asserted 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.[310]

The Commission also conducted an independent preliminary analysis of the risk profile and volatility of ETFs investing primarily in short-term U.S. Treasury securities and observed that during the period covered by the analysis, the relevant ETFs presented characteristics that were comparable to that of the underlying U.S. Treasury security investments.[311] Specifically, using data available on Bloomberg, the Commission observed 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 one-year U.S. Treasury securities had a standard deviation of 8 BPS for the same period.

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[309] Proposal at 81248 and Invesco Petition 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-end 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 requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund (17 CFR 270.22e-4).

[310] Invesco Petition at p. 2.

[311] Proposal at 81250.

Further, the Commission considered the limited types of investments that meet the requirements of Commission Regulation 1.25. As a result of various regulatory reforms discussed in the Proposal, several asset classes included in Commission Regulation 1.25 no longer qualify as Permitted Investments.[312] In particular, as discussed in Section III.A.1. of the Proposal, 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 Commission Regulation 1.25.[313] In addition, as discussed in Section III.A.4. of the Proposal, commercial paper and corporate notes and bonds no longer qualify as Permitted Investments with the expiration of the TLGP.[314]

The Commission also noted the increased demand for high quality collateral, including for assets that currently qualify as Permitted Investments under Commission Regulation 1.25, resulting from certain regulatory reforms.[315] As an example, the Commission discussed the regulatory framework for swaps, adopted in the aftermath of the 2008 financial crisis through the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Commission remarked that the framework requires, among other things, the clearing of certain swaps or the margining of certain uncleared swaps, thus requiring market participants dealing in swaps to post margin to clearinghouses, or post and collect margin with swap counterparties, in specified forms of liquid collateral.[316]

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[312] Proposal at 81248.

[313] Proposal at 81241-42.

[314] Proposal at 81253.

[315] Proposal at 81248.

[316] *Id*.

The Commission inferred that these margining requirements might be driving an increased demand for assets that currently qualify as Permitted Investments.[317]

In the Proposal, the Commission expressed its preliminary belief that expanding the range of available Permitted Investments to include interests in ETFs that meet specified conditions 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.[318] The Commission also expressed its belief that the proposed addition of interests in ETFs as Permitted Investments under Commission Regulation 1.25(a) would foster innovation and promote competition in the ETF market and the financial services industry more generally.[319] The Commission also considered that CME accepts shares of short-term U.S. Treasury ETFs as performance bond for clearing members to margin customer and proprietary trades, noting that interests in U.S. Treasury ETFs that qualify as Permitted Investments could ultimately be pledged by FCMs as margin collateral.[320] Consistent with existing regulatory limitations on 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 a U.S. Treasury ETF.[321] Thus,

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[317] *Id*.

[318] *Id*.

[319] *Id*.

[320] Proposal at 81249 and 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 (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).

[321] Commission Regulation 1.29(b) (an FCM or DCO, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds in Permitted Investments) and Commission

to ensure compliance with the requirements applicable to other Permitted Investments as well as the general objectives of Commission Regulation 1.25 to preserve principal and maintain liquidity of Permitted Investments, the Commission proposed to impose certain conditions on ETFs[322] in order for their interests to qualify as Permitted Investments ("Qualified ETF"), as discussed below.

Given the similarities between ETFs investing primarily in short-term U.S. Treasury securities and MMFs whose interests already qualify as Permitted Investments,[323] the Commission preliminarily determined to impose all pertinent requirements applicable to MMFs under Commission Regulation 1.25(a) to such ETFs, subject to certain modifications to address the unique characteristics of the ETFs.[324] In particular, consistent with Commission Regulation 1.25(c), which sets forth provisions for MMFs whose interests qualify as Permitted Investments, the Proposal would require that a Qualified ETF 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.[325] Additionally, the ETF would be required to be sponsored by a federally regulated financial institution, a Section 3(a)(6) bank,[326] an investment adviser

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Regulations 22.2(e)(1) and 30.7(i) (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 IV.C. below, the Commission is also adopting an amendment to Commission Regulation 22.3(d) to clarify that DCOs are financially responsible for investments of Cleared Swaps Customer Collateral in Permitted Investments.

[322] Proposal at 81249-53.

[323] Proposal at 81249.

[324] Proposal at 81249.

[325] Proposal at 81249 and proposed Commission Regulation 1.25(c)(1).

[326] For a definition of Section 3(a)(6) bank, *see supra* note 52.

registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the FDIC.[327]

In addition, the Commission proposed to limit Qualified ETFs to funds that are passively managed and that seek to replicate the performance of a published short-term U.S. Treasury security index composed of bonds, notes, and bills with a remaining time-to-maturity of 12 months or less, issued by, or unconditionally guaranteed as to timely payment of principal and interest by, the U.S. Department of the Treasury.[328] The Commission further proposed to require that the securities comprising the short-term U.S. Treasury index represent at least 95 percent of the ETF's investment portfolio.[329] In that regard, the Commission noted that pursuant to SEC requirements, 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.[330] The Commission, however, preliminarily concluded that a stricter standard of 95 percent should to help ensure that FCMs and DCOs invest Customer Funds in accordance with Commission Regulation 1.25's general objectives of preserving principal and maintaining liquidity.[331]

The Commission further proposed, consistent with the current requirements applicable to interests in MMFs, to prohibit the agreement governing an FCM's or DCO's acquisition and holding of interests in Qualified ETFs from containing provisions

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[327] Proposal at 81249 and proposed Commission Regulation 1.25(c)(2), as applying to Qualified ETFs per proposed introductory text of paragraph (c) of Commission Regulation 1.25.

[328] Proposed Commission Regulation 1.25(a)(1)(vi).

[329] Proposal at 81294 and proposed Commission Regulation 1.25(c)(8)(ii).

[330] Proposal at 81249.

[331] *Id*.

that would prevent the pledging of the Qualified ETF's shares.[332] The proposed amendments would also require FCMs and DCOs to maintain confirmations relating to their purchase of interests in a Qualified ETF in their records in accordance with Commission Regulation 1.31, and document the ownership of the interests (by book-entry or otherwise) in the FCMs' and DCOs' custody accounts in accordance with Commission Regulation 1.26.[333] FCMs and DCOs would additionally be required to obtain the acknowledgment letter required by Commission 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.[334]

Also, under the terms of the Proposal, a Qualified ETF would be required to compute the NAV by 9 a.m. of the business day following each business day and make it available to FCMs or DCOs, as applicable, by that time.[335] In addition, the Qualified ETF would be legally obligated to redeem its interests and make payment in satisfaction of the interests by the business day following a redemption request.[336] The Proposal also

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[332] Proposal at 81250 and Paragraph (c)(6) of Commission Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Commission Regulation 1.25.

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

[334] Proposal at 81250.

[335] Paragraph (c)(4) of Commission Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Commission Regulation 1.25. The proposed requirement was intended to allow for the valuation of the Qualified ETF's investment portfolio to be available by 9 a.m. of 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. 2000 Permitted Investments Amendment at 78003.

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

provided that FCMs or DCOs, as applicable, would be required to retain documentation demonstrating compliance with this requirement.[337] Because Commission 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, the Commission sought comments on whether these redemption exceptions should be extended to Qualified ETFs.[338]

The Commission also proposed several conditions specific to Qualified ETFs. Specifically, articulating concerns related to compliance with the Customer Funds segregation requirements and Commission Regulation 1.25(b)(1) liquidity standards, the Commission proposed to require an FCM or DCO that invests Customer Funds in the shares of a Qualified ETF to be an authorized participant of the ETF.[339] The Commission reasoned that if an FCM or DCO had to purchase or redeem Qualified ETF shares through an intermediated transaction involving a third-party authorized participant, the FCM or DCO would have to transfer Customer Funds out of a segregated account maintained in compliance with Section 4d of the Act or Part 30 of Commission's regulations, which would introduce risk that the account could be undersegregated.[340]

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[337] *Id.*

[338] Proposal at 81253, Question 11.

[339] Proposal at 81251 and proposed paragraph (c)(8) of Commission Regulation 1.25.

[340] Proposal at 81250-51. As a result of the transfer of Customer Funds to the authorized participant, the customer segregated account might not be fully funded, 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. *Id*. at 81251 and 17 CFR 1.20(a), 17 CFR 22.2(f), and 17 CFR 30.7(a).

The Commission also expressed concern that the transfer of Customer Funds to the authorized participant might 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.[341] The Commission was further concerned that relying on a third-party authorized participant could protract redemptions, thus violating the requirement in Commission Regulation 1.25(b)(1) that Permitted Investments have the ability to be converted into cash within one business day without material discount in value.[342] The Commission requested comment on whether there were alternative approaches to requiring FCMs or DCOs to be authorized participants that could address or mitigate the Commission's concerns regarding the segregation of Customer Funds during the purchase and redemption process.[343]

Given the time limits for the redemption and liquidation of Permitted Investments in Commission Regulation 1.25, the Commission also proposed that Qualified ETFs be required to redeem their shares in cash because in-cash redemptions could allow for a more expeditious liquidation of the shares as compared to in-kind redemptions.[344] The Commission also proposed 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.[345]

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[341] Proposal at 81251 and 17 CFR 1.20(b), 17 CFR 22.2(b), and 17 CFR 30.7(b). The Commission noted that with respect to 30.7 customer funds, Commission 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).

[342] Proposal at 81251.

[343] Proposal at 81252, Question 9.

[344] Proposal at 81251 and proposed Commission Regulation 1.25(c)(8)(i).

[345] Proposal at 81251 and proposed Commission Regulation 1.25(c)(8)(iii).

b. Comments

The Commission received ten comments in support of the addition of Qualified ETFs to the list of Permitted Investments.[346] No commenters opposed the addition of Qualified ETFs.

Some commenters expressed their belief that investments in Qualified ETFs are generally safe, short-term investments consistent with the objectives of Commission Regulation 1.25 regarding preserving principal and maintaining liquidity of Customer Funds.[347] Commenters also stated that the inclusion of U.S. Treasury ETFs would provide FCMs and DCOs the opportunity to diversify their investments.[348] SIFMA AMG asserted that at the time of the Commission's last review of Permitted Investments in 2011, the U.S. Treasury ETF market was not well developed, but that at present, it "provides several options" that would meet the standards for Permitted Investments under Commission Regulation 1.25.[349] Commenters also highlighted the similarity in characteristics between U.S. Treasury ETF securities and other instruments that currently qualify as Permitted Investments.[350] In particular, Invesco noted that "customers will continue to be safeguarded because Treasury ETFs' underlying holdings are comprised of a sub-set of the same high-quality liquid instruments that are otherwise permitted under the Commodity Exchange Act and Regulation 1.25."[351] Consistent with statements made

[346] AIMA at p. 2; BlackRock at p. 2; CCP Global at p. 3; FIA/CME Joint Letter at p. 11; ICI at p. 2; Invesco at p. 2; MFA at p. 5; Nodal at p. 2; SIFMA AMG at p. 3; SSGA at p. 2.

[347] CCP Global at pp. 3-4; ICI at pp. 2-6; Invesco at pp. 2-3.

[348] AIMA at p. 2; BlackRock at p. 2; CCP Global at p. 3; FIA/CME Joint Letter at p. 2; ICI at p. 2; SIFMA AMG at pp. 3-4; SSGA at p. 2; WFE at p. 5.

[349] SIFMA AMG at pp. 3-4.

[350] Invesco at p. 2; SIFMA AMG at p. 3; SSGA at p. 2; WFE at p. 5.

[351] Invesco at p. 2.

in the Invesco Petition,[352] commenters also asserted that investments by FCMs and DCOs in Qualified ETFs would be operationally efficient and cost-effective, because FCMs and DCOs would have the opportunity to invest in an ETF holding a portfolio of U.S. Treasury securities instead of investing directly in the individual U.S. Treasury securities.[353] Several commenters also stated that the design and characteristics of ETFs, such as price and investment holdings transparency, as well as intra-day trading and liquidity, present additional features that make short-term U.S. Treasury ETFs efficient vehicles for investment of Customer Funds.[354]

On the other hand, commenters expressed concerns regarding some of the proposed conditions for investing in ETFs and urged the Commission to reconsider them. Several commenters expressed reservations or opposed the proposed requirement that FCMs and DCOs be authorized participants.[355] Some commenters stated that this requirement deviates from existing ETF market structure and would unnecessarily limit the FCMs and DCOs that could invest in Qualified ETFs.[356] In particular, WFE posited that the requirement "would severely limit the parties that could invest in [Qualified] ETFs to" entities that are registered as broker-dealers and authorized participants, criteria

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[352] *Id*. at p. 11. The Invesco Petition asserts that U.S. Treasury ETFs eliminate operational challenges and certain expenses that FCMs and DCOs would experience by directly investing in U.S. Treasury securities, including managing and reinvesting interest payments, periodically rolling positions, and maintaining multiple CUSIPs, requiring professionals to manage the duration, yield, and liquidity of portfolio securities.

[353] SIFMA AMG at p. 4; Invesco at p. 2 (n. 4).

[354] BlackRock at p. 3; CCP Global at p. 3; Invesco at p. 2; SIFMA AMG at p. 5; SSGA at p. 2.

[355] AIMA at p. 2; BlackRock at p. 2 and pp. 4-5; CCP Global at p. 3; FIA/CME Joint Letter at pp. 11-13; ICI at pp. 3-4; Invesco at pp. 3-5; SIFMA AMG at pp. 5-7; SSGA at p.2; WFE at p. 5.

[356] BlackRock at p. 2; CCP Global at p. 3; FIA/CME Joint Letter at pp. 14-15; ICI at p. 3; Invesco at p. 3; SSGA at p.2; WFE at p. 5.

that DCOs do not satisfy.[357] Similarly, ICI questioned whether DCOs could even become authorized participants,[358] and raised potential operational challenges associated with FCMs and DCOs becoming authorized participants.[359] ICI explained that although many FCMs are authorized participants, some FCMs may take the view that becoming an authorized participant is not consistent with their business model, or they may otherwise not want to take on the additional regulatory, compliance, and operational costs associated with becoming an authorized participant.[360]

Commenters further asserted that the Commission's concerns regarding compliance with the Customer Funds segregation requirements and the prompt liquidation of the Qualified ETF shares could be effectively addressed through existing market practices.[361] Commenters had several suggestions for alternative arrangements. The majority of commenters opposing the requirement that FCMs and DCOs be authorized participants advocated for the Commission to allow for transactions to occur on a delivery-versus-payment ("DVP") basis via an authorized participant acting as an agent for the FCM or DCO ("Authorized Participant Agency Model").[362] Through the Authorized Participant Agency Model, the FCMs and DCOs would have access to the primary market, without being an authorized participant themselves, pursuant to an agreement with other authorized participants that would transact as agents on their

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[357] WFE at p. 5.

[358] ICI at p. 3.

[359] *Id*.

[360] *Id*.

[361] SIFMA AMG at p. 6;

[362] CCP Global at p. 3, Invesco at p. 4; FIA/CME Joint Letter at pp. 13-15; BlackRock at p. 4; ICI at pp.3-4; SIFMA AMG at pp. 2, 5-7; SSGA at p. 2.

behalf.[363] According to the commenters, the Authorized Participant Agency Model would allow FCMs and DCOs to access an ETF's primary market on the same terms as if they were authorized participants themselves and receive the benefits associated therewith (*e.g.*, same day or next-day settlement and transacting at NAV).[364] As explained in the Invesco comment letter, when operating on a DVP basis through the Authorized Participant Agency Model, the FCM or DCO would not, in the case of a redemption, transfer Qualified ETF shares to the Qualified ETF (through the authorized participant) until cash is received by such FCM or DCO.[365] In the case of a creation transaction, cash would not be transferred by the FCM or DCO to the Qualified ETF (through the authorized participant) until the Qualified ETF shares are received.[366] Invesco further stated that at no time would Customer Funds (either cash or Qualified ETF shares) be in the custody of any entity outside of the applicable FCM's or DCO's segregated Customer Funds depository.[367] Further, under the Authorized Participant Agency Model, the redemption or creation would occur at NAV and settle within a day.[368] Several commenters also noted that this DVP process would be similar to what is applicable to repurchase agreements currently allowed under CFTC regulations.[369] Finally, AIMA suggested allowing the DCOs to provide a letter of credit to an ETF and

[363] Invesco at p. 4.

[364] *Id.*

[365] *Id.*

[366] *Id.*

[367] *Id.*

[368] *Id.*

[369] Invesco at p. 4; SIFMA AMG at p. 6 (noting that pursuant to Commission Regulation 1.25(d)(9), a repurchase agreement that is a Permitted Investment must provide for the transfer of securities or cash on a DVP basis to a customer segregated account.).

the ETF would agree to pay a penalty for late redemptions.[370] ICI also stated that market-based solutions, such as providing letters of credit to the authorized participant could resolve potential exposure concerns that an authorized participant could have if it engages in redemption transactions before receiving the ETF shares.[371] Another alternative commenters suggested was to allow FCMs and DCOs to transact on the secondary market, again on a DVP basis.[372] SIFMA AMG stated that recent changes in SEC regulations, effective in May 2024, shorten the standard settlement cycle for most institutional securities transactions from two business days after the trade date (T+2) to one (T+1).[373] Thus, SIFMA AMG asserted that as long as transactions are done on a DVP basis, secondary market transactions to sell Qualified ETF shares should be permitted.[374]

With regard to the proposed requirement that Qualified ETFs be required to redeem their shares in cash, commenters largely advocated that the Commission allow Qualified ETFs to redeem in kind as well as in cash.[375] Specifically, BlackRock recommended that the Commission revise the condition to allow for redemptions in cash or in kind with a same day settlement (T+0) option.[376] BlackRock argued that in-kind

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[370] AIMA at p. 2.

[371] ICI at p. 4.

[372] BlackRock at pp. 4-5; CCP Global at p. 3; FIA/CME Joint Letter at pp. 14-15; SIFMA AMG at pp. 2-3, 5-6; SSGA at p. 2.

[373] SIFMA AMG at p. 6; *see also Shortening the Securities Transaction Settlement Cycle*, 88 FR 13872 (March 6, 2023).

[374] SIFMA AMG at p. 6.

[375]BlackRock at pp. 2, 5; FIA/CME Joint Letter at pp. 12-13; ICI at pp. 4-5; MFA at pp. 5-6; SIFMA AMG at pp. 7-8; SSGA at p. 3.

[376] BlackRock at pp. 2, 5. BlackRock further noted that the SEC recognized the benefits of in-kind redemptions in SEC Rule 6c-11, stating "ETFs that meet redemptions in cash may maintain larger cash positions to meet redemption obligations, potentially resulting in cash drag on the ETF's performance. The

redemptions are standard for many ETFs as they provide an efficient way for portfolio managers to execute changes in an ETF's portfolio.[377] ICI echoed BlackRock's recommendation and stated that in-kind redemptions can offer investors more efficient tax treatment.[378] ICI explained that an ETF's ability to redeem in kind permits it to defer tax realization for remaining shareholders in the ETF, thus reducing capital gains payments and related distributions, as compared to redeeming shares for cash.[379] ICI argued that requiring ETFs to redeem in cash would not only potentially reduce the benefits of deferred tax treatment to a Treasury ETF's shareholders, but may limit the potential universe of Qualified ETFs, thus reducing diversification opportunities for FCMs and DCOs.[380] ICI further asserted that several ETFs, including several Treasury ETFs, have a T+0 redemption cycle, which allows for delivery of in-kind securities on the day of the trade so that securities can be sold the next business day.[381] ICI asserted that the ability to redeem at a T+0 settlement cycle would satisfy the Commission's concerns regarding next day liquidation of the underlying U.S. Treasury securities.[382] Further, FIA and CME stated that allowing in-kind redemptions is at times more advantageous given that U.S. Treasury securities themselves are a highly liquid investment.[383] Additionally, FIA and CME noted that requiring cash redemptions "could

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use of cash baskets also may be less tax-efficient than using in-kind baskets to satisfy redemptions, and may result in additional transaction costs for the purchase and sale of portfolio holdings." *Id.* at p. 5.

[377] *Id*.

[378] ICI at pp. 4-5.

[379] *Id*. at p. 4.

[380] *Id*.

[381] *Id. See also* AIMA at p. 2; BlackRock at p. 2.

[382] ICI at p. 4.

[383] FIA/CME Joint Letter at pp. 12-13. *See also* WFE at p. 6.

potentially cause an inequitable first-mover advantage; liquidation of a significant portion of the fund to meet a redemption could cause a drop in the value of the underlying assets and in turn of the shares of the fund."[384]

Asserting that in-kind redemptions are a key feature of a U.S. Treasury ETF's pricing mechanism, SIFMA AMG raised concerns that an in-cash redemption mandate could potentially distort the price of a Qualified ETF.[385] SIFMA AMG argued that, as a result, an FCM or DCO may be subject to a settlement price that is not at the fund's NAV (*i.e.*, not its fair value).[386] SIFMA AMG also noted that some DCOs accept U.S. Treasury securities as margin and an FCM might want to have the option to redeem shares in kind to post such securities with the clearinghouse or to return U.S. Treasury collateral to customers.[387] Further, according to SIFMA AMG's understanding, when an authorized participant makes an in-kind redemption request, whether for itself or on behalf of another market participant with whom it has an agency arrangement, a Qualified ETF is able to complete settlement within one business day.[388] Finally, SIFMA AMG asserted that in-kind redemptions also avoid certain transaction fees, keeping cost lower for investors.[389]

Several commenters also criticized the condition that DCOs accept the interest in the Qualified ETF as performance bond.[390] Among them, FIA and CME observed that

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[384] *Id.*

[385] SIFMA AMG at pp. 7-8.

[386] *Id.* at p. 8.

[387] SIFMA AMG at pp. 7-8.

[388] *Id.*

[389] *Id*. at p. 8.

[390]Blackrock at p. 6; WFE at p. 6; FIA/CME at p. 13; SIFMA AMG at p. 7; CCP Global at p. 3-4.

CME is the only DCO that currently accepts U.S. Treasury ETFs as collateral, and that if CME were to modify or cease its acceptance of such ETFs, the change would be disruptive to FCMs.[391] FIA and CME cautioned that the Commission should not conflate the standards governing collateral acceptability at DCOs with the requirements for Permitted Investments.[392] Consistent with these concerns, other commenters argued that DCOs and FCMs have their own risk management policies, which consider the institution's unique characteristics and specific risk management needs.[393] SIFMA AMG further asserted that using a DCO's initial margin standards as a proxy for determining whether a U.S. Treasury ETF is a safe investment instrument for Customer Funds is not appropriate.[394] In this regard, SIFMA AMG argued that the Commission should rely instead on factors that address the preservation of principal and liquidity already specified in Commission Regulation 1.25. They further asserted that using a DCO's performance bond criteria as a gatekeeper unnecessarily constrains the diversification determination that should be made by each FCM or DCO using factors set out in Commission Regulation 1.25.[395]

Commenters also generally opposed the proposed condition that Qualified ETFs invest at least 95 percent of their portfolio in securities comprising the short-term U.S.

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[391] FIA/CME Joint Letter at p. 13.

[392] FIA/CME Joint Letter at p. 13 (referencing Commission Regulation 39.13(g)(10), which provides that DCOs must limit the assets they accept as initial margin to those that have minimal credit, market, liquidity risk, and Commission Regulation 39.33, which provides that DCOs' financial resources may include highly marketable collateral, including high quality, liquid, general obligations of a sovereign nation provided that these assets are readily available and convertible into cash pursuant to prearranged and highly reliable funding arrangements under extreme but plausible market conditions); CCP Global at p. 4.

[393] CCP Global at p. 4; SIFMA AMG at p.7.

[394] SIFMA AMG at p.7.

[395] *Id*.

Treasury index that the fund is designed to track, suggesting instead that the Commission adopt an 80 percent threshold requirement, which is consistent with current market conventions.[396] ICI pointed out that many ETFs, including certain Treasury ETFs, have adopted an 80 percent investment policy pursuant to SEC Rule 35d-1 under the Investment Company Act of 1940 ("SEC Rule 35d-1"), which requires a fund to have adopted a "policy to invest, under normal circumstances, at least 80% of the value of its assets in investments in accordance with the investment focus that the fund's name suggests."[397] CCP Global and WFE stated that the proposed condition was unnecessarily punitive.[398] WFE added that the proposed 95 percent threshold could cause funds to deviate from their index.[399] Conversely, although they did not oppose the Commission's 95 percent portfolio threshold requirement, BlackRock and ICI requested clarification on the impacts of this increased threshold on the ETF's stated investment policies and associated documentation.[400] BlackRock and ICI asked if the Commission were to adopt the proposed 95 percent portfolio threshold, that the Commission clarify that an investment requirement would be satisfied by funds that maintain investments meeting the specified threshold, even if the fund's prospectus permits the fund to hold securities outside of the threshold.[401] ICI stated that if the 95 percent threshold was adopted as a fundamental investment policy, changing the investment policy would require a

[396] AIMA at p. 3; CCP Global at p. 3; MFA at p. 5; FIA/CME Joint Letter at p. 12; WFE at p.6.

[397] ICI at p. 5; *see also* 17 CFR 270.35d-1.

[398] CCP Global at p. 3; WFE at p. 6.

[399] WFE at p. 6.

[400] BlackRock at p. 3; ICI at p. 5.

[401] BlackRock at p. 3; *see also* ICI at p. 6.

shareholder proxy vote, which is costly and burdensome to obtain.[402] Therefore, ICI recommended that the Commission confirm that it is establishing a portfolio test for a Qualified ETF, which would not require the Treasury ETFs to change any existing investment policies or associated disclosures.[403] ICI also requested that cash be allowed to satisfy the threshold requirement set in addition to eligible U.S. Treasury securities.[404] FIA and CME noted, however, that FCMs and DCOs rely on the composition thresholds stated in funds' prospectus terms in conducting due diligence of investments and expressed concerns that there may not be industry-wide amendments to prospectus terms in response to the 95 percent threshold requirement.[405] WFE also recommended that the Commission clarify the steps that would be taken in the situation where a percentage threshold requirement is breached and an FCM or DCO is expected to divest from the fund.[406]

In addition, five commenters requested that the Commission revise the portfolio composition requirements to allow for additional investments.[407] Specifically, commenters recommended that in addition to short-term U.S. Treasury securities, the Commission allow Qualified ETFs to invest in certain repurchase agreements, cash, and "cash equivalents," including MMFs.[408] Three commenters asserted that the revision

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[402] ICI at p. 5.

[403] ICI at p. 6.

[404] ICI at p. 5; *see also* BlackRock at p. 2; CCP Global at p. 3; FIA/CME Joint Letter at p. 12 (note 58); WFE at p. 6.

[405] FIA/CME Joint Letter at p. 12.

[406] WFE at p. 6.

[407] BlackRock at pp. 2-3; CCP Global at p. 3; FIA/CME Joint Letter at pp. 11-12; MFA at p. 5; WFE at p 6.

[408] BlackRock at p. 3 (arguing that the Commission should expand the eligible underlying investments to align them with those allowed for Permitted Government MMFs, *i.e.*, cash, government securities, and/or

would provide appropriate flexibility, while preserving the high quality and liquid nature of the ETF.[409] Arguing that the Commission should align the Qualified ETF's portfolio requirements with the requirements applicable to Permitted Government MMFs, a few commenters also requested that the Commission allow Qualified ETFs to invest in short-term securities issued by U.S. government agencies that are fully guaranteed as to principal and interest by the U.S. government.[410]

In connection with the proposed requirement that FCMs and DCOs obtain the acknowledgement letter required by Commission Regulation 1.26 from an "entity with substantial control over the ETF interests,"[411] FIA and CME requested clarification regarding the appropriate signatory to the letter. FIA and CME noted that the entity with substantial control over the ETF interests may differ depending on whether the Final Rule requires FCMs and DCOs to be authorized participants.[412] Specifically, FIA and CME noted that if, in referring to the "depository acting as custodian for the ETF interests," the

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repurchase agreements that are fully collateralized); CCP Global at p 3 (arguing that the Commission should allow Qualified ETFs to invest in U.S. Treasury securities, cash, Repurchase Transactions collateralized in U.S. Treasury securities, and U.S. Treasury MMFs); FIA/CME Joint Letter at p. 12 (recommending that the Commission allow a Qualified ETF to invest in securities with a maximum remaining maturity of 12 months or less issued or guaranteed by the U.S. Treasury, including securities issued by U.S. government agencies that are backed by the full faith and credit of the U.S. government, as well as government MMFs, 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 (as defined under SEC Rule 2a-7) with a remaining term to final maturity of 12 months or less); MFA at p. 5 (arguing that the Commission should allow Qualified ETFs to invest in securities with a maximum remaining maturity of less than 12 months issued or guaranteed by the U.S. Treasury, including short-term securities issued by U.S. government agencies that are backed by the full faith and credit of the U.S. government, government MMFs, 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).

[409] BlackRock at p. 3; FIA/CME Joint Letter at p. 12; WFE at p. 6.

[410] BlackRock at p. 3; FIA/CME Joint Letter at p. 11; MFA at p. 5.

[411] Proposal at 81250 and proposed Commission Regulation 1.25(c)(3).

[412] FIA/CME Joint Letter at p. 15.

Commission intends to refer to the custodian of the Qualified ETF, such depository is likely not the entity with substantial control over the Qualified ETF interests given that it will not have a record of the FCM's or DCO's interests in the Qualified ETF and the "depository's role, including in effecting purchase/redemption/transfer transactions, will be at the direction of the Qualified ETF."[413]

Finally, in response to the Commission's question whether there are any extraordinary circumstances, similar to the events listed in Commission Regulation 1.25(c)(5)(ii) with respect to MMFs, that may justify an exception to the proposed next-day redemption requirement with regard to Qualified ETFs, three commenters recommended that the redemption exceptions for MMFs be made available for Treasury ETFs.[414] FIA and CME argued that Qualified ETFs and Permitted Government MMFs have comparable credit, market, and liquidity risk and therefore should be subject to the same regulatory treatment of extraordinary circumstances in which redemptions could be postponed.[415] ICI also supported exceptions to the next-day redemption requirement for ETFs and noted that many ETFs include disclosure in their registration statements regarding the ability to suspend redemption and payment consistent with Section 22(e) of the Investment Company Act of 1940.[416]

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[413] *Id.* at pp. 15-16.

[414] ICI at p. 6 (focusing on the circumstances specified in Section 22(e) of the Investment Company Act of 1940); FIA/CME Joint Letter at p. 18; SSGA at p. 3.

[415] FIA/CME Joint Letter at p. 18.

[416] ICI at p. 6. ICI further stated that since Section 22(e) of the Investment Company Act of 1940 applies to ETFs as well as MMFs, the redemption exemptions under Commission Regulation 1.25(c)(5)(ii), which are consistent with, and expand upon, the exceptions listed in Section 22(e), should also apply to ETFs. *Id.*; *see also* Section 22(e) of the Investment Company Act of 1940, 15 U.S.C. 80a-22(e) (restricting investment companies from suspending the right of redemption or postponing the date of payment or satisfaction upon redemption of any redeemable security, for more than seven days, except in certain enumerated

c. Discussion

After considering the comments received, the Commission is adopting the proposed addition of interests in Qualified ETFs to the list of Permitted Investments, subject to certain modifications discussed below. The Commission reiterates that the inclusion of Qualified ETFs as a Permitted Investment should foster innovation and promote competition in the ETF market and the financial services industry more generally. Further, the addition of Qualified ETFs should also foster diversification in the investment of Customer Funds through a new type of financial instrument that allows FCMs and DCOs to purchase a type of collateral (*i.e.*, U.S. Treasury securities) that is already a Permitted Investment without having to acquire the securities directly or through an MMF. That is, the Commission agrees with commenters that by allowing FCMs and DCOs to invest Customer Funds in Qualified ETFs, the Commission would provide FCMs and DCOs with an efficient means for investing indirectly in Permitted Investments, specifically U.S. Treasury securities, while allowing FCMs and DCOs to reduce the expenses and resources required to manage individual, direct investments in such instruments.[417] Further, because Qualified ETFs would be required to meet the conditions discussed below, Qualified ETFs would be comparable to Permitted Government MMFs whose interests currently qualify as Permitted Investments under Commission Regulation 1.25(a).[418]

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circumstances including New York Stock Exchange closures outside of customary week-end and holiday closings or periods when trading on the New York Stock Exchange is restricted).

[417] Invesco at p. 2; SIFMA AMG at p. 4.

[418] 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. 17 CFR 270.2a-7(d)(2) (providing that MMFs must limit their portfolio

In response to the comments received, the Commission has determined to revise the requirement that an FCM or DCO be an authorized participant in order to invest Customer Funds in Qualified ETFs.[419] Instead, under the terms of the Final Rule, an FCM or DCO would be able to invest Customer Funds in interests of a Qualified ETF either as an authorized participant of the Qualified ETF or by entering into an agency agreement with an authorized participant, whereby the authorized participant would transact with the ETF on behalf of the FCM or DCO. In both instances, the transactions must take place on a DVP basis, such that no Customer Funds are transferred out of the segregated customer accounts maintained in compliance with Section 4d of the Act and/or Part 30 of the Commission's regulations until property of equal or greater value is deposited in the customer segregated accounts.

The Commission understands that generally the process of transacting on a DVP basis through an authorized participant acting on behalf of an FCM or DCO would function as follows. In the case of a creation transaction, the authorized participant would use its proprietary funds to acquire a creation basket of U.S. Treasury securities before placing an order with the Qualified ETFs for the purchase of creation units. Upon receipt of the Qualified ETF shares, the authorized participant would transfer such shares to the FCM's or DCO's customer segregated accounts and receive payment from the FCM or DCO customer segregated account on a DVP basis. Under no circumstances

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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 Final Rule admits as a Permitted Investment only ETFs providing investors with substantial protections that are comparable, though not identical, to those afforded to MMF investors.

[419] Proposal at 81252 and proposed Commission Regulation 1.25(c)(8).

would the authorized participant receive payment of Customer Funds from the FCM or DCO until the authorized participant has transferred the Qualified ETF interests to the FCM's or DCO's customer segregated accounts.

In the case of a redemption transaction, the authorized participant would either pre-fund the redemption with the FCM or DCO (*i.e.*, transfer proprietary cash funds to the FCM's or DCO's customer segregated accounts prior to the transfer of the Qualified ETF shares from the customer segregated accounts to the authorized participant) or post cash collateral with the fund to obtain U.S. Treasury securities prior to receiving the Qualified ETF shares from the FCM or DCO and then transferring the shares to the fund. The authorized participant would receive a fee from the FCM or DCO for the service. For the process to comply with the Commission's segregation requirements, the fee may not be paid with Customer Funds. In addition, although the authorized participant would be acting as an agent of the FCM or DCO, the ETF would not hold the FCM or DCO accountable for any failure of the authorized participant to perform its obligations to the ETF.[420] The Commission has addressed the concern of commenters who requested an alternative to the proposed requirement that the FCM or DCO be an authorized participant in the revisions from the Proposal discussed above that enable an FCM or

[420]The Commission's understanding on this matter is based on representations made by ICI and Invesco during a conversation with Commission staff on August 5, 2024, during which ICI and Invesco further explained the statements in their comment letters. In its comment letter, ICI noted that market-based solutions, such as submitting letters of credit to the authorized participant "could resolve potential exposure concerns that an [authorized participant] could have if engaging in redemption transactions before receiving the ETF shares." ICI at p.3. Additionally, one other commenter, AIMA, suggested permitting a DCO to submit a letter of credit to the ETF in lieu of requiring a DCO to become an authorized participant. AIMA at p. 2. During a conversation with Commission staff on August 5, 2024, however, ICI represented that the submission of letters of credit is not a common business practice.

DCO to invest Customer Funds in interests of a Qualified ETF through an agency agreement with an authorized participant.

Moreover, regardless of the exact process used by FCMs and DCOs to transact with an authorized participant, for the transaction to be compliant with Commission regulations, the FCM or DCO must ensure that: (i) all Commission segregation requirements are met throughout the process; (ii) the transaction occurs on a DVP basis; (iii) no fees and/or other costs associated with the transaction are charged to the customer segregated accounts; and (iv) no person, including, but not limited to, the ETF or the authorized participant has any claim over Customer Funds held by the FCM or DCO.

Eliminating the requirement that FCMs and DCOs be authorized participants from the Final Rule should expand the opportunity to invest Customer Funds in Qualified ETFs beyond those FCMs and DCOs that have the resources to become authorized participants. This change addresses concerns raised by commenters that requiring FCMs and DCOs to be authorized participants would unfairly favor the limited number of FCMs that are already authorized participants and disadvantage DCOs that may not meet the criteria of an authorized participant.[421] Further, as noted by commenters, some FCMs may not want to incur the regulatory, compliance, and operational costs associated with becoming an authorized participant.[422] In addition to these costs, which some FCMs may find excessive, commenters asserted that there are "potential operational burdens and registration requirements for becoming an authorized participant [that] may outweigh the

[421] WFE at p. 5; ICI at p. 3.

[422] ICI at p. 3 (n. 8).

potential benefits of investing customer funds in ETFs."[423] The Commission is persuaded by commenters that the stated challenges to becoming an authorized participant may burden FCMs and DCOs so substantially that they are unable to take advantage of Qualified ETFs as an investment option. Thus, removing the requirement that FCMs and DCOs be authorized participants should provide an opportunity for all FCMs and DCOs, regardless of their size or specific business model, to invest Customer Funds in Qualified ETFs if the FCMs and DCOs determine that such investment is consistent with their risk-management policies.

As noted above, several commenters requested that the Commission also allow FCMs and DCOs to invest Customer Funds in shares of Qualified ETFs via secondary market transactions on a DVP basis.[424] The Commission understands that the changes to the standard settlement cycle of certain broker-dealer transactions, including transactions in ETFs, that became effective in May 2024,[425] may allow liquidation of Qualified ETF shares to occur on the secondary market in compliance with Commission Regulation 1.25's general liquidity requirement, which provides that Permitted Investments must have the ability to be converted into cash within one business day without material discount in value.[426] Commenters also noted that there has been substantial growth in the secondary ETF market, which has made pricing differences from the primary market minimal.[427] The Commission has also observed that individual Treasury bills, when

[423] BlackRock at p. 5.

[424] BlackRock at pp. 4-5; CCP Global at p. 3; SSGA at p. 2; SIFMA AMG at pp. 2-3, 5-6; FIA/CME Joint Letter at pp. 14-15.

[425] Shortening the Securities Transaction Settlement Cycle, 88 FR 13872 (March 6, 2023).

[426] 17 CFR 1.25(b)(1).

[427] FIA/CME Joint Letter at p. 15; CCP Global at p. 3.

purchased on the secondary market, may have a wider bid-ask spread when compared to Treasury ETF shares.[428] Therefore, the Commission has determined not to restrict FCMs and DCOs from investing Customer Funds in shares of Qualified ETFS by buying and selling such shares on the secondary market, provided such transactions are transacted in compliance with the Commission's segregation requirements, and consistent with Commission Regulation 1.25's liquidity requirements, as well as all other applicable provisions.[429] The Commission also notes, as further discussed in Section IV.C. below, that the Final Rule provides that FCMs would be subject to a 6 percent capital charge on investments in Qualified ETF shares that do not comprise a full creation unit.[430]

In adopting the Final Rule, the Commission has also determined to modify the proposed requirement that FCMs and DCOs redeem Qualified ETFs in cash. The Commission understands that ETFs typically redeem interests in kind, although they may also redeem in cash or both in kind and in cash. As discussed above, the Commission

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[428] The Commission reviewed Bloomberg data from five ETFs: iShares Short Treasury Bond ETF (SHV); SPDR Bloomberg 1-3 Month T-Bill ETF (BIL); iShares 0-3 Month Treasury Bond ETF (SGOV); Goldman Sachs Access Treasury 0-1 Year ETF (GBIL); and Invesco Short Term Treasury ETF (TBLL).

[429] An FCM or DCO is required to manage the purchase and sale of Qualified ETF shares on the secondary market consistent with the Commission's segregation requirements, particularly the requirement to ensure that the firm is not undersegregated at any point in time. In this respect, an FCM or DCO may elect to use proprietary funds to purchase Qualified ETF shares and subsequently transfer the shares to a customer segregated account. Alternatively, to the extent that an FCM or DCO holds funds in customer segregated accounts in excess of the total amount owed to customers (including any applicable residual interest requirements), the FCM or DCO may withdraw such funds and use such funds to purchase shares of Qualified ETFs. Furthermore, an FCM or DCO liquidating Qualified ETF shares that are held in customer segregated accounts must ensure that the removal of such shares does not result in the customer accounts becoming undersegregated (including any applicable residual interest requirements). Alternatively, the FCM or DCO must transfer proprietary cash or other Permitted Investments into customer segregated accounts in an amount equal or greater than the fair market value of the Qualified ETF Shares prior to the removal of the shares from the customer segregated accounts.

[430] *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.

proposed to require that Qualified ETFs redeem their shares within one business day following the submission of the redemption request to help ensure a more expeditious liquidation of the Qualified ETF shares, consistent with the time limit for redemptions applicable to MMFs under Commission Regulation 1.25(c)(5) and the general liquidity requirement in Commission Regulation 1.25(b)(1).[431] The Commission has considered the comments asserting that redemptions in kind can satisfy the liquidity requirements imposed by Commission Regulation 1.25.[432] Specifically, the Commission has considered arguments that short-term U.S. Treasury ETFs may commit to redeem shares on the same business day of the redemption request, thus allowing FCMs and DCOs to liquidate the underlying U.S. Treasury securities within one business day, as required by Commission Regulation 1.25.[433] The Commission, however, understands that such redemption timeframe may be conditioned upon the fund receiving the redemption request before a certain cut-off time during the business day.[434] In addition, liquidation of the underlying U.S. Treasury securities may be delayed during periods of market turmoil. Such delay may, in particular, hinder the FCM's ability to return Customer Funds to customers or to post variation margin to the clearing house. To ensure that FCMs and DCOs are able to liquidate an investment in a Qualified ETF within the timeframe mandated by Commission Regulation 1.25, the Commission has determined to

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[431] Proposal at 81251.

[432] BlackRock at pp. 2,5; ICI at pp. 4-5; MFA at pp. 5-6; SSGA at p. 3; SIFMA AMG at pp. 7-8; FIA/CME Joint Letter at pp. 12-13.

[433] ICI at p. 4; AIMA at p. 2; BlackRock at p. 5; Invesco at p. 4; *see also* Invesco Petition at p. 6.

[434] Invesco Petition at p. 6 (noting that an U.S. Treasury ETF generally offers and redeems shares with settlement on the same day (if creation or redemption orders are received before 12:00 p.m. Eastern time) or the next business day (if creation or redemption orders are received on or after 12:00 p.m. Eastern time) at the NAV next calculated in creation units in exchange for the deposit or delivery of a basket of securities).

require FCMs and DCOs that are not authorized participants to redeem Qualified ETF shares in cash within one business day of the redemption request. To that effect, an FCM DCO conducting the redemption through an authorized participant acting as the FCM's or DCO's agent must ensure that its contractual agreement with the authorized participant requires the authorized participant to transfer cash to the customer segregated account of the FCM or DCO, on a DVP basis, within one business day of the redemption request. For FCMs that are authorized participants of the Qualified ETF, the Commission has determined to allow such FCMs to redeem Qualified ETF shares in kind, provided that the FCM has the operational ability to convert the instruments received pursuant to the redemption into cash within one business day of the redemption request. The Commission is making this determination based on the understanding that FCMs that qualify as authorized participants are securities brokers or dealers that have the operational capacity and arrangements in place to convert the U.S. Treasury securities received upon redemption into cash in a timely manner. The Commission believes that such policy, where the FCM or DCO is obligated to have the necessary contractual agreements in place to redeem Qualified ETF shares in cash or to swiftly convert U.S. Treasury securities into cash, as applicable, but the Qualified ETFs preserve the possibility to redeem in kind, should resolve commenters' concerns that applying an in-cash redemption condition to the ETF would limit the potential universe of ETFs that qualify as a Permitted Investment.[435] It should also resolve other commenters' concerns

[435] ICI at p. 4.

discussed above that requiring an ETF to redeem in cash might cause an inequitable first-mover advantage.[436]

Further, following consideration of comments received, the Commission has determined not to adopt, as a condition for qualification as a Permitted Investment, the proposed requirement that Qualified ETFs be acceptable by a DCO as performance bond from clearing members to margin customer trades. In making this determination, the Commission acknowledges the views of various commenters that the standards for DCO collateral acceptability and the standards for Permitted Investments should not be conflated.[437] Specifically, Commission Regulation 1.25(b) requires that an FCM or DCO "manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity."[438] By comparison, Commission Regulation 39.13(g)(10) requires DCOs to "limit the assets it accept as initial margin to those that have minimal credit, market, and liquidity risk."[439] Although there are similarities between these requirements, the Commission confirms that an FCM's or DCO's investment choices for Permitted Investments of Customer Funds should be governed by the standards set forth in Commission Regulation 1.25. The Commission also recognizes the potential unintended consequences for FCMs if CME – currently the only DCO that accepts short-term U.S. Treasury ETFs as a performance bond – changes its collateral acceptability

[436] FIA/CME Joint Letter at pp. 12-13.

[437] CCP Global at p. 4; FIA/CME Joint Letter at p. 13; SIFMA AMG at p. 7.

[438] 17 C.F.R. 1.25(b).

[439] 17 C.F.R. 39.13(g)(10). Further, 17 C.F.R. 39.33(c)(3)(E) allows DCO's financial resources to include "[h]ighly marketable collateral, including high quality, liquid, general obligations of a sovereign nation [that] . . . must be readily available and convertible into cash pursuant to prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions."

policy and stops accepting such ETFs, particularly if the change in policy is unrelated to the safety and liquidity of the collateral instrument.[440]

The Commission is also adopting with some changes the requirement that the Qualified ETF invest at least 95 percent of its assets in eligible securities comprising the short-term U.S. Treasury index whose performance the fund seeks to replicate and cash. In the Final Rule, eligible short-term securities are defined as 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. In response to comments, the Commission did not intend to limit the amount of cash that Qualified ETFs hold and is therefore adjusting the requirement to clarify that cash is an eligible underlying asset for purposes of the 95 percent threshold.[441] The Commission understands that many ETFs, including certain U.S. Treasury ETFs, have adopted an investment policy consistent with SEC Rule 35d-1,[442] which requires that certain registered investment companies, including ETFs, 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.[443] The Commission, however, has determined to maintain a stricter standard than an 80 percent minimum in order to help ensure that FCMs and DCOs invest

[440] FIA/CME Joint Letter at p. 13.

[441] ICI at p. 5; FIA/CME Joint Letter at p. 12 (note 58); CCP Global at p. 3; WFE at p. 6; BlackRock at p. 2.

[442] AIMA at p. 3; MFA at p. 5; FIA/CME Joint Letter at p. 12; CCP Global at p. 3; ICI at p. 5.

[443] 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.

Customer Funds in accordance with Commission Regulation 1.25's general objectives of preserving principal and maintaining liquidity.

The Commission acknowledges commenters' concerns regarding the potential burdens and costs associated with changing the fund's fundamental investment policy to reflect the adoption of a 95 percent portfolio threshold.[444] Therefore, the Commission is clarifying that a U.S. Treasury ETF meets the 95 percent portfolio threshold requirement if the fund effectively invests 95 percent or more of its assets in eligible securities and cash, even if the fund's registration statement sets a lower threshold. However, to ensure that a U.S. Treasury ETF meets the conditions for qualification as a Permitted Investment, FCMs and DCOs must verify that the fund satisfies the 95 percent threshold requirement. Thus, FCMs and DCOs are required to monitor the Qualified ETF's portfolio and should do so on a monthly basis, consistent with existing regulations applicable to FCMs to submit monthly financial reports within 17 business days after the end of each month,[445] particularly in the absence of registration statement language reflecting the fund's commitment to adhere to the 95 percent threshold requirement.

Further, the Commission confirms that, under the Final Rule, if the aggregate of the ETF's cash holdings and assets invested in eligible securities comprising the short-term U.S. Treasury index falls below 95 percent of the fund's total assets, the FCM or DCO is not permitted to make additional investments of Customer Funds in the Qualified ETF. Rather, as the Commission stated in the Proposal, the FCM or DCO should take reasonable actions to divest interests in the fund, while managing Customer Funds in a

[444] BlackRock at p. 3; ICI at p. 5.

[445] 17 CFR 1.10(b)(1).

manner consistent with Commission Regulation 1.25's general objectives of preserving principal and maintaining liquidity.[446] In response to a comment requesting further clarification on the actions to be taken should a threshold breach by the fund occur,[447] the Commission confirms, as discussed in the Proposal, that depending on the market conditions, such actions may include taking steps to progressively reduce the amount of Customer Funds invested in Qualified ETFs rather than immediately divesting the full amount of the investments in a potentially volatile market.[448]

In addition, the Commission has determined to maintain the scope of eligible underlying instruments to be included in the 95 percent threshold to 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, and cash. In response to comments advocating that the scope of Qualified ETFs be expanded to funds that invest in certain short-term U.S. agency obligations,[449]

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[446] Proposal at 81249-50.

[447] WFE at p. 6.

[448] Proposal at 81249-50.

[449] BlackRock at p. 3 (arguing that the Commission should expand the eligible underlying investments to align them with those allowed for Permitted Government MMFs, *i.e.*, cash, government securities, and/or repurchase agreements that are fully collateralized); CCP Global at p 3 (arguing that the Commission should allow Qualified ETFs to invest in U.S. Treasury securities, cash, Repurchase Transactions collateralized in U.S. Treasury securities, and U.S. Treasury MMFs); FIA/CME Joint Letter at p. 12 (recommending that the Commission allow a Qualified ETF to invest in securities with a maximum remaining maturity of 12 months or less issued or guaranteed by the U.S. Treasury, including securities issued by U.S. government agencies that are backed by the full faith and credit of the U.S. government, as well as government MMFs, 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 (as defined under SEC Rule 2a-7) with a remaining term to final maturity of 12 months or less); MFA at p. 5 (arguing that the Commission should allow Qualified ETFs to invest in securities with a maximum remaining maturity of less than 12 months issued or guaranteed by the U.S. Treasury, including short-term securities issued by U.S. government agencies that are backed by the full faith and credit of the U.S. government, government MMFs, 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 Commission acknowledges that the universe of short-term U.S. agency obligations that are fully and unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury is limited and that securities issued by U.S. government-sponsored enterprises do not fall into this category. The Commission, however, declines to expand the scope of eligible underlying instruments included in the 95 percent threshold to U.S. agency obligations that are not unconditionally guaranteed by the U.S. Department of the Treasury, because such obligations present different liquidity characteristics than U.S. Treasury securities. Given that many U.S. agency obligations are also mortgage-backed securities, they have structural features that produce less predictable cashflow and additional risks than U.S. Treasury securities.[450] The Commission is adopting the 95 percent threshold requirement as proposed.[451]

In consideration of comments received,[452] the Commission is not adopting the proposed revision to Commission Regulation 1.25(c)(5)(ii) that would have precluded Qualified ETFs from postponing redemption and payment under the circumstances

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[450] Federal Reserve Bank of New York, Staff Report: Mortgage Backed Securities, No. 1001 February 2022 available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1001.pdf.

[451] Also, as discussed in Section IV.C. below, FCMs will be required to determine capital charges for Qualified ETF shares based on SEC staff guidance. The SEC ETF Letter only applies to certain ETFs, specifically those that invest "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 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." SEC ETF Letter, available at: *https://www.sec.gov/divisions/marketreg/mr-noaction/2022/finra-060222-15c3-1.pdf*. The portfolio composition of an ETF that invests a portion of its assets in short-term U.S. agency obligations that are unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury should not differ materially from that of an ETF that invests solely in U.S. Treasury securities and cash. Therefore, the Commission requires that FCMs determine capital charges for Qualified ETFs whose portfolio includes U.S. agency obligations that are unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury based on the SEC ETF Letter.

[452] FIA/CME Joint Letter at p. 18; ICI at p. 6; SSGA at p. 3.

enumerated in that paragraph. As a result of this modification, Qualified ETFs will also be able to rely on Commission Regulation 1.25(c)(5)(ii), as applicable. Specifically, the exception provided under Commission Regulation 1.25(c)(5)(ii)(A) relates to a non-routine closure of the Fedwire or applicable Federal Reserve Banks and, under the Final Rule, will be extended to Qualified ETFs in addition to Government MMFs. Next-day redemption exceptions detailed at Commission Regulation 1.25(c)(5)(ii)(B)-(D) correspond to exceptions provided in Section 22(e) of the Investment Company Act and therefore apply to registered investment companies generally. As a result, because Qualified ETFs will be required to be investment companies registered under the Investment Company Act of 1940, these exceptions will also apply to Qualified ETFs. The exception in Commission Regulation 1.25(c)(5)(ii)(E) refers to periods during which the SEC has by rule or regulation deemed that trading should be restricted or that an emergency exists. This exception could potentially apply to all registered investment companies and will apply to Qualified ETFs. Finally, the exception in Commission Regulation 1.25(c)(5)(ii)(F) refers to the condition of SEC Rule 22e-3,[453] which is only applicable to MMFs, and will not apply to Qualified ETFs.

The Commission has determined not to adopt the proposed requirement that FCMs and DCOs obtain the acknowledgment letter required by Commission Regulation 1.26 from an entity that has substantial control over the ETF interests purchased with

[453] Section 22(e) of the Investment Company Act of 1940, codified at 15 U.S.C. 80a-22(e), restricts investment companies from suspending the right of redemption or postponing the date of payment or satisfaction upon redemption of any redeemable security, for more than seven days, except in certain enumerated circumstances including New York Stock Exchange closures outside of customary week-end and holiday closings or periods when trading on the New York Stock Exchange is restricted. Section 22(e)(3) allows the SEC to define, by order, additional circumstances, during which redemptions may be restricted "for the protection of security holders of the company." 15 U.S.C. 80a-22(e)(3).

Customer Funds and that has knowledge and authority to facilitate redemption and payment or transfer of the Customer Funds. Under the terms of the Final Rule, FCMs and DCOs will instead be required to obtain the acknowledgement letter mandated by Commission Regulation 1.20, as required for any investment of Customer Funds in Permitted Investments except Permitted Government MMFs. This change from the Proposal is based on the Commission's understanding that, unlike MMF shares that may be held directly with the fund or its affiliate, Qualified ETFs shares will be held with a depository.[454] The deletion of this proposed requirement also addresses FIA's and CME's comment about the lack of clarity with respect to the "entity that has substantial control" over the Qualified ETF, from which the acknowledgement letter would have to be obtained.[455]

The Commission is adopting the remaining conditions for Qualified ETF eligibility set forth in the Proposal as proposed without change. That is, under the terms of the Final Rule, an FCM or DCO that acquires and holds interests in Qualified ETFs may not enter into an agreement that would prevent it from pledging the Qualified ETF's shares. FCMs and DCOs must also maintain confirmations relating to their purchase of interests in a Qualified ETF in their records.

Additionally, the NAV for the Qualified ETF must be computed by 9 a.m. of the business day following each business day and made available to FCMs or DCOs, as

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[454] The Commission's understanding on this matter is based on an email from Kevin Ercoline, Associate General Counsel, ICI, to Commission staff, dated August 15, 2024, ICI Email 20240913, available at https://comments.cftc.gov/PublicComments/ViewExParte.aspx?id=1826&SearchText=. As explained in the August 15, 2024 email, it is common practice that an FCM or DCO purchases ETF shares and custodies them with the FCM's or DCO's custodian.

[455] FIA/CME Joint Letter at p. 15.

applicable, by that time.[456] This 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.[457]

Further, the Qualified ETF must be legally obligated to redeem its interests and make payment in satisfaction of the interests by the business day following a redemption request.[458] As discussed above, limiting Qualified ETFs to funds that track the performance of a published short-term U.S. Treasury security index should facilitate redemptions of Qualified ETFs' shares being completed within one business day, consistent with Commission Regulations 1.25(c)(5)(i) and 1.25(b)(1).[459]

The Commission is adding paragraph (v) to Commission Regulation 1.25(a)(1), as redesignated to accommodate other amendments to the list of Permitted Investments pursuant to the Final Rule, to add the interests of Qualified ETFs (U.S. Treasury exchange-traded funds) to the list of Permitted Investments under Commission Regulation 1.25. The Commission is adopting further conforming changes throughout Commission Regulation 1.25. As discussed above, the Final Rule provides for the

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

[457] 2000 Permitted Investments Amendment at 78003.

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

[459] *See* 17 CFR 1.25(c)(5) (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) (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).

replacement of "money market mutual fund" or "money market mutual funds" with "government money market fund" or "government money market funds" throughout Commission Regulation 1.25. The Commission is inserting next to the term "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.

The Commission is revising Commission Regulation 1.25(c)(1) to incorporate the condition as set forth in the Proposal 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.[460]

Consistent with the Proposal, the Commission is also adding a new paragraph (8) to Commission Regulation 1.25(c) to incorporate the requirement that investments of Customer Funds in Qualified ETFs occur on a DVP basis. In a modification from the Proposal, however, new Commission Regulation 1.25(c)(8) does not specify that Qualified ETF interests must be redeemable by the FCM or DCO "in its capacity of an authorized participant." The Commission is also not specifying the ETF's interests must be "redeemable in cash" but rather that the FCM or DCO must have the necessary contractual arrangements in place to liquidate the ETF shares in cash in compliance with Commission Regulation 1.25's liquidity requirements. New Commission Regulation 1.25(c)(8) provides that an FCM or DCO transacting with a Qualified ETF through an authorized participant must redeem interests in the Qualified ETF in cash, whereas an FCM that is an authorized participant of the Qualified ETF may redeem interests in the

[460] Proposed Commission Regulation 1.25(c)(1).

Qualified ETF in kind, provided the FCM is able to convert the U.S. Treasury securities received pursuant to the redemption in cash within one business day of the redemption request.

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 adopting the revision set forth in the Proposal to amend Commission Regulation 1.25(b)(2)(i) to indicate that the prohibition of investments containing embedded derivatives does not apply to Qualified ETFs.

The Commission is also adopting the revision set forth in the Proposal to amend Commission 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 DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a-7, may not exceed 24 months. The amendment revises Commission 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.[461] The Commission is implementing this change because 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.

4. Investments in Commercial Paper and Corporate Notes or Corporate Bonds

Commission Regulation 1.25(b) currently provides that FCMs and DCOs may invest Customer Funds in commercial paper, corporate notes, and corporates bonds that

[461] Revised Commission Regulation 1.25(b)(4)(i).

are guaranteed under the TLGP administered by the FDIC. The TLGP program, however, expired in 2012.[462] Therefore, commercial paper, corporate notes, and corporate bonds have not been Permitted Investments for more than a decade. To address the termination of the TLGP, the Commission proposed to remove commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments in Commission Regulation 1.25.[463]

The Commission received three comments supporting the removal of commercial paper, corporate notes, and corporate bonds as Permitted Investments.[464] No commenters opposed the proposed revisions. FIA, CME, and MFA, expressed general support for the removal of commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments.[465] AIMA commented that the removal of commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments, along with the other proposed changes, would "appropriately update the list of permitted investments in line with sound risk management practices, allow DCOs and FCMs greater flexibility to manage risks and reduce currency and concentration risk."[466]

The Commission has considered the comments received and has determined to amend the list of Permitted Investments by revising Commission Regulation 1.25(a)(1) to

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[462] *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.").

[463] Proposal at 81253.

[464] AIMA at p. 2; FIA/CME Joint Letter at p. 20; MFA at p.7.

[465] FIA/CME Joint Letter at p. 20; MFA at p. 7.

[466] AIMA at p. 2.

eliminate commercial paper, corporate notes, and corporate bonds as proposed, because these instruments have not been Permitted Investments since the expiration of the TLGP in 2012.[467]

5. Investments in Permitted Investments with Adjustable Rates of Interest

Commission Regulation 1.25(b)(2)(iv)(A) currently provides that Permitted Investments may contain variable or floating interest rates provided, among other things, that: (i) the interest payments on variable rate securities correlate closely, 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 Commission Regulation 1.25(a);[468] 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,[469] or the interest rate of any fixed rate instrument that is a listed Permitted Investment under Commission Regulation 1.25(a).[470]

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[467] In light of the Proposal's proposed elimination of commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments, the FIA/CME Joint Letter suggested a technical amendment to remove paragraph (b)(2)(vi) from Commission Regulation 1.25, which sets forth conditions that commercial paper, corporate notes, and corporate bonds must satisfy to be Permitted Investments. FIA/CME Joint Letter at p. 21. The Proposal included the deletion of current Commission Regulation 1.25(b)(2)(vi), and the Commission is deleting current paragraph (b)(2)(vi) as proposed. Proposal at 81273.

[468] 17 CFR 1.25(b)(2)(iv)(A)(*1*).

[469] 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.

[470] 17 CFR 1.25(b)(2)(iv)(A)(*2*).

LIBOR had commonly been used 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.[471] After a loss of confidence in LIBOR as a reliable benchmark following a number of enforcement actions concerning attempts to manipulate the benchmark,[472] the U.K. Financial Conduct Authority ("UK FCA") announced on March 5, 2021 that LIBOR would cease to be published and would effectively be discontinued.[473]

Prior to the UK FCA announcement, the Federal Reserve Bank of New York had convened the Alternative Reference Rate Committee ("ARRC") in 2014 to identify best practices for U.S. alternative reference rates as well as best practices for contract robustness, to develop an adoption plan, and to create an implementation plan with metrics of success and a timeline.[474] In June 2017, the ARRC identified SOFR, a broad Treasury repurchase agreements financing rate, as the preferred alternative benchmark to U.S. dollar LIBOR for certain new U.S. dollar derivatives and financial contracts.[475]

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[471] Proposal at 81253-54. *See also, 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.

[472] *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).

[473] *See generally* 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") available at the Commission's website: https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=21-26&field_csl_letter_year_value=&field_csl_dodd_frank_exists_value=All. The UK FCA, which regulates ICE Benchmark Administration Limited, the administrator of ICE LIBOR, confirmed that LIBOR would either cease to be provided by any administrator or would no longer be representative for the 1-week and 2-month U.S. dollar LIBOR settings, immediately after December 31, 2021, and for all other U.S. dollar LIBOR settings immediately after June 30, 2023).

[474] Staff Letter 21-26 at p. 3.

[475] 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*.

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.[476] 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.[477] The Federal Reserve Bank of New York ("FRBNY"), in cooperation with the U.S. Office of Financial Research, publishes SOFR by 8:00 a.m. each business day.[478]

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.[479] 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 interest rates 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, issued a joint letter on December 23, 2022, 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.[480] Due to the transition from LIBOR to SOFR, the Commission proposed to

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[476] *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*.

[477] *Id*.

[478] *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*.

[479] CFTC Staff Letter 21–02.

[480] CFTC Staff Letter 22–21.

amend Commission 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. The Commission also requested comment on whether it should consider other additional interest rates beyond SOFR as permitted benchmarks for adjustable rate securities under Commission Regulation 1.25.[481]

The Commission received three comments regarding the proposed transition to SOFR, and all three comments supported the proposed amendment to replace LIBOR with SOFR as a permitted benchmark for adjustable rate securities under Commission Regulation 1.25(b)(2)(iv)(A).[482] In addition to supporting the addition of SOFR, FIA, CME, and MFA also recommended that the Commission amend Commission Regulation 1.25 to permit FCMs and DCOs to invest Customer Funds in adjustable rate securities that reference SONIA, €STR, TONAR, and COBRA, to the extent that an FCM or DCO has balances owed to customers denominated in GBP, EUR, JPY, or CAD, respectively.[483] In support of its recommendation, the FIA/CME Joint Letter states that these additional alternative reference rates have been selected by public/private-sector working groups, similar to the ARRC, formed by the Bank of England (SONIA), the European Central Bank (€STR), the Bank of Japan (TONAR), and the Bank of Canada (COBRA), in connection with the transition away from LIBOR rates in these currencies.[484]

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[481] Proposal at p. 81254, Question 15.

[482] MFA at pp. 2, 7; FIA/CME Joint Letter at p. 20; SIFMA AMG at p. 12.

[483] MFA at p. 7; FIA/CME Joint Letter at p. 20.

[484] FIA/CME Joint Letter at p. 20.

The Commission has considered the comments received and upon further consideration is adopting the proposed revision to Commission Regulation 1.25(b)(2)(iv)(A)(*1*) and (*2*) subject to a clarification regarding the SOFR rates that qualify as acceptable benchmarks. The Final Rule specifies that adjustable rate securities may reference the overnight, 1-month, 3-month, and 6-month SOFR rate published by the FRBNY. The Final Rule also permits adjustable rate securities to be benchmarked to the CME Term SOFR Rate published by the CME Group Benchmark Administration Limited.[485] The CME Term SOFR Rate is computed by the CME Group Benchmark Administration Limited based on SOFR futures contracts traded on the CME. The FRBNY and CME Group Benchmark Administration Limited published SOFR rates are reliable reference rates as they are calculated in a transparent manner based on actual trading activity in the overnight or futures markets and subject to regulatory oversight. The replacement of LIBOR with SOFR advances the objective of Commission Regulation 1.25 of preserving principal and maintaining liquidity by requiring the use of reliable benchmarks in the qualification of adjustable rate securities as Permitted Investments.

The Commission has decided not to adopt the additional alternative rates suggested by the commenters. At this time, the Commission has not observed any investment instruments that would qualify as Permitted Investments using these alternative reference rates. Furthermore, as discussed above and in the Proposal, the

[485] CME Group Benchmark Administration Limited is registered benchmark administrator, authorized and supervised by the UK FCA. CME Term SOFR Rates provide an indication of the forward-looking measurement of overnight SOFR, based on market expectations implied from derivatives markets. See generally CME's webpage on CME Term SOFR Rates available at https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html.

Commission has performed an extensive review of SOFR and has followed the work of the ARRC in developing SOFR. It has not, however, engaged in a similar review of the additional alternative reference rates at this time.

To give effect to the adoption of SOFR as a permitted benchmark for Permitted Investments with an adjustable rate of interest, paragraphs (b)(2)(iv)(A)(*1*) and (*2*) of Commission Regulation 1.25 are amended by replacing the phrase "one-month or three-month LIBOR rate" with the phrase "Secured Overnight Financing Rate."[486] These amendments are 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, and align with the evolution of the market.[487]

6. Investments in Certificates of Deposit Issued by Banks

Commission Regulation 1.25(a)(1)(iv) currently permits, subject to certain conditions, 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 Commission 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 terms of the bank CD agreement.[488]

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[486] Final Commission Regulation 1.25(b)(2)(iv)(A)(*1*) and (*2*).

[487] 2005 Permitted Investments Amendment at 28192 (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).

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

As stated in the Proposal, the Commission's experience has been that FCMs and DCOs have not elected bank CDs as an investment option for Customer Funds.[489] In connection with the Proposal, Commission staff reviewed SIDR Reports filed by FCMs for the period September 15, 2022 through February 15, 2023 and noted no FCMs reporting investments of Customer Funds in bank CDs.[490]

In the Proposal, the Commission requested comment on whether Commission Regulation 1.25 should be amended by removing bank CDs from the list of Permitted Investments given the historical lack of usage by FCMs and DCOs.[491] Specifically, the Commission requested comment on whether the elimination of bank CDs as a Permitted Investment would have a material adverse impact on FCMs' and DCOs' ability to invest Customer Funds.[492] The Commission also requested comment regarding whether there were provisions of Commission Regulation 1.25, or other legal or operational issues, that

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[489] Proposal at 81254-55. Although FCMs have not communicated a specific reason for the lack of investments in bank CDs, the Commission understands that few, if any, bank CDs meet the requirements in Commission Regulation 1.25(b)(v) that the CD is 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. 17 CFR 1.25(b)(v).

[490] Proposal at 81254-55. Commission 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 further required to include the total amount invested in each of the Permitted Investments in the SIDR Report. 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). The Commission is also revising the SIDR Report to reflect the revisions to the list of Permitted Investments adopted by the Commission under this rulemaking. *See* Section IV.D. for a discussion of the final amendments to the SIDR Report.

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 Commission 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.

[491] *Id.*

[492] Proposal at 81255, Question 17.

hinder or prevent FCMs and DCOs from investing Customer Funds in bank CDs.[493] The Commission also requested comment on whether FCMs and DCOs may elect to invest Customer Funds in bank CDs with the current rising interest rate environment for bank deposits and bank CDs.[494] In addition, the Commission requested comment on what factors it should consider before removing bank CDs from the list of Permitted Investments.[495] Lastly, the Commission stated that based on the comments received, and the Commission's further consideration of this issue, it may determine to revise the list of Permitted Investments by removing bank CDs in the final rulemaking.[496]

Three comments responded to the Commission's request for comment on this subject.[497] Two commenters supported the removal of bank CDs as Permitted Investments. FIA and CME stated in their joint letter that bank CDs should be removed from the list of Permitted Investments as they are not aware of the recent use of bank CDs as a Permitted Investment, nor has any FIA member stated that it foresees investing Customer Funds in bank CDs.[498] Nodal also supported the removal of bank CDs from the list of Permitted Investments, noting that from a risk perspective, bank CDs replace, but do not materially mitigate, counterparty risk faced by FCMs and DCOs with respect to direct bank deposits.[499] ICE stated, however, that it did not believe that it would be

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[493] *Id.*, Questions 18 and 19.

[494] *Id.*, Question 20.

[495] *Id.*, Question 21.

[496] *Id.* In the Proposal, the Commission also detailed the additional conforming amendments that it would make to Commission regulations to reflect the potential elimination of bank CDs from Commission Regulation 1.25(a)(1). Proposal at 81255.

[497] FIA/CME Joint Letter at p. 20; Nodal pp. 3-4; ICE at p. 4.

[498] FIA/CME Joint Letter at p. 20.

[499] FIA/CME Joint Letter at p. 20; Nodal at pp. 3-4.

beneficial to remove bank CDs as Permitted Investments even if the use of such investments by FCMs and DCOs is currently limited.[500]

The Commission has considered the comments received and is removing bank CDs from the list of Permitted Investments in Commission Regulation 1.25(a)(1) as proposed. The Commission adopted bank CDs as a Permitted Investment in 2000.[501] Since its adoption, the Commission has not observed any material use of bank CDs as an investment instrument for Customer Funds. Although ICE stated that it did not believe that it was beneficial to remove bank CDs, the lack of use of bank CDs suggests that FCMs and DCOs do not view bank CDs as viable investments for Customer Funds. Furthermore, the FIA/CME Joint Letter states that no FIA member has indicated that it foresees investing Customer Funds in bank CDs.[502]

The Commission is therefore deleting paragraph (a)(1)(iv) of Commission Regulation 1.25 and redesignating subparagraph (i) through (vii) of Commission Regulation 1.25(a)(1) to reflect the removal of bank CDs from the revised list of Permitted Investments. In addition, the Commission is deleting paragraph (b)(2)(v) of Commission Regulation 1.25, which sets forth restrictions on the features of permitted bank CDs, and is revising and/or deleting, as appropriate in light of other amendments, paragraphs (b)(3)(i)(C) and (b)(3)(ii)(B) of Commission 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

[500] ICE at p. 4.

[501] Proposal at 81237.

[502] FIA/CME Joint Letter at p. 20.

that list. The Commission is also making conforming amendments to Commission Regulations 1.32(f)(3), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Reports described in Section IV.D. below, to reflect the removal of bank CDs from the list of Permitted Investments in Commission Regulation 1.25. Finally, the Commission has deleted 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

a. Proposal

Commission Regulation 1.25(b)(3) establishes asset-based and issuer-based concentration limits for an FCM's or DCO's investment of Customer Funds in Permitted Investments.[503] 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.[504] An FCM or 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.[505]

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[503] 17 CFR 1.25(b)(3).

[504] The asset-based and issuer-based concentration limits for futures customer funds are set forth in Commission Regulation 1.25(b)(3). With respect to 30.7 customer funds, Commission 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 Commission 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, Commission Regulations 22.2(e)(1) and 22.3(d) provide that an FCM or DCO, respectively, may invest Cleared Swaps Customer Collateral in accordance with Commission 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).

[505] 2011 Permitted Investments Amendment at 78787 (concentration limits are to be calculated on a customer-segregation origin by customer-segregation origin basis, *i.e.*, based on separate segregation account classes).

As explained in the Proposal, an FCM or 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.[506]

With respect to MMFs, an FCM or DCO may currently 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.[507] 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.[508] For Prime MMFs, an FCM or 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.[509]

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[506] Proposal at 81255-59; Commission Regulation 1.25(b)(3)(i)(A) – (D); 17 CFR 1.25(b)(3)(i)(A) – (D). The term "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).

[507] 17 CFR 1.25(b)(3)(i)(E).

[508] 17 CFR 1.25(b)(3)(i)(G).

[509] 17 CFR 1.25(b)(3)(i)(F) and (G).

With respect to issuer-based concentration limits, an FCM or 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.[510] An FCM or 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; (ii) obligations of any single issuer of municipal securities, bank CDs, commercial paper, or corporate notes or bonds – 5 percent.[511]

With respect to MMFs, an FCM or 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.[512] With respect to MMFs that maintain investment portfolios that hold instruments other than U.S. government securities, an FCM or 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.[513]

The Commission proposed to amend the asset-based and issuer-based concentration limits in Commission Regulation 1.25(b)(3) to reflect the proposed

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[510] *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.

[511] 17 CFR 1.25(b)(3)(ii)(A) and (B).

[512] *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.

[513] 17 CFR 1.25(b)(3)(ii)(C) and (D).

revisions to the list of Permitted Investments discussed in the Proposal and to adjust the limits based on the Commission's experience administering Commission Regulation 1.25.[514] As discussed in Section IV.A.1. above, the Commission proposed to limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs. Under the Proposal, 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 fully collateralized.[515] 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 Commission 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 proposed 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. agency obligations and/or other instruments within the limits of SEC Rule 2a-7. More precisely, under the Proposal, an FCM's or 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 account classes of

[514] Proposal at 81255-59.

[515] Proposal at 81241 and 81256.

futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[516] 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.[517]

The Commission also proposed 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.[518] For purposes of clarity, the Commission proposed 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 proposed issuer-based concentration limits for investments in Permitted Government MMFs. Specifically, the Commission proposed to limit investments of Customer Funds in any single family of Permitted Government MMFs to 25 percent and investments of Customer Funds in any individual Permitted Government MMFs to 5 percent of the total assets held in each of the segregated account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[519]

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

[517] 17 CFR 1.25(b)(3)(i)(B).

[518] Proposed Commission Regulation 1.25(b)(3)(i)(F).

[519] Proposed Commission Regulations 1.25(b)(3)(ii)(C) and (D), respectively.

Further, as part of the proposed amendments to the concentration limits in Commission Regulation 1.25,[520] the Commission proposed 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 IV.A.3. above, the Commission is adding Qualified ETFs to the list of Permitted Investments.[521] The Commission proposed to impose conditions on Qualified ETFs that are substantially similar to the conditions that are imposed on Permitted Government MMFs whose interests qualify as Permitted Investments.[522] 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, the Commission preliminarily determined that it would be appropriate for Qualified ETFs to have the same asset-based and issuer-based concentration limits as those proposed for Permitted Government MMFs.

Under the Proposal, an FCM's or 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 account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[523] The Commission also proposed to extend the current 10 percent asset-based concentration

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[520] *See* discussion in Section IV.B. above.

[521] Proposed Commission Regulation 1.25(a)(1)(vi).

[522] *See* Section IV.A.3. above.

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

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 to Qualified ETFs. In addition, to mitigate the potential risks arising from concentration in any particular fund or family of funds, the Commission proposed to limit investments of Customer Funds in any single family of Qualified ETFs to 25 percent and investments of Customer Funds in any individual Qualified ETF to 5 percent of the total assets held in each of the segregated account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[524] Because there may be at least five U.S. Treasury ETFs that could potentially qualify as Permitted Investments, the Commission preliminarily believed that the proposed issuer-based concentration limits would not be overly restrictive.[525]

The Commission also proposed revisions to the asset-based and issuer-based concentration limits to remove limits on commercial paper, and corporate notes and bonds, given that the Commission proposed to eliminate these instruments from the list of Permitted Investments.[526] The Commission stated that if bank CDs were removed from the list of Permitted Investments based on public feedback, the Commission would

[524] Proposed Commission Regulations 1.25(b)(3)(ii)(C) and (D). These limits are the same for both Permitted Government MMFs and Qualified ETFs.

[525] 2022 CME Advisory Notice, *supra* note 320 (announcing that CME has added five Short-Term U.S. Treasury ETFs to the list of accepted margin collateral). The five ETFs added by the CME would meet the proposed condition of being accepted as performance bond by a DCO. For purposes of clarity, FCMs and DCOs would need to assess ETFs' eligibility in light of all applicable conditions.

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

eliminate the asset-based and issuer-based concentration limits for these instruments as well.[527]

Finally, the Commission proposed to expand the types of investments that would qualify as Permitted Investments to include Specified Foreign Sovereign Debt. However, the Commission did not propose asset-based or issuer-based concentration limits on an FCM's or DCO's investments in Specified Foreign Sovereign Debt. Among other considerations, the Commission noted, in the Proposal, that proposed Commission Regulation 1.25(a)(1)(vii), which permits an FCM or DCO to invest Customer Funds in Specified Foreign Sovereign Debt only to the extent that the FCM or DCO 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 DCO may invest in Specified Foreign Sovereign Debt.

The concentration limits in Commission Regulation 1.25 are minimum requirements.[528] As discussed in the Proposal, pursuant to Commission 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.[529] If, based on its independent risk assessment, an FCM determines that stricter concentration limits

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[527] Proposal at 81257-58.

[528] Proposal at 81258. The Commission has stated in prior rulemakings that FCMs are expected to "carefully evaluate the appropriateness of each permitted investment in terms of its investment objectives and compliance with the time-to-maturity, concentration limits, and other requirements of Rule 1.25." 2005 Permitted Investments Amendment at 28192. As noted in other parts of this preamble, the Commission has adopted Commission Regulation 1.11 to require FCMs to establish a risk management program that considers risks posed by affiliates, all lines of business of the FCM, and all other trading activity engaged in by the FCM. *See supra* note 126, Section IV.A.2.c, and Section IV.B.a. DCOs are subject to similar risk management requirements as laid out in Commission Regulation 39.13.

[529] 17 CFR 1.11.

with respect to Permitted Investments of Customer Funds are appropriate, the FCM is required to implement such stricter limits, in accordance with Commission Regulation 1.11. Similarly, Commission 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, whereas Commission 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, 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 full portfolio of investments in a potentially volatile market.

b. Comments

The Commission requested 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 received

nine comments addressing concentration limits.[530] Eurex and WFE supported the Commission's decision not to impose asset-based or issuer-based concentration limits on Specified Foreign Sovereign Debt, citing consistency with the 2018 Order.[531] A number of other commenters, however, recommended changes to the asset-based and issuer-based concentration limits for Permitted Government MMFs and Qualified ETFs proposed by the Commission as discussed below.[532]

Regarding the proposed change of imposing a 50 percent asset-based concentration limit for all Permitted Government MMFs with at least $1 billion in assets and whose management company manages at least $25 billion in assets, FIA and CME did not support the Commission's proposed changes and urged the Commission to keep the current asset-based limits.[533] FIA and CME argued that the Commission should continue to allow investments in "Treasury-only" MMFs without imposing asset-based concentration limits.[534] These commenters contended that large Government MMFs invest in high-quality securities, have stable market value NAVs, have robust liquidity profiles, have implemented significant cybersecurity safeguards, and operate in a manner

[530] AIMA at pp. 2-3; BlackRock at p. 7; Eurex at pp. 2-3; Federated Hermes at pp. 1-3; ICI at pp. 2, 6-10; Nodal at pp. 2-3; SIFMA AMG at pp. 2, 8-12, FIA/CME Joint Letter at pp. 16-18; WFE at p. 4.

[531] Eurex at p. 2; WFE at p. 5.

[532] AIMA at pp. 2-3; BlackRock at p. 7; Federated Hermes at pp. 1-3; ICI at pp. 2, 6-10; Nodal at pp. 2-3; SIFMA AMG at pp. 2, 8-12, FIA/CME Joint Letter at pp. 16-18.

[533] FIA/CME Joint Letter at p. 17.

[534] *Id*. Commission Regulation 1.25(c) currently excludes from the concentration limits MMFs investing solely in U.S. government securities as this term is currently used in Commission Regulation 1.25. Because the Commission proposed to defined Permitted Government MMF by reference to SEC Rule 2a-7 as an MMF that invests 99.5 percent or more of its 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 obligations), and/or Repurchase Transactions that must be collateralized fully, the scope of underlying instruments in which a Permitted Government MMF would be allowed to invest is broader than that of MMFs currently excluded from the concentration limits. Proposal at 81256.

that is consistent with the Commission's customer asset protection regime.[535] Thus, FIA and CME asserted that the Commission's statement in the 2011 Permitted Investments Amendment that "[i]ndirect investments in Treasuries via a Treasury-only MMMF is essentially the risk equivalent of a direct investment in Treasuries, while allowing an FCM or DCO the administrative ease of delegating the management of its portfolio to a MMMF" is no less true today than it was in 2011.[536] Further, FIA and CME asserted that Government MMFs "arguably present greater diversification and more resiliency for investors than government securities themselves in rare instances of volatility or stress in the government securities market."[537] FIA and CME also argued that although financial institutions, including FCMs and DCOs, like all commercial entities, could be targets for cyber-attacks that may adversely impact normal operating capabilities and impair an FCM's or DCO's ability to redeem, promptly on demand, interests in Permitted Government MMFs or Qualified ETFs, FCMs and DCOs are already "subject to comprehensive regulatory requirements to implement policies, procedures, and controls to detect, prevent, monitor, and mitigate operational risk, including cybersecurity risk."[538] FIA and CME further noted that the Commission has proposed to augment and reinforce these required policies, procedures, and controls with a new requirement for FCMs to establish an "operational resilience framework."[539] As a result of the existing protections, FIA and CME believe that the proposed concentration limits are not well-

[535] FIA/CME Joint Letter at p. 17.

[536] *Id*.; 2011 Permitted Investments Amendment at 78796.

[537] FIA/CME Joint Letter at p. 17.

[538] *Id.* at 16 (referencing Commission Regulations 1.11, 39.13, 39.18(b), 160.30, and 162.21).

[539] *Id*. (referencing *Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants*, 89 FR 4706 (Jan. 24, 2024)).

tailored to the regulatory objectives that the Commission articulated in the Proposal.[540] BlackRock also suggested that the Commission keep the existing asset-based concentration limit framework because, in their view, the framework is operating as intended.[541] ICI did not object to the changes to the asset-based concentration limits proposed for Permitted Government MMFs given their relative risk and liquidity profiles.[542]

Regarding the proposed changes to issuer-based concentration limits, AIMA, Federated Hermes, ICI, and Nodal recommended a 25 percent single fund concentration limit for both Permitted Government MMFs and Qualified ETFs, a limit that they asserted would be more consistent with market practices.[543] Federated Hermes argued that the proposed 5 percent issuer-based concentration limit per fund for Permitted Government MMFs was "unnecessarily restrictive and [an] arbitrary number."[544] This commenter objected to the proposed limit because, from their perspective, the proposed limit is not based on meaningful data and the risks the Commission raises as concerns are already addressed by SEC Rule 38a-1,[545] which Federated Hermes summarizes as

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[540] *Id.* at 17.

[541] BlackRock at p. 7.

[542] ICI at p. 8.

[543] AIMA at p. 3; Federated Hermes at p. 1; ICI at pp. 6-7 (arguing that a failure to appropriately calibrate the proposed concentration limits will result in the reduced utility of Permitted Government MMFs and Treasury ETFs for many FCMs and DCOs, especially smaller firms); Nodal at p. 3 (calling for a "flat limit of 25%" for both individual and any single family of funds).

[544] Federated Hermes at p. 1.

[545] SEC Rule 38a-1 requires registered investment companies to adopt and implement written policies and procedures reasonably designed to prevent federal securities laws violations; obtain approval by the registered investment company's board of the policies and procedures of the registered investment company and the policies and procedures of certain service providers; review the adequacy of those policies and procedures at least annually; and designate a chief compliance officer responsible for the administration of the registered investment company's policies and procedures. 17 CFR 270.38a-1.

requiring registered investment companies, including Permitted Government MMFs, to adopt and implement written compliance policies and procedures reasonably designed to prevent violation of the federal securities laws. In addition, Federated Hermes, and other commenters, pointed to the SEC's proposed rule that would require funds to adopt and implement compliance policies and procedures, and cybersecurity programs, to detect, respond to, and recover from a cybersecurity incident, and that are reasonably designed to ensure that a fund can continue to operate during a cybersecurity event.[546]

FIA, CME, BlackRock, and SIFMA AMG expressed support for keeping the current issuer-based concentration limit thresholds of 10 percent for individual funds, and 25 percent for fund families.[547] FIA, CME, and BlackRock contended that these limits are better aligned with current market structure given that there are few, if any, families of Permitted Government MMFs and Qualified ETFs that include more than two individual eligible funds.[548] Relatedly, Nodal, which was one of the commenters that supported a 25 percent limit for individual funds, stated that many fund families only have one Government MMF, which would result in an effective limit of 5 percent per fund family instead of the proposed 25 percent.[549] AIMA echoed this point by noting that the proposed limits are "not consistent with market practice given that there are very

[546] Federated Hermes at pp. 2-3 (referencing a Federal Register release, 88 FR 16921 (March 21, 2023), reopening the comment period for an SEC proposal, *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies*, 87 FR 13524 (March 9, 2022) ("SEC Investment Management Cybersecurity Release").

[547] FIA/CME Joint Letter at p. 18; BlackRock at p. 7; SIFMA AMG at p. 10 (n. 35) (referencing the SEC Investment Management Cybersecurity Release).

[548] FIA/CME Joint Letter at p. 18.

[549] Nodal at p. 2.

few families of eligible MMFs or ETFs that offer more than two eligible individual funds."[550]

SIFMA AMG also criticized the proposed 5 percent issuer concentration limit and advocated for keeping the current 10 percent concentration limit.[551] SIFMA AMG expressed a general concern about the use of cybersecurity risk as a justification for a Commission rulemaking in areas unrelated to cybersecurity, which, in SIFMA AMG's opinion, could provide "an unfounded, unquantifiable precedent for future rulemakings."[552]

SIFMA AMG further noted that "MMFs and U.S. Treasury ETFs are sponsored by SEC-registered investment advisers that are subject to their own cyber safeguards and regulatory obligations."[553] In particular, SIFMA AMG cited SEC Regulation S-P,[554] which requires registered broker-dealers, investment companies, and investment advisers to "develop, implement, and maintain written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer information,"[555] as well as the SEC Investment Management Cybersecurity Release that was also cited by other commenters.[556]

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[550] AIMA at p. 3. As an alternative, AIMA supports an individual fund limit of 25 percent. *Id.*

[551] SIFMA AMG at p. 10.

[552] *Id.*

[553] *Id.*

[554] 17 CFR 248.30.

[555] 17 CFR 248.30 sets forth regulatory obligations for the protection of customer information, response programs for unauthorized access to customer information, and requirements relating to the disposal of customer information.

[556] SIFMA AMG at p. 10 (referencing SEC Investment Management Cybersecurity Release).

SIFMA AMG also asserted that the Proposal had not adequately explained why the proposed 5 percent limit more appropriately addressed the Commission's concerns over redemption and liquidity risks.[557] This commenter also asserted that a low issuer-based concentration limit would require more monitoring by FCMs and DCOs and potentially increase transaction fees.[558] Finally, SIFMA AMG noted that only five Qualified ETFs are currently accepted as performance bond by a DCO which would mean that only 25 percent of the Customer Funds held by the FCM or DCO may be invested in a Qualified ETF even though the concentration limit overall is 50 percent for Qualified ETFs.[559] SIFMA AMG opined that the Commission should instead allow FCMs and DCOs to allocate based upon their own risk assessments of the Permitted Investments in which they choose to invest Customer Funds, subject to "more appropriate guardrails like the current 10% limit."[560]

c. Discussion

After consideration of the comments received, coupled with the Commission's concerns regarding the safety of Customer Funds, the Commission has decided to adopt, with one exception described below, the proposed concentration limits as set forth in the Proposal. Specifically, the Commission is adopting a single asset-based concentration limit of 50 percent for all Permitted Government MMFs of at least $1 billion in assets and whose management company manages at least $25 billion in assets. For MMFs that hold

[557] *Id.*

[558] *Id.*

[559] *Id.*

[560] *Id.*

less than $1 billion in assets or have a management company with less than $25 billion in assets under management, the Commission is maintaining the current 10 percent asset-based concentration limit.[561]

Regarding issuer-based concentration limits for Permitted Government MMFs, the Commission is limiting investments of Customer Funds in any single family of Permitted Government MMFs to 25 percent, as set forth in the Proposal. With respect to investments of Customer Funds in any individual Permitted Government MMF, however, the Commission is increasing the permissible concentration to 10 percent of the total assets held in each of the segregated account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds, a change from the 5 percent that was set forth in the Proposal.

For Qualified ETFs, the asset-based concentration limits will be the same as those set forth in this Final Rule for Permitted Government MMFs. For Qualified ETFs with at least $1 billion in assets and whose management company manages at least $25 billion in assets, the asset-based concentration limit will be 50 percent of total funds held in each of the three categories of Customer Funds. For Qualified ETFs that hold less than $1 billion in assets or whose management company manages less than $25 billion in assets under management, the asset-based concentration limit will be 10 percent. The issuer-based concentration limit for Qualified ETFs will be 25 percent for a single family of Qualified ETFs, which is unchanged from the Proposal. With respect to any individual Qualified

[561] As proposed, the Commission is also deleting the conjunction "and" in Commission Regulation 1.25(b)(i)(G), redesignated as Commission Regulation 1.25(b)(i)(E) and revised to reflect other amendments adopted in this Final Rule, to clarify that the fund size threshold and the management company size threshold are to be construed as alternative prongs triggering the 10 percent limit.

ETF, however, consistent with the upward revision for Permitted Government MMFs, the concentration limit will be 10 percent, rather than 5 percent as set forth in the Proposal.

The new concentration limits are summarized below:

Instrument	Size	Current Concentration Limits		New 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%	N/A	N/A
Government MMFs investing solely in U.S. government securities (*i.e.*, securities issued or fully guaranteed by the U.S. government)	>$1B assets and management company with >25B in assets	No limit	No limit	50%	25% per family 10% per fund
	<$1B assets 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 management company with >25B in assets	50%	25% per family 10% per fund	50%	
	<$1B assets or management company with < $25B in assets	10%		10%	
Qualified ETFs	>$1B assets and management	N/A	N/A	50%	25% per family

	company with >25B in assets				10% per fund
	<$1B assets or management company with < $25B in assets	N/A	N/A	10%	

As in the Proposal, Specified Foreign Sovereign Debt will be excluded from the concentration limits.[562] This is consistent with the current exclusion of U.S. government securities from the asset-based and issuer-based concentration limits. The Commission reiterates that 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,[563] and by the countries being members of the G7, which represents the world's largest industrial democracies. In addition, the Commission has 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 new condition that would permit an FCM or DCO to invest Customer Funds in Specified Foreign Sovereign Debt only to the extent that the FCM or DCO has balances owed to customers denominated in the currency of the applicable country should limit the amount of Customer Funds that an FCM or DCO may invest in

[562] Proposal at 81258.

[563] *Id.* *See also* 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*.

the Specified Foreign Sovereign debt.[564] Additionally, the condition that an FCM or 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 further preserve the principal of customers' foreign currency deposits held by FCMs and DCOs.[565] Lastly, not imposing asset-based or issuer-based concentration limits on an FCM's or 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, the Commission will not adopt asset-based and issuer-based concentration limits for investments in Specified Foreign Sovereign Debt.

As discussed above, the Commission received a substantial number of comments with respect to the issue of asset-based and issuer-based concentration limits pertaining to the proposed limits for Permitted Government MMFs and Qualified ETFs.[566] These include the comments previously discussed from FIA, CME, and BlackRock that advocated for no asset-based concentration limit for Permitted Government MMFs and Qualified ETFs, emphasizing the greater diversification and resiliency such funds provide in times of market stress.[567]

The Commission has considered these comments, but continues to believe that the asset-based concentration limits set forth in the Proposal are an effective tool in ensuring

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[564] Proposed Commission Regulation 1.25(a)(1)(vii).

[565] Proposed Commission Regulation 1.25(f)(3).

[566] *See generally* Section IV.B.b.

[567] FIA/CME Joint Letter at p. 17; BlackRock at pp. 2, 7.

that Customer Funds are invested in a manner that limits risks arising from a high concentration in any particular Permitted Investment asset class. Based on its experience administering its customer protection rules, the Commission declines to allow FCMs and DCOs to invest up to 100 percent of segregated Customer Funds in any category of Permitted Government MMFs and Qualified ETFs.

That the new Permitted Government MMF category is broader in scope than MMFs investing solely in U.S. government securities is particularly relevant here. This new Permitted Government MMF category is 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.[568] The scope of underlying instruments in which a Permitted Government MMF would be allowed to invest is therefore broader than that of the MMFs currently excluded from the concentration limits of Commission 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 proposed, and the Commission is now adopting, 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. agency obligations and/or other instruments within the limits of SEC Rule 2a-7. More precisely, under the Proposal, an

[568] 2000 Permitted Investments Amendment at 78010. The 2000 Permitted Investments Amendment provided in paragraph (a)(1)(vii) of Commission Regulation 1.25 that an FCM or 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.

FCM's or 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 account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.[569] This asset-based concentration limit that the Commission is adopting is 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.

The new Permitted Investment category of Qualified ETFs provides additional flexibility to FCMs and DCOs with respect to the investment of Customer Funds, as FCMs and DCOs could invest 50 percent in Permitted Government MMFs, and the other 50 percent in Qualified ETFs under the Final Rule, which lessens any practical impact of an overall asset-based concentration limit of 50 percent for each type of fund.

Moreover, Commission staff reviewed SIDR Reports filed by FCMs for the period between January 16, 2024 and June 28, 2024. The available data from the reports indicate that FCMs are investing a relatively low proportion of the Customer Funds they hold in MMFs in comparison to direct purchases of U.S. Government Securities, and that such firms' investments in MMFs are sufficiently small that they are unlikely to rise to

[569] Proposed Commission Regulation 1.25(c)(3)(i)(D).

levels that would breach the asset-based concentration limits that the Commission is adopting in this Final Rule.[570]

With respect to issuer-based concentration limits for Permitted Government MMFs and Qualified ETFs, as discussed above, no commenter on this issue supported the proposed 5 percent limit on any individual Permitted Government MMF or Qualified ETF. The commenters differed, however, as to whether the applicable limit for any individual Permitted Government MMF or Qualified ETF should be the 10 percent limit that is the existing limit for certain MMFs, or a higher limit of 25 percent that is applicable to fund families.[571]

In light of these comments, the Commission is adopting issuer-based concentration limits for MMFs and ETFs that differ from those in the Proposal. With respect to the issuer-based concentration limits on Permitted Government MMFs, the Commission proposed to limit investments of Customer Funds in any single family of Government MMFs to 25 percent, consistent with the existing requirements applicable to MMFs, but to reduce the existing 10 percent limit for investments of Customer Funds in any individual Government MMF, to just 5 percent. The Commission proposed the same limits for Qualified ETFs. In proposing stricter concentration limits, the Commission intended to facilitate the preservation of principal and maintenance of liquidity of Customer Funds through sound diversification standards and to mitigate the potential risk

[570] The Commission acknowledges the possibility that FCMs may make greater use of MMFs going forward and may reconsider the asset-based concentration levels for such funds, as appropriate, if that were to occur.

[571] As discussed previously, FIA and CME in their Joint Letter, as well as BlackRock and SIFMA AMG, expressed support for setting the individual fund concentration limit at 10 percent. By contrast, AIMA, Federated Hermes, ICI, and Nodal advocated for a 25 percent limit for any individual fund.

that a large portion of Customer Funds could become inaccessible due to cybersecurity or operational incidents, among other events.[572]

In light of comments received, however, the Commission has determined to raise the proposed 5 percent individual fund concentration limit for both Permitted Government MMFs and Qualified ETFs to 10 percent. In proposing to reduce the individual fund threshold to just 5 percent, the Commission's concerns with respect to the risk to principal and potential lack of sufficient liquidity for both Permitted Government MMFs and Qualified ETFs were illustrated by the 2008 "breaking the buck" by the Reserve Primary Fund as described in the Proposal.[573] But as ICI pointed out, this example involved a prime MMF that held privately issued debt in its portfolio, which will no longer be a Permitted Investment under the Final Rule.[574] Other commenters pointed out other practical challenges with regard to the 5 percent limit relating to the requirement that FCMs and DCOs monitor for compliance with concentration limits across a greater number of funds.[575] Regarding the potential for cyber-attacks, the Commission acknowledges comments highlighting that both Permitted Government MMFs and Qualified ETFs are subject to comprehensive SEC regulatory requirements, which include cyber safeguards.[576] After considering these comments, the Commission has determined that concentration limits of 10 percent for any individual Permitted Government MMF or Qualified ETF, along with the adoption of the Proposal's 25

[572] Proposal at 81257.

[573] *Id*.

[574] ICI at p. 9.

[575] SIFMA AMG at p. 10.

[576] *Id*.

percent limit for any signed family of Permitted Government MMFs or Qualified ETFs, should address the Commission's concerns regarding risk to Customer Funds and cybersecurity risks.

The concentration limits set forth in this Final Rule, including increasing the limit for any individual Permitted Government MMF or Qualified ETF from 5 percent to 10 percent (but not 25 percent, as some commenters recommended as discussed above), should promote both the preservation of principal and maintenance of liquidity of Customer Funds through sound diversification standards, while ensuring that the limit is not set so low that the application of the requirement might not be practical. Even with the higher threshold of 10 percent for individual Permitted Government MMFs and Qualified ETFs, this restriction should mitigate the potential risk that FCMs and DCOs may be unable to access a large portion of Customer Funds due to cybersecurity or operational incidents, among other events.

Although commenters generally criticized any issuer-based concentration limit for Permitted Government MMFs and Qualified ETFs as arbitrary,[577] the Commission has chosen to maintain the existing 10 percent limitation on any individual fund based on its prior experience with this standard. In the Commission's experience, this limit has not proven to be a problem as it applies to current Permitted Investments, and this will not change for Permitted Government MMFs and Qualified ETFs.

Although the foregoing discussion is applicable to both Permitted Government MMFs and Qualified ETFs, a few issues are of particular relevance to Qualified ETFs. As discussed above, for Qualified ETFs, the asset-based and issuer-based concentration

[577] Federated Hermes at p. 2; ICI at pp. 7-8; SIFMA AMG at p. 11.

limits will be the same as those for Permitted Government MMFs. In addition to raising similar objections to the issuer-based concentration limits for Qualified ETFs as for Permitted Government MMFs, commenters specifically noted that few families of ETFs offer more than two eligible funds, making the proposed 5 percent per fund concentration limit overly restrictive.[578] The Commission recognizes that the small number of funds may limit the ability of FCMs and DCOs to fully utilize the Qualified ETFs allocation, but prior to this Final Rule, ETFs were not Permitted Investments at all. Moreover, even if there is only a small number of Qualified ETFs currently, more such ETFs may be created to meet the interest of FCMs and DCOs following the Commission's inclusion of Qualified ETFs in Commission Regulation 1.25. Even if additional Qualified ETFs are not created in response to industry demand, however, because there is a relatively high 50 percent asset-based concentration limit on Permitted Government MMFs that are economically similar to Qualified ETFs, an FCM or DCO should have sufficient flexibility to invest Customer Funds in a combination of Permitted Government MMFs and Qualified ETFs to gain their desired exposure, provided the FCM or DCO determines that such investments are appropriate.

C. Futures Commission Merchant Capital Charges on Permitted Investments

The Commission discussed in the Proposal that Commission Regulations 1.29, 22.2(e)(1), and 30.7(i) provide that FCMs and DCOs, as applicable, are financially responsible for any losses resulting from the investment of futures customer funds,

[578] AIMA at p. 3. FIA/CME Joint Letter at p. 18

Cleared Swaps Customer Collateral, and 30.7 customer funds, respectively.[579] To reserve liquidity for potential losses resulting from the investments of Customer Funds, Commission Regulation 1.17(c)(5)(v) requires an FCM to take prescribed capital charges (or "haircuts") on such investments in computing the firm's regulatory capital.[580] The capital charges are designed to address 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 realized and unrealized losses associated with the Permitted Investments, while also retaining sufficient funds in segregation to fully meet its financial obligation to customers. Commission Regulation 1.17(c)(5)(v) further provides that an FCM must apply the prescribed capital charges specified in Rule 15c3-

[579] Proposal at 81259-60. Specifically, the Commission stated that: (i) Commission Regulation 1.29, 17 CFR 1.29(b), provides that FCMs or DCOs, as applicable, 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; (ii) Commission Regulation 22.2(e)(1), 17 CFR 22.2(e)(1), provides that FCMs 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 Commission Regulation 30.7(i), 17 CFR 30.7(i), provides that FCMs 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.

[580] 17 CFR 1.17(c)(5)(v). Although capital charges do not also apply to DCOs, a DCO is required under Commission Regulation 39.11(a)(2) to maintain financial resources sufficient to enable it to cover its operating costs for a period of at least one year, calculated on a rolling basis. Potential investment losses would be included in the DCO's operating costs.

1[581] under the Securities Exchange Act ("SEC Rule 15c3-1")[582] and Appendix A to SEC Rule 15c3-1[583] to the Permitted Investments.

As discussed in Section IV.A.2. above, the Commission is amending the Permitted Investments under Commission Regulation 1.25 to include Specified Foreign Sovereign Debt instruments (*i.e.*, the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom).[584] Under the Final Rule, the total dollar-weighted average time-to-maturity of each of the portfolios of Canadian, French, German, Japanese, and United Kingdom debt may not exceed 60 calendar days, and the total remaining time-to-maturity for any individual debt instrument may not exceed 180 calendar days.[585]

Pursuant to SEC Rule 15c3-1(c)(2)(vi), an FCM investing Customer Funds in qualifying sovereign debt of Canada would have no capital charge for debt 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 debt instruments with a remaining time-to-maturity of 3 to 6 months.[586] The capital charges for the sovereign debt of France, Germany, Japan, and

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[581] Commission Regulation 1.17(c)(5)(v) provides that an FCM that invests Customer Funds in Permitted Investments must take a charge (or deduction) in the amount specified in SEC Rule 15c3-1(c)(2)(vi) or (vii). 17 CFR 240.15c3-1(c)(2)(vi) and (vii).

[582] SEC Rule 15c3-1 sets forth minimum capital requirements for broker-dealers and specifies standardized haircuts to be applied on the market value of assets held by the broker-dealer for purposes of calculating the minimum capital requirements. SEC Rule 15c3-1(c)(2)(vi) details market risk capital charges for securities, including U.S. Treasury securities, municipal securities, and equity securities. SEC Rule 15c3-1(c)(2)(vii) imposes a capital charge of 100 percent of the carrying value of any securities that are not readily marketable.

[583] 17 CFR 240.15c3-1a. SEC Rule 15c3-1a provides standardized haircuts for equity options and related positions.

[584] Final Commission Regulation 1.25(a)(1)(vi).

[585] Final Commission Regulation 1.25(f)(1) and (2).

[586] 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

the United Kingdom are determined under SEC rules by reference to nonconvertible debt securities with a fixed interest rate, fixed maturity date, and minimal credit risk.[587] Nonconvertible debt securities with 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).[588] The Commission, therefore, proposed capital charges consistent with the above percentages for FCM investments in Specified Foreign Sovereign Debt instruments.[589]

As discussed in Section IV.A.3. above, the Commission is also amending the Permitted Investments under Commission Regulation 1.25 to include interests in Qualified ETFs.[590] Neither SEC Rule 15c3-1 nor Appendix A to SEC Rule 15c3-1 explicitly address capital charges for Qualified ETFs. SEC Rule 15c3-1(c)(2)(vi)(D)(1) does, however, 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 also 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 a creation unit of ETF shares, and a

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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.

[587] 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.

[588] *Id.*

[589] Proposal at 81259-60.

[590] Final Commission Regulation 1.25(a)(1)(v).

capital charge of 6 percent of the market value of ETF shares that do not comprise a full creation unit.[591]

The SEC staff's guidance is applicable to a U.S. Treasury ETF that: (i) is an open-end investment company registered with the SEC under the Investment Company Act of 1940 that issues securities redeemable at the fund's NAV; and (ii) invests solely in cash and government securities that are eligible securities under paragraph (a)(11) of SEC Rule 2a-7, which are 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. The SEC staff position is 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[592] under the

[591] *See generally* SEC ETF Letter, available at the SEC's website: *https://www.sec.gov/divisions/marketreg/mr-noaction/2022/finra-060222-15c3-1.pdf*

[592] 17 CFR 240.15c6-1.

Securities Exchange Act of 1934. Based on the SEC's guidance regarding the capital charges for U.S. Treasury ETFs, and the Commission's general incorporation of the SEC capital charges for Permitted Investments as set forth in Commission Regulation 1.25(c)(5)(v), the Commission proposed that FCMs investing Customer Funds in redeemable shares (*i.e.,* creation units) of a Qualified ETF must apply a capital charge equal to 2 percent of the fair market value of the shares in computing the firm's regulatory capital.[593]

The Commission received two comments on the capital charges for Specified Foreign Sovereign Debt and Qualified ETFs. BlackRock expressed support for the 2 percent FCM capital charge on the shares of Qualified ETFs held as Permitted Investments.[594] FIA and CME requested that the Commission simplify and clarify the definition of a Qualified ETF to better align the eligibility conditions for Qualified ETFs with the SEC's guidance on capital charges.[595] The Commission is adopting the FCM capital charges for Specified Foreign Sovereign Debt and Qualified ETF shares held as Permitted Investments shares as proposed. In addition, in a modification from the Proposal, the Commission is not restricting FCMs and DCOs from buying and selling Qualified ETF shares through secondary market transactions, provided that such transactions otherwise comply with the Commission's segregation regulations and liquidity requirements. Therefore, consistent with the capital charge specified in the SEC

[593] Proposal at 81260. The Commission proposed to permit Qualified ETFs as a Permitted Investment provided the FCM or DCO transacted with the Qualified ETF for the purchase or sale of full creation or redemption units (*i.e.*, redeemable securities). As the Proposal did not permit the investment of Customer Funds in Qualified ETFs in non-creation unit sizes, the Commission did not explicitly address the 6 percent capital requirement specified in the SEC ETF Letter.

[594] BlackRock at pp. 2, 6-7.

[595] FIA/CME Joint Letter at p. 11.

ETF Letter, the applicable capital charge for Qualified ETF shares that do not comprise a full creation unit is 6 percent.[596] The Commission intends to keep these capital charges consistent with the SEC to ensure that FCMs, many of whom are also broker-dealers, will only have to comply with a single set of capital charges. Consistency in requirements between the SEC and the Commission, which has long been a defining characteristic of the Commission's regulatory approach to FCM capital, should foster a more level playing field, ultimately promoting trust and integrity within the market.

D. Segregation Investment Detail Report

Commission Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) require each FCM to submit a SIDR Report twice each month to the Commission and the firm'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, and 30.7 customer funds, respectively.[597] The SIDR Report also identifies the amount of futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds invested in each category of Permitted Investments: (i) U.S. Treasury securities; (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 Commission proposed to amend the content of the SIDR Report to reflect the proposed amendments to the list of Permitted Investments detailed in the Proposal. Specifically, the Commission proposed to amend the content of the SIDR Report by: (i)

[596] *See generally* SEC ETF Letter.

[597] Proposal at 81260-61.

limiting the reporting of MMFs to Permitted Government MMFs; (ii) deleting the reporting of balances invested in commercial paper, corporate notes and bonds, and bank CDs;[598] (iii) adding the reporting of balances invested in the Specified Foreign Sovereign Debt of each particular foreign jurisdiction (*i.e.*, individual reporting for Canada, France, Germany, Japan, and the United Kingdom); and, (iv) adding balances invested in Qualified ETFs.[599]

The Commission did not receive any comments on the proposed amendments to the SIDR Report. Therefore, the Commission is amending the content of the SIDR Report specified in Commission Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) as proposed, to reflect the amendments to the list of Permitted Investments adopted in this Final Rule and reflected in Final Commission Regulation 1.25(a)(1).

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

Commission regulations currently provide that an FCM may deposit Customer Funds only with depositories and custodians that agree to provide the Commission with direct, read-only electronic access to the Customer Fund accounts ("Read-only Access Provisions").[600] The Commission adopted the Read-only Access Provisions in 2013 as part of its regulatory reforms to enhance the Commission's customer protection regime in

[598] In the Proposal, the Commission stated that if the Commission eliminated bank CDs as a Permitted Investment in the final rulemaking, the Commission would also amend Commission Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to remove references to bank CDs from the SIDR Report template. Proposal at 81261 (n. 264).

[599] Proposal at 81260-61.

[600] The Read-only Access Provisions are set forth in Commission Regulation 1.20, Appendix A to Commission Regulation 1.20, and Appendix A to Commission Regulation 1.26, for futures customer funds; Commission Regulation 22.5 for Cleared Swaps Customer Collateral; and, Commission Regulation 30.7 and Appendices E and F to Part 30 of the Commission's regulations for 30.7 customer funds.

response to the failure of two FCMs that violated customer fund segregation statutory and regulatory requirements, which resulted in shortfalls in Customer Funds balances.[601] Along with other regulatory measures, the Read-only Access Provisions were designed to address concerns regarding the efficacy of the Commission's oversight program to monitor FCM activities, verify Customer Funds balances, and detect fraud.[602]

By adopting the Read-only Access Provisions, the Commission established a mechanism to enable Commission staff to review and identify discrepancies between an FCM's daily segregation reports[603] and customer fund balances on deposit at various depositories.[604] The Commission also adopted template acknowledgment letters in Appendix A to Commission Regulation 1.20 and Appendix E to Part 30 of the Commission's regulations requiring, among other things,[605] that a 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."[606] The template acknowledgment letters in Appendix A to Commission Regulation 1.26 and

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[601] 2013 Protections of Customer Funds Release at 68509.

[602] *Id.* at 68510.

[603] Commission 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 to demonstrate the FCM's compliance with its obligation to hold a sufficient amount of funds in segregated accounts to pay the full account balance of each customer.

[604]2013 Protections of Customer Funds Release at 68537 and 68580.

[605] 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.

[606] 17 CFR Appendix A to 1.20, 17 CFR Appendix E to Part 30.

Appendix F to Part 30 contain similar provisions with respect to MMF accounts in which FCMs hold customer segregated funds.[607]

When adopting the Read-only Access Provisions, the Commission 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 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.[608] 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.[609]

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. 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.[610]

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[607] 17 CFR Appendix A to 1.26, 17 CFR Appendix F to Part 30.

[608] 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).

[609] *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 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*.

[610] At the time the Commission issued the 2013 Protections of Customer Funds Release, CME and NFA had just recently launched the programs. 2013 Protections of Customer Funds Release at 68512. The

These programs generate alerts for discrepancies that exceed defined thresholds. When such alerts occur, CME/NFA staff conduct analysis and follow-up actions, which include engaging with an FCM to clarify or remedy the situation, and documenting 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 demonstrated 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.[611] The Commission 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 for provision of any other information regarding or related to an account, to ensure that staff have timely access to information concerning Customer Funds from depositories.[612]

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verification programs have developed further 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.

[611]2013 Protections of Customer Funds Release at 68537 (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 reduce the need to rely upon direct electronic access to account information at depositories).

[612]Commission 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, Commission 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. Commission Regulation 1.20(d)(6) provides

The Commission has encountered various practical challenges in implementing the Read-only Access Provisions. Due to the number of depositories utilized by FCMs, as well as the total number of accounts that FCMs maintain with various depository institutions, the Commission must obtain and keep a current log of credentials, 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.[613] 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.[614] Furthermore, due to lack of infrastructure, some foreign depository institutions are unable to provide direct electronic access to the customer segregated accounts, offering instead to provide end-of-day account 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

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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. Commission 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. Commission Regulation 22.5 provides that an FCM must obtain a written acknowledgment letter in accordance with Commission Regulation 1.20 and Commission 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.

[613] 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.

[614] Depositories often require Commission staff to update 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.

using the Read-only Access Provisions as intended.[615] 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 proposed to eliminate the Read-only Access Provisions in Commission Regulations 1.20 and 30.7, and Appendix A to Commission Regulation 1.20, Appendix A to Commission Regulation 1.26, and Appendices E and F to Part 30 of the Commission's regulations.

The Commission received two comments regarding the proposed elimination of the Read-only Access Provisions.[616] NFA supported the Commission's Proposal, stating that NFA and CME, collectively, receive account balance information each business day directly from all depositories holding Customer Funds for FCMs.[617] Furthermore, NFA stated that it and CME have programs that compare daily balances reported by depositories holding Customer Funds to balances reported by FCMs in their daily segregation schedules.[618] NFA also stated that when there is a discrepancy in reported balances that exceed defined thresholds, alerts are generated and staff conduct appropriate analysis and prompt follow up with an impacted FCM to clarify and remedy the situation, if necessary, and document this work.[619] In light of its program, NFA

[615] Commission staff has not had a regulatory need to attempt to use read-only access for any FCM's depository accounts since it was implemented over 10 years ago.

[616] Eurex at p. 3; NFA at p. 2.

[617] NFA at p. 2.

[618] *Id.*

[619] *Id.*

stated that it does not believe that the Commission's Read-only Access Provisions provide any meaningful additional customer protection.[620]

Eurex also supported the Commission's proposal to eliminate the Read-only Access Provisions, stating that it fully agrees with the Proposal's rationale regarding the effectiveness of the CME and NFA daily segregation confirmation and verification process.[621] Eurex further stated that the Read-only Access Provisions posed substantial challenges, which Eurex believes do not bring any corresponding benefits given the existing CME and NFA confirmation and verification processes.[622]

The Commission has considered the comments and is eliminating the Read-only Access Provisions as proposed for the reasons stated in the Proposal. Therefore, the Commission is eliminating the Read-only Access Provisions in Commission Regulations 1.20(d)(3) and 30.7(d)(3), and Appendix A to Commission Regulation 1.20 (redesignated as Appendix C to Part 1), Appendix A to Commission Regulation 1.26 (redesignated as Appendix F to Part 1), and Appendices E and F to Part 30 of the Commission's regulations.[623]

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[620] *Id*.

[621] Eurex at p. 3.

[622] *Id.*

[623] These amendments also apply to Commission 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 Commission Regulations 1.20 and 1.26. 17 CFR 22.5(a). Commission Regulation 22.5(b) further requires FCMs to adhere to all requirements specified in Commission Regulations 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 redesignating Appendices A and B to Commission Regulation 1.20 as Appendices C and D to Part 1, and Appendices A and B to Commission 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.

Consistent with the position stated in the Proposal, FCMs will not need to obtain new acknowledgment letters for existing accounts at depositories holding Customer Funds reflecting the elimination of the Read-only Access Provisions.[624] Instead, revised acknowledgment letters must be obtained only for accounts opened following the effective date of the rule amendments, or in the event that the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the elimination of the Read-only Access Provisions after the effective date of the rule amendments.

F. Revisions to the Customer Risk Disclosure Statement

Commission Regulation 1.55(a) currently requires an FCM, or an introducing broker ("IB") in the case of an introduced account, to provide each customer that is not an "eligible contract participant" a written risk disclosure statement prior to opening the customer's account ("Risk Disclosure Statement").[625] Commission Regulation 1.55(a) further requires the FCM or IB to receive a signed and dated statement from the customer acknowledging the receipt and understanding of the Risk Disclosure Statement.[626] The Commission has specified standardized language for the disclosures that are required to be included in the Risk Disclosure Statement. The disclosures address risks associated with transaction in cleared derivatives, customer segregation, and bankruptcy.

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[624] Proposal at 81262.

[625] 17 CFR 1.55(a). The term "eligible contract participant" is defined in section 1a(18) of the CEA and Commission Regulation 1.3. 7 U.S.C. 1a(18) and 17 CFR 1.3. The definition covers various CFTC-regulated entities meeting specified conditions, including swap dealers, FCMs, and commodity pools with over $5 million in assets under management, as well as various types of other federally-regulated financial institutions such as certain banks, broker-dealers, insurance companies, pension plans, as well as corporations and other forms of corporate entities with over $10 million in assets, and individuals with $10 million invested on a discretionary basis or $5 million invested on a hedging basis. Certain other exclusions and conditions apply with respect to these various types of designated entities and individuals.

[626] *Id*.

Furthermore, Commission Regulation 1.55(b)(6) requires the Risk Disclosure Statement to include the following disclosure: "The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission may invest customer funds in."

Although certain conforming amendments to Commission Regulation 1.55 are necessary to reflect the changes to the list of Permitted Investments in Commission Regulation 1.25, the Commission omitted to include a discussion of potential amendments to Commission Regulation 1.55(b)(6) in the Proposal. The Commission is now adopting technical, conforming amendments to Commission Regulation 1.55(b)(6) to: (i) delete the reference in the Risk Disclosure Statement to investments in corporate notes and bonds; (ii) clarify that only certain MMFs may be Permitted Investments, and (iii) add investments in Specified Foreign Sovereign Debt and Qualified ETFs, which reflect the revised list of Permitted Investments that are being adopted under this Final Rule. As amended, the disclosure will state: "The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation

1.25 and include: U.S. government securities; municipal securities; certain money market funds; certain foreign sovereign debt, and U.S. Treasury exchange-traded funds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in."[627]

The Commission is not requiring FCMs and IBs to obtain revised Risk Disclosure Statements from existing customers due to the technical amendment. FCMs and IBs are required to use the amended Risk Disclosure Statement for any customers onboarded on or after the compliance date of March 31, 2025. The Commission is setting an extended compliance date to provide FCMs and IBs with sufficient time to make any necessary system changes to reflect the revised Risk Disclosure Statement, which is generally prepared as an electronic document. The extended compliance period also addresses the fact that the Proposal did not include a discussion of proposed conforming amendments to Commission Regulation 1.55.

V. Section 4(c) of the Act

With respect to an FCM's or DCO's investment of futures customer funds, the amendments to Commission Regulation 1.25 are being promulgated under Section 4d(a)(2) of the Act.[628] Section 4d(a)(2) provides that an FCM or DCO may invest futures customer funds in U.S. government securities and municipal securities. Section 4d(a)(2) 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.

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[627] Final Commission Regulation 1.55(b)(6).

[628] 7 U.S.C. 6d(a)(2).

Pursuant to its authority under Section 4(c)[629] of the Act, the Commission proposed 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.[630] 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 transactions. In enacting Section 4(c), Congress' goal was "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."[631] The Commission

[629] 7 U.S.C. 6(c). 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) and 4(b) of the Act, respectively, rather than Section 4(c). 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.") and 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).

[630] 7 U.S.C. 6(c)(1).

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

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.[632]

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.[633] When Section 4(c) was enacted, the Conference Report accompanying the Futures Trading Practices Act of 1992 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."[634] The definition of "public interest" in this context is consistent with the purposes of the Act as described in Section 3(b) of the Act.[635]

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[632] 7 U.S.C. 6(c)(1).

[633] 7 U.S.C. 6(c)(2).

[634] Public Law 102-546, 106 Stat. 3590 (1992) and 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."

[635] 7 U.S.C. 5(b) (providing that "it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act 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.")

In the Proposal, the Commission detailed its preliminary analysis 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 DCO. The discussion in the Proposal focused on how the proposed expansion is, in the Commission's view, consistent with the public interest and the purposes of the Act.[636]

The Commission solicited public comment on whether the Proposal satisfies the requirements for exemption under Section 4(c) of the Act. Commenters criticizing the expansion of Permitted Investments to Specified Foreign Sovereign Debt asserted that this expansion could put customers at undue financial risk[637] and "might compromise the protection of customer funds in favor of expanding the financial industry's quest for wider investment options."[638] Better Markets further stated that the Commission has not provided an adequate public benefit-oriented justification for adding this new type of investment to Commission Regulation 1.25.[639] The Investor Advocacy Group also argued that the Commission should not "embed" the goal of profits into the "fabric" of its definition of the public interest by including potential revenue and profits for FCMs as a public interest purpose.[640] Better Markets also asserted that higher profits "do not inherently guarantee reduced customer charges."[641] Finally, the Investor Advocacy Group argued that the public interest language in the Act is not intended to promote the

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[636] Proposal at 81264. The analysis did 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.

[637] Investor Advocacy Group Joint Letter at p. 1; Better Markets at p. 3.

[638] Better Markets at p. 3.

[639] *Id.*

[640] Investor Advocacy Group Joint Letter at pp. 1-2.

[641] Better Markets at 4.

financial interests of the exchanges or dealers, but to protect the public and markets from fraud.[642]

The Commission acknowledges the concerns raised by commenters but after consideration it maintains that the expansion to the list of Permitted Investments adopted in the Final Rule is consistent with the conditions in Section 4(c) of the Act as they apply to an exemption with respect to an FCM or DCO. The discussion below describes why the Commission has determined that the exemption granted and the expansion adopted in the Final Rule is consistent with the public interest and the purposes of the Act as required pursuant to Section 4(c)(2)(A) of the Act.[643] The amendments to the Permitted Investments adopted in this Final Rule should provide FCMs and DCOs with an opportunity to diversify their investments of futures customer funds, mitigating the risks that can arise from concentrating futures customer funds in a smaller set of Permitted Investments, without compromising the safety of such investments. To qualify as Permitted Investments, the instruments subject to this Final Rule must meet strict conditions to ensure that investments of futures customer funds are consistent with the objective of preserving principal and maintaining liquidity, as required by Commission Regulation 1.25. The additional Permitted Investments that the Commission is adding to

[642] Investor Advocacy Groups Joint Letter at p. 2.

[643] Consistent with the Proposal, the analysis does not include a discussion of Section 4(c)(2)(B)'s conditions *(i.e.*, that the agreement, contract, or transaction will be entered solely between "appropriate persons" and will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under the Act) because the exemption in this instance does not implicate or affect a futures agreement, contract, or transaction.

Commission Regulation 1.25 present credit and volatility characteristics that are comparable to instruments that already qualify as Permitted Investments.

The Final Rule permits FCMs and DCOs to invest futures customer funds only in the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom and only to the extent that the FCMs' and DCOs' hold balances owed to customers denominated in the applicable currency. As noted in Section IV.2.b. above, FCMs held collectively a U.S. dollar equivalent of $64 billion of Customer Funds denominated in CAD, EUR, JPY, and GBP in August 2024. The ability for FCMs and DCOs to invest such Customer Funds in the applicable Specified Foreign Sovereign Debt instruments reduces potential currency risk that DCOs, FCMs, and customers would otherwise be exposed to as a result of investing such foreign currencies in U.S.-dollar denominated assets.

The Final Rule further conditions an FCM's or DCO's investment in Specified Foreign Sovereign Debt to mitigate potential credit and liquidity risk. The Final Rule provides that an FCM's or DCO's portfolio of investments must have a dollar-weighted average time-to-maturity of 60 calendar days or less, which will mitigate price risk and liquidity risk of the debt securities by providing an FCM with an option of holding the securities to maturity and not liquidating the securities at a loss. The Final Rule also mitigates credit risk by prohibiting an FCM or DCO from purchasing new debt securities if the two-year credit default spread of the applicable foreign sovereign exceeds 45 BPS.

In addition, permitting investments in Qualified ETFs, subject to the adopted 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 DCOs may use to manage the risk of holding futures customer funds. Qualified ETFs also provide potential benefits to FCMs, particularly smaller FCMs, that may lack 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 Commission Regulation 1.25 for the preservation of principal and liquidity of Permitted Investments.

Although higher profits for FCMs do not "guarantee" lower costs to customers,[644] one can reasonably infer that if FCMs and DCOs obtain an additional source of income, they may be less likely to increase the cost of their services, even if such a result cannot be guaranteed. In turn, lower costs for customers may lead to greater market participation and increased market liquidity.

An expanded list of Permitted Investments should thus increase the likelihood that FCMs and DCOs will continue as viable businesses and remain available for customers at a time when the overall number of FCMs continues to decrease. Without the ability to generate revenue and operate at a profit sufficient to remain a going concern, FCMs, which are central to a well-functioning commodity interest market, may continue to exit the business, which would disrupt the ability of farmers, financial service providers, and other commercial enterprises to effectively manage the commodity risk associated with

[644] Better Markets at p. 4.

their businesses. A smaller number of FCMs would also concentrate risk associated with Customer Funds in fewer firms, increasing the potential for systemic risk due to the potential for significant disruption should one of the remaining FCMs fail. This is particularly an issue in situations where an FCM is required to liquidate under a bankruptcy proceeding and port Customer Funds and positions to other FCMs. To efficiently and effectively manage such a process, the market needs other financially sound FCMs that are willing to receive the positions and funds of the customers of the failing FCM. Without the available capacity, customers may be required to liquidate positions that hedge cash market or other exposures. Therefore, promoting the continued participation of FCMs and DCOs in the market is a public benefit to customers, the efficient operation of the commodity interest markets, and the public in general.

Moreover, additional investment options may also motivate FCMs or DCOs to increase their presence in the commodity interest markets, or encourage new entrants to the industry, thereby increasing competition, which could result in reduced costs to customers and an increase in trading activity and liquidity, which supports efficient price discovery.

Based on the considerations discussed above, the Commission finds that the amendments to the list of Permitted Investments promote responsible economic and financial innovation and fair competition. By providing opportunities for investment diversification and risk management, promoting the continued participation of FCMs and DCOs in the market, and encouraging new entrants to the industry, the expansion of the list of Permitted Investments is consistent with the "public interest" and the purposes of

the Act. Thus, the Commission has determined that the Final Rule meets the conditions in Section 4(c) of the Act.

VI. Compliance Dates

The compliance date for the Final Rule is the effective date of this release, except for the amendments to the SIDR Report, which are specified in Commission Regulations 1.32, 22.2(g)(5), and 30.7(l)(5), and the amendments to the customer Risk Disclosure Statement required under Commission Regulation 1.55.

As discussed in Section IV.D., the Commission is amending the SIDR Report required under Commission Regulations 1.32, 22.2(g)(5), and 30.7(l)(5) to align with the revisions to the list of Permitted Investments adopted herein. Specifically, the Commission is amending the content of the SIDR Report by: (i) revising the reporting of MMFs to include balances invested only in Permitted Government MMFs; (ii) deleting the reporting of balances invested in commercial paper, corporate notes and bonds, and bank CDs; (iii) adding the reporting of balances invested in the Specified Foreign Sovereign Debt of each particular foreign jurisdiction (*i.e.*, individual reporting for Canada, France, Germany, Japan, and the United Kingdom); and, (iv) adding balances invested in Qualified ETFs.

In addition, as discussed in Section IV.F., the Commission is revising the Risk Disclosure Statement that an FCM or IB is required to provide to a customer prior to the opening of an account. The Final Rule amends Commission Regulation 1.55(b)(6) by removing corporate notes and bonds from, and by adding Specified Foreign Sovereign Debt and Qualified ETFs to, the list of Permitted Investments that an FCM is authorized to enter into with Customer Funds.

The Commission is setting a compliance date of March 31, 2025 for the amendments to the SIDR Report and Risk Disclosure Statement. The compliance period is intended to provide FCMs with an opportunity to make any necessary updates to their policies, procedures, systems, and practices resulting from the amendment to the SIDR Report. The compliance period will also allow the Commission, NFA, and CME to make necessary updates to the electronic filing systems that are currently used to receive and process the SIDR Reports submitted by FCMs. The compliance period also provides FCMs and IB with time to update their Risk Disclosure Statements and to make necessary revisions to any electronic account opening documents and processes.

VII. 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 impact.[645] 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,[646] a regulatory flexibility analysis or certification typically is required.[647] As discussed in the Proposal, the amendments being adopted herein affect FCMs and DCOs. The Commission has previously determined that registered FCMs and DCOs are not small entities for purposes of the RFA.[648] Accordingly, the Chairman, on behalf of the

[645] 5 U.S.C. 601 *et seq*.

[646] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq*.

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

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

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")[649] imposes certain requirements on Federal agencies, including the Commission, 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").[650] 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.[651] 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.[652]

[649] 44 U.S.C. 3501 *et seq*.

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

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

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

This final rulemaking amends regulations that contain collections of information for which the Commission has previously received control numbers from OMB. The titles for these collections 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.[653]

The Commission requested public comment on all aspects of its burden analysis under the PRA in the Proposal. No comments were received addressing the PRA analysis. As further discussed below, however, based on public comments received and conversations with industry representatives, the Commission has concluded that it is not necessary to provide a new template acknowledgement letter for investments in Qualified ETFs. Accordingly, as described below, the Commission has concluded that the amendments introduced by this Final Rule do not contain any new collections of information and will not increase the burden associated with the information collections contained in the affected regulations.

As discussed in Section IV.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 amending Commission Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Report, by: (i) deleting the requirement for an FCM to report the balances invested in

[653] 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*.

commercial paper, corporate notes and bonds, and bank CDs as such investments would no longer be Permitted Investments under the Final Rule; (ii) requiring 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 (iii) requiring 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 are now Permitted Investments. As such, the changes to the content of the SIDR Reports would reflect the revisions to the list of Permitted Investments discussed in Section IV.A. above. The Commission does not expect these 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.[654]

In addition, the Commission is revising Commission 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. Commission Regulation 1.26 also specifies the form of the written acknowledgment letter that each FCM or DCO must obtain from an MMF, in the

[654] The Commission has previously estimated that compliance with the requirements under Commission 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).

event futures customer funds are held directly with the MMF. Commission Regulations 22.5 and 30.7(d) set forth similar requirements with respect to Cleared Swaps Customer Collateral and 30.7 customer funds. The amendments to Commission Regulation 1.26 require FCMs and DCOs investing Customer Funds in a Permitted Government MMF 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 adopting an analogous amendment to Commission Regulation 30.7(d)(2) with respect to investments of 30.7 customer funds by FCMs.[655] The revisions to Commission Regulations 1.26 and 30.7(d) should reduce the number of MMFs from which FCMs and DCOs, as applicable, will be required to obtain an acknowledgment letter by limiting the requirement to Permitted Government MMFs, a smaller set of MMFs. The addition of Qualified ETFs to the list of Permitted Investments is not expected to create a new acknowledgment letter requirement, as Qualified ETF shares will be held in the customer segregated accounts maintained by the FCM's or DCO's custodian, from which the FCM or DCO had to obtain an acknowledgement letter pursuant to Commission Regulations 1.20, 22.5, and 30.7(d).[656] This is consistent with the Commission's understanding of current practices.[657]

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[655] An amendment to Commission Regulation 22.5 is not necessary because Commission Regulation 22.5 cross-references Commission Regulation 1.26.

[656] For any Permitted Investment, other than investment in Permitted Government MMFs, FCMs and DCOs are required to obtain an acknowledgement letter pursuant to Commission Regulations 1.20, 22.5, and 30.7(d). 17 CFR 1.20, 22.5, and 30.7(d).

[657] The Commission had proposed to add new template acknowledgment letters modeled on the acknowledgment letter under Commission Regulation 1.26 for MMFs but addressing investments in Qualified ETFs (proposed Appendices H and I to Part 1 and proposed Appendix G to Part 30). Based on public comments received and communications with industry representatives, the Commission has concluded that it is not necessary to provide such new template acknowledgment letters. Instead, FCMs and DCOs will be able to follow the process for Permitted Investments other than Permitted Government

As discussed in Section IV.F. above, FCMs and IBs are required to provide each customer that is not an "eligible contract participant" a Risk Disclosure Statement prior to opening the customer's account.[658] The Commission is adopting technical amendments to Commission Regulation 1.55(b) to account for changes in the list of Permitted Investments in Commission Regulation 1.25 by: (i) deleting the reference in the Risk Disclosure Statement to investments in corporate notes and bonds; (ii) clarifying that only certain MMFs may be Permitted Investments, and (iii) adding investments in Specified Foreign Sovereign Debt and Qualified ETFs. The Commission is not requiring FCMs and IBs to obtain revised Risk Disclosure Statements from existing customers due to the technical amendments. FCMs and IBs are required to use the amended Risk Disclosure Statement for any customers onboarded on or after the compliance date of March 31, 2025. Accordingly, the Commission is retaining its existing burden estimates associated with this collection of information.[659] Additionally, the Commission does not expect the technical, conforming amendments to result in an increase in the number of burden hours required for customers to review and acknowledge the amended Risk Disclosure Statement.

Also, in connection with the revisions related to the elimination of the Read-only Access Provisions, an FCM will need to obtain the revised acknowledgment letter only

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MMFs and obtain an acknowledgment letter pursuant to Commission Regulations 1.20, 22.5, and 30.7(d), using the template under Commission Regulation 1.20 (redesignated as Appendix C to Part 1).

[658] For the definition of "eligible contract participant," see *supra* note 625.

[659] The Commission has previously estimated that compliance with the requirements under Commission Regulation 1.55. The Commission has estimated that 59 respondents will incur an annual burden of 20 hours per statement. Supporting Statement for Revised Information Collections for Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs (OMB Control 3038-0024) and Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral (OMB Control Number 3038-0091).

for accounts opened following the effective date of the 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 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.[660]

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.[661] 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: (i) protection of market participants and the public; (ii) efficiency, competitiveness and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest

[660] The Commission has estimated that 36 covered FCMs incur an estimated 216 burden hours annually to file required acknowledgment letters pursuant to Commission 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 Commission 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 Commission 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 Commission 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.

[661] 7 U.S.C. 19(a).

considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations.

As described in more detail in Section IV.A. above, the Commission is revising the list of Permitted Investments in Commission Regulation 1.25(a) to: (i) add Specified Foreign Sovereign Debt and interests in Qualified ETFs; (ii) limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs; and (iii) eliminate commercial paper, corporate notes or bonds, and bank CDs. The Commission is amending the Risk Disclosure Statement specified in Commission Regulation 1.55 that FCMs are required to provide to certain customers to reflect the revisions to the list of Permitted Investments. The Commission is further amending the asset-based and issuer-based concentration limits for Permitted Investments to reflect the revisions to the investments that FCMs and DCOs may make with Customer Funds. The Commission is further specifying the capital charges that FCMs, in computing their regulatory capital, are required to take on investments of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs. The Commission is also amending Commission Regulation 1.25(b)(2)(iv)(A)(*1*) and (*2*) by replacing LIBOR with SOFR as a permitted benchmark for Permitted Investments with an adjustable interest rate. The Commission is also revising relevant provisions in Parts 1 and 30 of the Commission's regulations to eliminate the requirement for FCMs to ensure that each depository that it uses to hold Customer Funds provides the Commission with read-only electronic access to the account. Finally, the Commission is adopting certain conforming and technical revisions to its regulations to reflect or incorporate the amendments above.

The Commission recognizes that the Final Rule may impose costs. 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 the amendments on all activity subject to the 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 its effect on, U.S. commerce under Section 2(i) of the Act.[662]

The Commission has endeavored to assess the expected costs and benefits of the Final Rule in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the Final Rule. Additionally, any initial and recurring compliance costs for any particular FCM or DCO will depend on its size, existing infrastructure, practices, and cost structure.

To further inform the Commission's consideration of the costs and benefits imposed by the Proposal, the Commission invited comments from the public on all

[662] 7 U.S.C. 2(i).

aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed by the Commission; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission did not receive comments specific to the benefits and costs of the Proposal. To the extent that the Commission received comments that indirectly address the costs and benefits of the Proposal, those comments are discussed below.

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

The Commission requested comment 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 Commissions regulations governing the investment of Customer Funds and related requirements. Commenters generally supported the proposed amendments to Commission Regulation 1.25, with two commenters opposed to the proposed addition of Specified Foreign Sovereign Debt to the list of Permitted Investments. The commenters supporting the Proposal also recommended or requested revisions to several proposed amendments and proposed conditions specified in the Proposal; however, no specific costs were identified by these commenters that would affect DCOs and FCMs as a result of the changes.

1. Specified Foreign Sovereign Debt, Interests in Qualified Exchange-Traded Funds, and Associated Capital Charges

The Final Rule expands the list of Permitted Investments that an FCM and DCO may enter into with Customer Funds by adding Specified Foreign Sovereign Debt (*i.e.*, the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom).[663] The Final Rule provides that an FCM or DCO may invest Customer Funds in Specified Foreign Sovereign Debt subject to the following conditions: (i) the investment by an FCM or DCO in the debt securities of Canada, France, Germany, Japan, and the United Kingdom is limited to balances owed to customers denominated in CAD, EUR, JPY, and GBP, respectively; (ii) the dollar-weighted average of the remaining time-to-maturity of the portfolio of investments in Specified Foreign Sovereign Debt, computed on a country-by-country basis, may not exceed 60 calendar days; (iii) the remaining time-to-maturity in any Specified Foreign Sovereign Debt security may not exceed 180 calendar days; and (iv) the FCM or DCO does not make any new investments, and discontinues investing Customer Funds through Repurchase Transactions as soon as possible, if the two-year credit default spread of the relevant foreign sovereign exceeds 45 BPS.[664]

The Final Rule also permits FCMs and DCOs to engage in Repurchase Transactions involving Specified Foreign Sovereign Debt with a broader group of counterparties than otherwise permitted[665] by authorizing transactions with: (i) a foreign

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[663] Final Commission Regulation 1.25(a)(1)(vi).

[664] Final Commission Regulation 1.25(a)(1)(vi)(A) and (B), and Final Commission Regulation 1.25(f).

[665] Commission Regulation 1.25(d)(2) currently permits an FCM and DCO to engage in Repurchase Transactions involving Customer Funds with counterparties that are: (i) Section 3(a)(6) banks; (ii) a domestic branch of a foreign bank insured by the FDIC; or (iii) a securities broker or dealer, or a

bank that maintains in excess of $1 billion in regulatory capital and is located in a money center country[666] or in a jurisdiction that has adopted the currency in which the Specified Foreign Sovereign Debt is denominated as its currency; (ii) a securities broker or dealer located in a money center country and regulated by a national financial regulator (or a provincial financial regulator with respect to a Canadian securities broker or dealer), and (iii) the Bank of England, the Banque de France, the Bank of Japan, the Deutsche Bundesbank, or the European Central Bank.[667]

The Final Rule also expands the type and number of custodians that FCMs and DCOs may use to hold securities received under Repurchase Transactions. In addition to current permitted custodians,[668] Final Commission Regulation 1.25(d)(7) provides that an FCM or DCO may hold Specified Foreign Sovereign Debt securities received under an agreement to resell the securities in a safekeeping account at a foreign bank that maintains regulatory capital in excess of $1 billion and is located in a money center country.[669] The Final Rule also adds the Bank of England, the Banque de France, the Bank of Japan, the Deutsche Bundesbank, and the European Central Bank as permitted custodians for securities received under agreements to resell the securities.[670]

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government securities broker or government securities dealer that is registered with the SEC or that has filed a notice pursuant to Section 15C(a) of the Government Securities Act of 1986.

[666] Commission Regulation 1.49(a)(1) defines "money center country" as Canada, France, Italy, Germany, Japan, or the United Kingdom.

[667] Final Commission Regulation 1.25(d)(2).

[668] Commission Regulation 1.25(d)(7) currently permits an FCM or DCO to hold securities received under Repurchase Transactions in safekeeping accounts with a Section 3(a)(6) bank, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a Federal Reserve Bank, a DCO, or the Depository Trust Company in account that complies with Commission Regulation 1.26.

[669] Final Commission Regulation 1.25(d)(7).

[670] *Id.*

The Final Rule also expands the list of Permitted Investments by adding Qualified ETFs.[671] To be eligible as a Permitted Investment, a Qualified ETF must be an investment company that is registered under the Investment Company Act of 1940, and must hold itself out to investors as an exchange-traded fund in accordance with SEC Rule 270.2a-7.[672] A Qualified ETF also must engage in an investment program 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 time-to-maturity of 12 months or less, issued by, or unconditionally guaranteed as to timely payment of principal and interest by, the U.S. Department of the Treasury.[673] Specifically, the Qualified ETF must invest 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 cash. In addition, the FCM or DCO must be able to redeem or liquidate, as applicable depending on whether the transaction is intermediated by a third-party authorized participant, the Qualified ETF interests in cash within one business day of a redemption request.[674] As discussed in Section IV.A.3. above, the Commission understands that an FCM or DCO should be able to arrange for the timely redemption or liquidation of Qualified ETF interests in cash either through an agreement with an authorized participant or by being an authorized participant itself with the necessary arrangements in place to convert U.S. Treasury securities into cash within one business day of the redemption request. Under the Final Rule, however, Qualified ETFs will be able to rely on Commission Regulation

[671] Final Commission Regulation 1.25(a)(1)(v).

[672] Final Commission Regulation 1.25(c)(1)

[673] Final Commission Regulation 1.25(a)(1)(v).

[674] Final Commission Regulation 1.25(c)(8).

1.25(c)(5)(ii), as applicable, and provide for the postponement of redemption and payment due to certain enumerated emergency situations.[675] The Commission also specified the capital charges that an FCM is required to take on any investment of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs in computing its regulatory capital to meet its minimum requirement under Commission Regulation 1.17. Specifically, the Final Rule provides that there is no capital charge for Canadian sovereign debt instruments with a remaining time-to-maturity of less than 3 months, and a capital charge of 0.5 percent of the market value of Canadian sovereign debt instruments with a remaining time-to-maturity of 3 to 6 months. Under the Final Rule, the capital charge for the sovereign debt of France, Germany, Japan, and the United Kingdom is 2 percent of the market value of the debt security.[676] The Final Rule further requires an FCM to take a 2 percent capital charge on the market value of Qualified ETF shares that comprise a full creation or redemption unit, and a 6 percent capital charge on Qualified ETF shares that do not comprise a full creation or redemption unit. The capital charges adopted herein are consistent with market risk capital charges imposed by the SEC on brokers and dealers holding proprietary positions in Specified Foreign Sovereign Debt instruments and Qualified ETF shares.[677] The FCM capital charges are intended to ensure that the firm's calculation of its adjusted net capital reflects that the firm's

[675] 17 CFR 1.25(c)(5)(ii). The Commission has determined not to adopt the proposed revision to Commission Regulation 1.25(c)(5)(ii), which would have limited the ability to provide for the postponement of redemption and payment due to any of the circumstances listed in that subsection to Government MMFs.

[676] *Id.*

[677] SEC ETF Letter.

obligation to internalize financial losses associated with the investment of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs.[678]

The Final Rule also imposes the same asset-based and issuer-based concentration limits to Qualified ETFs as it imposes on Permitted Government MMFs previously described in the preamble and further discussed below. A 50 percent concentration limit will apply to Qualified ETFs with at least $1 billion in assets and whose management companies have more than $25 billion in assets under management. The Final Rule further allows for a 10 percent concentration limit for Qualified ETFs with less than $1 billion in assets or which have a management company managing less than $25 billion in assets. The Commission is limiting investments of Customer Funds in any single family of Qualified ETFs to 25 percent and investments of Customer Funds in interests in an individual Qualified ETF to 10 percent of the total assets held in each of the segregated account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.

a. Benefits

Expanding the list of Permitted Investments to include Specified Foreign Sovereign Debt should benefit FCMs, DCOs, and market participants (including customers) by facilitating the management of risk associated with the acceptance of certain foreign currency deposits from customers to margin their trades, and should enable FCMs and DCOs to avoid certain risks and practical challenges in the handling of foreign currencies. Specifically, permitting FCMs and DCOs to invest foreign currencies

[678] *See generally* Section IV.C. above for a discussion of the capital charges on Specified Foreign Sovereign Debt securities and shares of Qualified ETFs.

deposited or owed to customers in identically denominated sovereign debt securities mitigates the risk that FCMs and DCOs face when converting foreign currencies to U.S. dollars to invest in Permitted Investments. The foreign currency risk arises from the FCMs' and DCOs' obligation to convert the Customer Funds from U.S. dollars back to the applicable foreign currencies when the margin deposits are returned to the customers.

The investment of non-U.S. dollar-denominated Customer Funds in Specified Foreign Sovereign Debt further benefits FCMs, DCOs, and market participants by providing an option that may assist with the mitigation of potential risks associated with FCMs and DCOs holding Customer Funds in unsecured deposit accounts with domestic or foreign commercial banks. If the depository or custodian becomes insolvent, claims related to uninsured cash balances are at greater risk of being treated as unsecured claims against the depository estate as compared to claims to specific securities held in custody. As a result, FCMs and DCOs may face less counterparty exposure by maintaining Customer Funds in the form of securities as opposed to cash, which would benefit market participants (including customers) by providing greater security to the timely, full payment of Customer Funds held by an insolvent depository or custodian.

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.

Permitting investments in Specified Foreign Sovereign Debt also benefits FCMs that post customer margin collateral with non-U.S. clearing organizations that impose strict cut-off times for cash withdrawals and more lenient cut-off times for non-cash

collateral withdrawals.[679] In such situations, FCMs have broader access to the deposits of Customer Funds held in the form of Specified Foreign Sovereign Debt securities than they do when such deposits are in the form of cash.

Further, expanding Permitted Investments to include Qualified ETFs should also benefit FCMs, DCOs, and market participants. As discussed in Section IV.A.3., Qualified ETFs are passively managed funds that seek to replicate the performance of published short-term U.S. Treasury security indices. Qualified ETFs provide FCMs and DCOs with the ability to invest Customer Funds in funds that are primarily comprised of U.S. Treasury securities and avoid the costs associated with direct investments, which involves managing interest payments and the maturity of securities.

The ability to invest in Specified Foreign Sovereign Debt and interests in Qualified ETFs will provide FCMs and DCOs with a wider range of alternatives in which to invest Customer Funds. As a result, FCMs and DCOs will have more investment options, some of which may be more economical than the existing Permitted Investments, such that FCMs and DCOs may be able to generate higher returns. In addition to allowing FCMs and DCOs to continue as viable businesses, this may motivate FCMs and DCOs to increase their presence in the commodity interest markets, thereby increasing competition, which might lead to a reduction in charges to customers and an increase trading activity and liquidity.

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[679] 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).

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

Revising the Risk Disclosure Statement required by Commission Regulation 1.55 to be provided to non-institutional or non-eligible contract participants customers to accurately reflect the types of instruments approved as Permitted Investments should benefit customers and potential customers. The final amendments to the Risk Disclosure Statement alert potential customers that, among other things, an FCM is permitted to invest Customer Funds in Permitted Investments detailed in Commission Regulation 1.25, an FCM may retain earnings on such investments, and customers may obtain further detail regarding the FCM's policies for the investment of Customer Funds from the firm if needed.

Also, requiring an FCM to apply capital charges on investments of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs should help to ensure that the FCM maintains a sufficient level of readily available liquid funds that could be transferred into the FCM's futures customer accounts, Cleared Swaps Customer Accounts, and/or 30.7 customer accounts to cover decreases in value of the investments, which would support the FCM's continued compliance with Customer Funds segregation requirements.[680] Requiring an FCM to maintain regulatory capital to cover potential

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

decreases in the value of the Permitted Investments benefits the FCM by helping to ensure that the firm has sufficient, liquid financial resources to meet 100 percent of its obligations to futures customers, Cleared Swaps Customers, and 30.7 customers at all times as required by Commission 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 Commission Regulations 1.29(b), 22.2(e)(1), and 30.7(i).

The Commission is also adopting new concentration limits for Qualified ETFs. The new concentration limits adopted by this Final Rule promote investments of Customer Funds in Qualified ETFs of different sizes subject to different concentration limits, leading to diversification in FCMs' and DCOs' portfolios, while encouraging investments larger, presumably safer Qualified ETFs. The Commission is adopting different concentration limits depending on the size of the fund because larger Qualified ETFs may be more resilient during times of significant financial stress and better equipped to manage high levels of redemptions. The Final Rule's concentration limits may also reduce the potential concentration in certain Qualified ETFs, in turn fostering competition across the funds, which may lead to better terms and reduced costs for FCMs and DCOs.

Finally, the amendment to Commission Regulation 22.3(d), clarifying that DCOs are responsible for losses resulting from their investments of Customer Funds, provides legal certainty with respect to the Commission's customer protection regulations. Specifically, in situations where an investment made by either an FCM or DCO

experiences a realized or unrealized loss in market value, the amended regulations make clear that the FCM or DCO, not the customer, is responsible for bearing the loss.

b. Costs

Although the Final Rule increases the range of permissible investments in which DCOs and FCMs may invest Customers Funds, facilitating their management of investments and capital, the Final Rule may result in Customer Funds being invested in instruments that may be less liquid and have increased exposure to credit and market risks than those currently permitted under Commission Regulation 1.25. Such risks could result in an increased exposure for FCMs and DCOs, who, pursuant to Commission 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 losses compromise the FCM's or DCO's ability to return Customer Funds.

To account for these potential risks and ensure that the new Permitted Investments are consistent with the general objectives of Commission Regulation 1.25 of preserving principal and maintaining liquidity, the Commission is adopting several conditions for foreign sovereign debt and interests in U.S. Treasury ETFs to qualify as Permitted Investments. Specifically, for Specified Foreign Sovereign Debt, the conditions include: (i) investments may be made only in the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, which are members of the G7and represent the world's largest industrial democracies; (ii) investments may only be made in the sovereign debt of a particular country to the extent an FCM or DCO holds balances owed to customers denominated in the currency of the particular country; (iii) the credit default spread of the

two-year debt instruments of the relevant foreign sovereign jurisdiction may not exceeds 45 BPS; (iv) 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 may not exceed 60 calendar days; and (v) the remaining time-to-maturity of any individual Specified Foreign Sovereign Debt instrument may not exceed 180 calendar days.[681] For interests in Qualified ETFs to be deemed Permitted Investments, the Commission is requiring, 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 composed of bonds, notes, and bills with a remaining time-to-maturity of 12 months or less, issued by, or unconditionally guaranteed as to timely payment of principal and interest by, the U.S. Department of the Treasury.[682] The eligible securities and cash must also represent at least 95 percent of the Qualified ETF's investment portfolio.[683] Moreover, as discussed above, the Final Rule would require FCMs to take capital charges based on the current market value of the Specified Foreign Sovereign Debt and Qualified ETFs to address the 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.

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[681] Final Commission Regulation 1.25(f).

[682] Final Commission Regulation 1.25(a)(1)(v).

[683] Final Commission Regulation 1.25(c)(8)(ii).

Requiring an FCM to apply capital charges in connection with the new categories of Permitted Investments will result in costs associated with reserving capital. The FCM may not be able to use funds reserved for capital to otherwise support its business operations, thus potentially making the operation of the FCM less economical. Capital requirements are nevertheless an essential risk-management feature of the FCM's regulatory regime, and the amounts reserved as capital are necessary and expected costs associated with operating an FCM.

In addition, the clarifying amendment to Commission Regulation 22.3(d) should not result in increased costs for DCOs. The amendment expressly states 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.[684] DCOs already reserve or otherwise take into consideration financial resources to account for their responsibility to absorb losses for such investments.

Finally, as discussed above, the Commission has retained its existing burden estimates associated with the approved collection of information for the reasons explained in Section VII.B., above. FCMs and DCOs should not incur material costs relating to the collection of information as a result of the Final Rule.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the Final Rule pursuant to the five considerations identified in Section 15(a) of

[684] *See supra* note 43.

the Act as follows: (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 Final Rule should have a beneficial effect on sound risk management practices and on the protection of market participants and the public.

i. Protection of Market Participants and the Public

The expansion of Permitted Investments to include Specified Foreign Sovereign Debt securities should enhance the protection of market participants and the public by providing FCMs and DCOs with the ability to manage risks associated with the receipt and holding of foreign currencies deposited as margin by customers. As discussed in Section IV.2., FCMs hold approximately $64 billion of Customer Funds denominated in non-U.S. dollars, which represents approximately 12 percent of the total $511 billion of Customer Funds held by FCMs. Investing these foreign currencies in foreign sovereign debt instruments meeting specified conditions provides FCMs and DCOs with a risk management tool to mitigate foreign currency exchange rate fluctuation risk that they would otherwise be exposed to if the foreign currency deposits had to be converted to U.S. dollars and then invested in U.S. dollar-denominated Permitted Investments. This risk mitigation protects market participants and the public by reducing exposures that FCMs and DCOs would otherwise face from investing foreign currency in U.S. dollar-denominated assets, and by reducing risk to customers of FCMs that would share pro rata in any shortfall in Customer Funds in the event of an insolvency. Providing FCMs and DCOs with efficient risk management tools also protects market participants and the

public by supporting FCMs' and DCOs' ongoing ability to continue to provide access to the commodity interest markets.

As discussed in Section IV.2., to limit the potential risks associated with investing in foreign sovereign debt, the Commission is adding to the list of Permitted Investments only certain foreign sovereign debt instruments that meet strict conditions designed to ensure the instruments' liquidity. The Commission's 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.[685] Thus, the current level of protection provided to Customer Funds will be maintained under the terms of this Final Rule.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

As discussed in the Proposal and in Section IV. A. above, expanding the list of Permitted Investments may provide FCMs and DCOs with the ability to generate additional income for themselves and their customers from their investment of Customer Funds. This may motivate FCMs or DCOs to increase their presence in the futures and cleared swaps markets increasing competition, which might lead to lower commission charges and fees for customers. The increase in revenue for FCMs and DCOs may also increase earnings to customers as DCOs and FCMs often pay a return on customer

[685] *See supra* note 238 (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 IV.A.2 (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 Proposal at 81250 (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).

deposited funds, and FCMs may otherwise share some or all of the income with customers.

The increased range of Permitted Investments should 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.

iii. Price Discovery

The Final Rule expands upon the types of investments that FCMs and DCOs may make with Customer Funds by including Specified Foreign Sovereign Debt securities and Qualified ETFs. The ability of FCMs and DCOs to invest Customer Funds in additional investments may generate additional income for FCMs and DCOs, which may lead to an increased participation in the commodity interest markets and thus enhance price discovery. Specifically, FCMs' main sources of revenue from engaging in the futures markets are commission income and income from the investment of Customer Funds.

Therefore, an increase in income from the investment of Customer Funds may benefit market participants by indirectly offsetting or reducing commissions charged to customers. In addition, FCMs, pursuant to customer agreements, may provide customers with interest on their margin deposits, and therefore, an increase in revenue from the investment of Customer Funds may directly benefit customers via increased interest income on their deposits. DCOs also pay interest to FCMs on deposits held at the DCO, and greater interest income from such deposits may benefit an FCM and its customers. Increases in revenue may also encourage greater participation in the commodity interest markets by customers and by firms willing to take on the responsibilities of an FCM. Such greater participation in the commodity interest markets may increase liquidity in the market and enhance the process of price discovery.

iv. Sound Risk Management

Increasing the range of Permitted Investments provides 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 considering the limited range of instruments that meet the eligibility criteria of current Commission 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 is providing FCMs and DCOs with an opportunity to better manage risks associated with holding foreign currencies deposited by customers. As

noted above, investing Customer Funds in Specified Foreign Sovereign Debt provides an alternative to taking on the exposure of holding cash at a commercial bank. Also, absent the ability to invest Customer Funds in identically denominated sovereign debt securities, an FCM or 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 Final Rule should 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 helps 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.

v. Other Public Interest Considerations

Although the four factors mentioned above are 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, in that allowing FCMs and DCOs to invest Customer Funds in such instruments may contribute to a more robust market for U.S. Treasury 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 transact in

foreign currency with potentially lower costs and risk. This may provide additional hedging opportunities for entities and enhance market liquidity.

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

The Final Rule limits the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs as defined by SEC Rule 2a-7, revises the asset-based concentration limits applicable to Government MMFs, and adds issuer-based concentration limits for such funds.[686] The Final Rule also removes 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. Finally, bank CDs are removed from the list of Permitted Investments due to a lack of use by FCMs and DCOs.[687]

a. Benefits

The Final Rule removes interests in Prime MMFs and Electing Government MMFs from the list of Permitted Investments currently set forth in Commission Regulation 1.25. Pursuant to the Final Rule, FCMs and DCOs are permitted to invest Customer Funds in interests of Permitted Government MMFs. As discussed in Section

[686] Separately, as discussed in Section VII.C.1., the Final Rule adds Qualified ETFs to the list of Permitted Investments and adopts concentration limits for such Qualified ETFs.

[687] Although commenters did not provide a specific reason for the lack of use of bank CDs, the Commission understands that few, if any, bank CDs meet the requirements in Commission Regulation 1.25(b)(v) that the CD is 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. 17 CFR 1.25(b)(v). Thus, eliminating this investment option also aligns with the decision to eliminate certain government MMFs that elect to impose liquidity fees to stem redemptions.

IV.A.1., interests in Prime MMFs and Electing Government MMFs should not be Permitted Investments under Commission Regulation 1.25 because such MMFs are subject to the SEC MMF Reforms, which include the ability of the fund to impose liquidity fees to stem redemptions, 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 transactions. The Final Rule, therefore, prevents investments of Customer Funds in MMFs that may pose unacceptable levels of liquidity risk.

The Final Rule imposes asset-based concentration limits corresponding to the size of the Permitted Government MMFs and their management companies. A 50 percent concentration limit will apply to Government MMFs with at least $1 billion in assets and whose management companies have more than $25 billion in assets under management. The Final Rule retains the current 10 percent concentration limit for MMFs with less than $1 billion in assets or which have a management company managing less than $25 billion in assets.[688] These concentration limits recognize that larger Government MMFs may be more resilient during times of significant financial stress and better equipped to manage high levels of redemptions. As such, these concentration limits should help to 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 holdings, and capacity to handle market stress.

[688] As discussed in Section IV.B., the Commission is deleting the conjunction "and" in Commission Regulation 1.25(b)(3)(i)(G), redesignated as Commission Regulation 1.25(b)(3)(i)(E) and revised to reflect other amendments adopted in this Final Rule, to clarify that the fund size threshold and the management company size threshold are to be construed as alternative prongs triggering the 10 percent limit.

The new concentration limits adopted by this Final Rule promote investments of Customer Funds in Permitted Government MMFs of different sizes subject to different concentration limits, leading to diversification in FCMs' and DCOs' portfolios, while encouraging investments in larger, presumably safer Government MMFs. The Final Rule's concentration limits may also reduce the potential concentration in certain Permitted Government MMFs, in turn fostering competition across the funds, which may lead to better terms and reduced costs for FCMs and DCOs. In addition, the Commission is adopting 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 other operational incident affecting the fund. Specifically, the Commission is limiting investments of Customer Funds in any single family of Government MMFs to 25 percent and investments of Customer Funds in interests in an individual Government MMF to 10 percent of the total assets held in each of the segregated account classes of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds. There are no precise concentration limits that can guarantee absolute protection against market volatility. The Commission's assessment is, however, that these limits represent a practical approach that takes the need to support the viability of FCMs' and DCOs' business model into account, while safeguarding the principal and liquidity of the Customer Funds.

The Final Rule also revises the list of Permitted Investments in Commission Regulation 1.25 to remove commercial paper and corporate notes or bonds guaranteed under the TLGP, to reflect that the TLGP expired in 2012 and, therefore, FCMs and

DCOs have not been permitted to invest in such instruments since 2012. This amendment streamlines the Commission's 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.[689]

The Final Rule also removes bank CDs from the list of Permitted Investments. The Commission's experience administering Commission Regulation 1.25 indicates that FCMs and DCOs have not invested Customer Funds in bank CDs. The Commission requested comment on the proposed elimination of bank CDs from the list of Permitted Investments. One commenter generally opposed the removal of bank CDs from the list of Permitted Investments, stating that the removal "would not be beneficial," but other commenters supported the removal, including the FIA which stated that its member FCMs did not foresee investing Customer Funds in bank CDs.[690] The Commission is removing bank CDs from the list of Permitted Investments in the Final Rule. Similar to the removal of commercial paper and corporate notes and bonds, the amendment will streamline the Commission's regulations and avoid potential confusion regarding the eligibility of bank CDs as Permitted Investments.

[689] 2010 Proposed Permitted Investments Amendment at 67644.

[690] ICE at p. 4; FIA/CME Joint Letter at pp. 20; Nodal at pp. 3-4. 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 observed that no FCMs reported investing customer funds in bank CDs.

b. Costs

This Final Rule limits the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs and could 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, because fewer MMFs would be available as Permitted Investments, FCMs and DCOs might have less flexibility in investing Customer Funds. FCMs and DCOs might thus generate lower returns and could pass on additional operational costs to customers by increasing their fees.

The potential risk of concentration of investments in Permitted Government MMFs is nonetheless mitigated by the 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. Additionally, the potential risk of concentration of investments is mitigated by the addition of Qualified ETFs to the list of Permitted Investments, a viable alternative to Permitted Government MMFs allowing FCMs and DCOs to diversify their investment holdings.

To meet the concentration limits adopted herein, FCMs and DCOs may be required to liquidate Government MMFs held in their portfolios and might incur losses. The risk of loss is likely to be mitigated because the Government MMFs permitted under Staff Letter 16-68 and Staff Letter 16-69 are presumably highly liquid.[691]

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

The elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP does not result in any costs as the instruments have not been available as Permitted Investments since 2012 when the TLGP expired. Similarly, removing bank CDs does not result in an 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 should this option become more economical for FCMs and DCOs.

c. Section 15(a) Considerations

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

i. Protection of Market Participants and the Public

The Final Rule removes interests in MMFs whose redemptions may be subject to liquidity fees, including Prime MMFs and Electing Government MMFs, from the list of Permitted Investments. The imposition of a liquidity fee conflicts with provisions in Commission 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 Final Rule provides greater protection to Customer Funds and promotes the efficient and safe investment of Customer Funds by FCMs and DCOs.

The Final Rule also limits the scope of MMFs whose interests qualify as Permitted Investments to Government MMFs as defined by SEC Rule 2a-7. These types of funds are less susceptible to runs and have seen inflows during periods of market

instability.[692] Thus, limiting the scope of eligible MMFs to Government MMFs should reduce the possibility that funds in which Customer Funds are invested may be adversely affected by run risk and other associated risks. However, because there will be fewer MMFs that will qualify as Permitted Investments under the Final Rule, FCMs' and DCOs' investments may be concentrated in fewer MMFs and the investments may be more susceptible to concentration risk.

The asset-based concentration limits for Government MMFs and Qualified ETFs assign 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 reflect that larger funds have capital bases better capable of handling a high volume of redemptions in times of stress. Accordingly, the concentration limits promote investments in larger funds, which by virtue of their size tend to be more resilient, while providing for diversification by permitting investments in smaller Government MMFs and Qualified ETFs subject to concentration limits intended to ensure the safety of Customer Funds. In addition, the issuer-based concentration limits promote diversification among different individual Government MMFs and Qualified ETFs, thus mitigating the potential risks associated with concentrating investments of Customer Funds with a single fund or family of funds.

[692] SEC 2023 MMF Reforms at 51417 (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 2023 MMF Reforms Proposing Release") at 7250. 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. *Id*.

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

By removing commercial paper and corporate notes or bonds guaranteed under the TLGP from the list of Permitted Investments under Commission Regulation 1.25, the Final Rule eliminates instruments that are no longer available as a result of the expiration of the TLGP in 2012. Deleting these investments from the list streamlines the Commission's rules and removes a potential source of confusion for the public and market participants. Because they are no longer Permitted Investments, maintaining these instruments in the list of Permitted Investments could cause misunderstanding among the public and market participants about the eligibility of these instruments as permissible investments of Customer Funds. By removing bank CDs, a type of instrument that is not used by FCMs and DCOs as an investment instrument, the Commission is also contributing to the ongoing effort to streamline the Commission's regulations and reduce the possibility of confusion.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating interests in Prime MMFs and Electing Government MMFs from the list of Permitted Investments, the Final Rule prevents investments of Customer Funds in instruments that may be less liquid due to the SEC MMF Reforms. The changes imposed by the SEC MMF Reforms may not allow FCMs and DCOs to redeem interests

in Prime MMFs and Electing Government MMFs without a material discount in value. The exclusion of these types of investments will improve efficiency in the markets, especially at times of stress when liquidity fees may be imposed, and ensure that Permitted Investments are always consistent with Commission Regulation 1.25's objectives of preserving principal and maintaining liquidity.

As discussed above, the deletion of commercial paper and corporate notes or bonds guaranteed under the TLGP and bank CDs from the list of Permitted Investments removes investment instruments that are either no longer available or not used as an investment of Customer Funds, streamlining the Commission's regulations and contributing to their efficient implementation by market participants.

iii. Price Discovery

The Final Rule, by reducing the range of products that qualify as Permitted Investments, results in fewer investment options available to FCMs and DCOs. This could cause FCMs and DCOs to generate less income from their investment of Customer Funds and pass the costs of operations onto customers by increasing commissions and other fees. Facing increased costs, customers may reduce trading, thereby reducing liquidity, which may hinder price discovery.

The elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP and bank CDs as Permitted Investments will not have an impact of this factor, because FCMs and DCOs have not invested Customer Funds in these instruments for several years.

iv. Sound Risk Management

By deleting interests in Prime MMFs and Electing Government MMFs from the list of Permitted Investments, the Final Rule prohibits investment of Customers Funds in such MMFs, which should reduce liquidity risk in light of the SEC MMF Reforms, thus promoting sound risk management. Also, the concentration limits that will apply to the Permitted Government MMFs and Qualified ETFs should foster diversification in FCMs' and DCOs' portfolios by encouraging investments of Customer Funds in larger funds that the Commission anticipates would have the capacity to withstand significant market stress and increasing redemptions, while making available smaller funds subject to specified concentration limits.

The elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP and bank CDs as Permitted Investments will not have an impact of this factor.

v. Other Public Interest Considerations

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

3. *SOFR as a Permitted Benchmark*

In March 2021, the U.K. FCA announced that LIBOR would be effectively discontinued.[693] As a result of the transition from LIBOR to SOFR, the Commission is replacing LIBOR with SOFR as a permitted benchmark for variable and floating rate securities that qualify as Permitted Investments under Commission Regulation 1.25. Under the terms of the Final Rule, adjustable rate securities would qualify as a Permitted Investment if, among other conditions, they reference a SOFR Rate published by the

[693] Staff Letter 21-26 at p. 1.

FRBNY or a CME Term SOFR Rate published by the CME Group Benchmark Administration Limited.

a. Benefits

Currently under Commission Regulation 1.25(b)(2)(iv)(A), Permitted Investments may have a variable or floating rate of interest, provided that the interest rate correlates to specified benchmarks, including LIBOR.[694] As discussed in Section IV.A.5., 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 is amending Commission Regulation 1.25 to remove LIBOR as a permitted benchmark and to replace it with SOFR. Accordingly, the replacement of LIBOR with SOFR, which has been identified as a preferred benchmark alternative by the ARRC,[695] should help to ensure that Customer Funds invested in Permitted Investments with adjustable rates of interest reference a reliable and robust benchmark providing greater protection to Customer Funds.

b. Costs

Given the widespread use of LIBOR as a benchmark, FCMs and DCOs that invest Customer Funds in Permitted Investments with variable and fixed rate securities might incur costs associated with the transition to SOFR. To the extent that FCMs and DCOs already invest in Permitted Investments with variable and fixed rate securities benchmarked to LIBOR, they would need to amend the terms of their agreements to

[694] 17 CFR 1.25(b)(2)(iv)(A).

[695] *See* Staff Letter 21-26 at p. 3.

incorporate the new benchmark. If they have not done so already, FCMs and DCOs may also need to adjust their systems and processes to implement and recognize SOFR as a benchmark.

c. Section 15(a) Considerations

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

i. Protection of Market Participants and the Public

LIBOR is no longer a reliable and robust benchmark. By eliminating LIBOR as a permitted benchmark, the Final Rule prevents investments of Customer Funds in securities referencing an unreliable benchmark and promotes the use of a safer, more accurate benchmark alternative.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

By codifying the use of SOFR as a permitted benchmark for Permitted Investments in which Customer Funds may be invested, the Final Rule conforms to current market developments, facilitates the transition to SOFR and reflects the phasing out of LIBOR, which is no longer published and deemed unreliable, removing a potential source of risk to the financial system.[696]

[696] 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 generally 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).

In addition, SOFR is now an essential benchmark that helps to ensure the stability and integrity of financial markets. Thus, codifying SOFR as a permitted benchmark for permitted investments may enhance the financial integrity of markets.

iii. Price Discovery

The replacement of LIBOR with SOFR as a permitted benchmark may have a positive impact on price discovery. By replacing an obsolete benchmark, LIBOR, with the now widely accepted benchmark, SOFR, FCMs and DCOs should have a greater opportunity to invest in variable or floating rate instruments that reference SOFR. The opportunity to invest in instruments referencing SOFR may encourage greater participation in the commodity interest markets, thereby increasing liquidity in the markets and enhancing the process of price discovery.

iv. Sound Risk Management

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

v. Other Public Interest Considerations

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

4. *Revision of the Read-only Access Provisions*

The Final Rule eliminates the Read-only Access Provisions in parts 1 and 30 of the Commission's regulations,[697] which currently require FCMs to ensure that depositories holding Customer Funds provide the Commission with direct, read-only electronic access to such accounts.

a. Benefits

Eliminating the Read-only Access Provisions streamlines the CFTC rules, facilitating their implementation and administration, and is consistent with the Commission's expectation that the existence of alternative methods for obtaining and verifying account balance information will diminish the need to rely on the direct read-only access to accounts. By relying on CME's and NFA's daily segregation confirmation and verification process, the Commission can allocate resources to more immediate regulatory concerns within its jurisdictional purview. As discussed in Section IV.E., the Commission has encountered numerous practical challenges in the administration of direct access to depository accounts. These challenges unduly burden the Commission's resources, particularly when one considers that the Commission contemplated that the use of real-time access would be limited. That is, the practical challenges prevent Commission staff from using the Read-only Access Provisions as intended.

[697] The relevant provisions appear in Commission Regulation 1.20, Appendix A to Commission Regulation 1.20, Appendix A to Commission Regulation 1.26, Commission Regulation 30.7 and Appendices E and F to Part 30 of CFTC's regulations. The amendments also extend to Commission 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 Commission Regulations 1.20 and 1.26. 17 CFR 22.5(a). Commission Regulation 22.5 further requires FCMs and DCOs to adhere to all requirements specified in Commission Regulation 1.20 and 1.26 regarding retaining, permitting access to filing, or amending the written acknowledgment letters. 17 CFR 22.5(a).

In addition, eliminating the requirement to provide the Commission with direct, read-only access to accounts maintained by FCMs, reduces costs for depositories, which may motivate these institutions to more readily take FCM Customer Funds on deposit, thereby lowering the bar to entry for new FCMs. The Final Rule 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 eliminates 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.

b. Costs

Withdrawing the requirement that depositories provide the Commission with direct, read-only electronic access to depository accounts holding Customer Funds deprives 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.

More efficient means for identifying discrepancies in the account balance information exist: obtaining account balance and transaction information through CME's and NFA's automated daily segregation confirmation system or by requesting the information directly from the depositories.

c. Section 15(a) Considerations

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

i. Protection of Market Participants and the Public

The Final Rule removes the requirement to provide the Commission with direct, read-only access to depository accounts. This change eliminates the potential cybersecurity risk associated with the maintenance of access credentials and authentication devices, thus limiting risk for market participants and the public.

CME's and NFA's automated daily segregation confirmation system provides an efficient and effective method for verifying customer account balances, which, in conjunction with the Commission's right to request information from the depositories, protects market participants and the public.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

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

In addition, depositories holding Customer Funds will no longer have to provide and continuously update the login information necessary for Commission staff's access to the accounts or to train Commission staff on how to access their systems. This will reduce the burden on depository service providers and make the Commission's

surveillance of accounts more efficient. Streamlining these processes may motivate depositories to more readily hold FCM Customer Funds, potentially fostering competition with respect to depository services provided to FCMs and ultimately reducing costs for such FCMs.

iii. Price Discovery

The Final Rule, 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.

iv. 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' daily segregation statements and the balances reported by the various depositories holding Customer Funds. Although the Commission is eliminating the Read-only Access Provisions, the Commission will continue to rely on CME's and NFA's automated system for oversight purposes. Thus, the amendment should not be detrimental to sound risk management practices.

Furthermore, as noted above, the deletion of the Read-only Access Provisions eliminates 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.

v. Other Public Interest Considerations

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

The Commission requested public comment on its cost-benefit considerations, including the Section 15(a) factors described above. The Commission received no specific comments on this part of the Proposal in response to this request.

D. Antitrust Considerations

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."[698]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. In the Proposal, the Commission requested comment on whether: (i) the Proposal implicates any other specific public interest to be protected by the antitrust laws; (ii) the Proposal is anticompetitive and, if it is, what the anticompetitive effects are; (iii) whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the Proposal.[699] The Commission did not receive comments on the anticompetitive effects of the Proposal.

[698] 7 U.S.C. 19(b).

[699] Proposal at 81273.

The Commission has considered the Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined that the Final Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act.

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 amends 17 CFR chapter I as follows:

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 as follows:

a. In paragraph (d)(2), revise the cross-reference to "Appendix A to § 1.20" to read "Appendix C to this part";

b. Remove and reserve paragraph (d)(3);

c. In paragraph (g)(4)(ii), revise the cross-reference to "Appendix B to § 1.20" to read "Appendix D to this part";

d. Redesignate Appendix A to § 1.20 as Appendix C to Part 1; and

e. Redesignate Appendix B to § 1.20 as Appendix D to Part 1.

§ 1.25 [Amended]

3. Amend § 1.25 as follows:

a. Republish the paragraph (a) heading and the introductory text of paragraph (a)(1);

b. Remove paragraphs (a)(1)(iv), (v), and (vi);

c. Redesignate paragraph (a)(1)(vii) as paragraph (a)(1)(iv);

d. Revise newly redesignated paragraph (a)(1)(iv);

e. Add new paragraphs (a)(1)(v) and (a)(1)(vi);

f. Republish the introductory text of paragraph (b) and the paragraph (b)(2) heading;

g. Revise paragraph (b)(2)(i) introductory text;

h. Republish paragraph (b)(2)(iv)(A);

i. Revise paragraphs (b)(2)(iv)(A)(*1*) and (*2*);

j. Remove paragraph (b)(2)(v) and (vi);

k. Republish paragraph (b)(3) heading;

l. Remove paragraph (b)(3)(i)(C);

m. Redesignate paragraphs (b)(3)(i)(D) through (E);

n. Revise newly redesignated paragraph (b)(3)(i)(D);

o. Remove paragraph (b)(3)(i)(F);

p. Redesignate paragraph (b)(3)(i)(G) as (b)(3)(i)(E);

q. Revise newly redesignated paragraph (b)(3)(i)(E), paragraphs (b)(3)(ii)(B) through (E) and (b)(4)(i), paragraph (c) introductory text, and paragraph (c)(1);

r. In paragraph (c)(7), revise the cross-reference to "The appendix to this section" to read "Appendix E to this part";

s. Add paragraph (c)(8);

t. Republish the introductory text of paragraph (d);

u. Revise paragraphs (d)(2) and (d)(7);

v. Add paragraph (f); and

w. Redesignate 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):

* * * * *

(iv) 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);

(v) 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

(vi) 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 the futures commission merchant 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 the derivatives clearing organization 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, a Secured Overnight Financing Rate published by the Federal Reserve Bank of New York or a CME Term SOFR Rate published by the CME Group Benchmark Administration Limited, 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, a Secured Overnight Financing Rate published by the Federal Reserve Bank of New York or a CME Term SOFR Rate published by the CME Group Benchmark Administration Limited, 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) * * *

(D) 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.

(E) 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 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 10 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.

* * * * *

(8) A futures commission merchant or derivatives clearing organization may invest in interests in U.S. Treasury exchange-traded funds if:

(i) 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 cash; and

(ii)The purchase and liquidation of interests in the fund conform to the following requirements:

(A) *Primary market transactions*. The futures commission merchant or derivatives clearing organization purchases or redeems interests in the fund on a delivery versus payment basis at a price based on the net asset value computed in accordance with the Investment Company Act of 1940 and regulations thereunder. A futures commission merchant or derivatives clearing organization that is an authorized participant of the fund may redeem interests in the fund in kind, provided that the futures commission merchant or derivatives clearing organization is able to convert the securities received pursuant to the in-kind redemption into cash within one business day of the redemption request. A futures commission merchant or derivatives clearing organization that transacts with the fund through an authorized participant acting as an agent for the futures commission merchant or derivatives clearing organization must have a contractual agreement obligating the authorized participant to pay the futures commission merchant's or derivatives clearing organization's redemption of interests in the fund in cash within one business day of the redemption request.

(B) *Secondary market transactions*. The futures commission merchant or derivatives clearing organization acquires or sells interests in the fund on a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(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 to 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, or 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 or a provincial financial regulator with respect to a Canadian securities broker or dealer; and the Bank of Canada, the Bank of England, the Banque de France, the 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), or with the Bank of Canada, the Bank of England, the Banque de France, the Bank of Japan, the Deutsche Bundesbank, or the European Central Bank.

* * * * *

(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, computed as the average of the bid and ask prices between willing buyers and sellers, 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 as follows:

a. Redesignate 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, remove the words indicated in the middle column from wherever they appear in the paragraph, and add the words indicated in the right column:

Paragraph	Remove	Add
(a)	"money market mutual funds"	"government money market funds"
(b)	"money market mutual fund"	"government money market fund"
(b)	"appendix A or B to this section"	"Appendix F or G to this part"
(b)	"appendix A or B to § 1.20"	"Appendix C or D to this part"

§ 1.32 [Amended]

5. Amend § 1.32 as follows:

a. Remove paragraph (f)(3)(iv);

b. Redesignate paragraphs (f)(3)(v) through (f)(3)(vii);

c. Revise newly redesignated paragraphs (f)(3)(iv), (v), and (vi) to read as follows:

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

* * * * *

(f) * * *

(3) * * *

(iv) Permitted foreign sovereign debt by country:

(A) Canada;

(B) France;

(C) Germany;

(D) Japan;

(E) United Kingdom;

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

(vi) Interests in government money market funds.

* * * * *

§ 1.55 [Amended]

6. Amend § 1.55 by revising paragraph (b)(6) to read as follows:

§ 1.55 Public disclosures by futures commission merchants.

* * * * *

(b) * * *

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; certain money market funds; certain foreign sovereign debt; and U.S. Treasury exchange-traded funds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

* * * * *

7. 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 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 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 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:

8. 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 Section 1.25(c)(5)

* * * * *

9. 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 the Shares are in a fund that holds itself out to investors as a government money market fund, in accordance with 17 C.F.R. § 270.2a-7. In addition, you acknowledge and agree that the Shares are in a fund that does not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of 17 C.F.R. § 270.2a-7(c)(2)(i).

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 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:

10. 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 the Shares are in a fund that holds itself out to investors as a government money market fund, in accordance with 17 C.F.R. § 270.2a-7. In addition, you acknowledge and agree that the Shares are in a fund that does not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of 17 C.F.R. § 270.2a-7(c)(2)(i).

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 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:

PART 22—CLEARED SWAPS

11. 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.

§ 22.2 [Amended]

12. Amend § 22.2 as follows:

a. Remove paragraph (g)(5)(iii)(D)

b. Redesignate paragraphs (g)(5)(iii)(E) through (G)

c. Revise newly redesignated paragraphs (g)(5)(iii)(D), (E), and (F) to read as follows:

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

* * * * *

(g) * * *

(5) * * *

(iii) * * *

(D) Permitted foreign sovereign debt by country:

(*1*) Canada;

(*2*) France;

(*3*) Germany;

(*4*) Japan;

(*5*) United Kingdom;

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

(F) Interests in government money market funds.

* * * * *

§ 22.3 [Amended]

13. 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

14. 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.

§ 30.7 [Amended]

15. Amend § 30.7 to read as follows:

a. Revise paragraphs (d)(2) and (3);

b. Remove paragraph (l)(5)(iii)(D);

c. Redesignate paragraphs (l)(5)(iii)(E) through (G);

d. Revise newly redesignated paragraphs (l)(5)(iii)(D) through (F).

The revisions 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 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.

(3)(i) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to provide the Director of the Market Participants Division, 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 Market Participants Division, or any successor division, or such Director's designees, without further notice to or consent from the futures commission merchant.

* * * * *

(l) * * *

(5) * * *

(iii) * * *

(D) Permitted foreign sovereign debt by country:

(*1*) Canada;

(*2*) France;

(*3*) Germany;

(*4*) Japan;

(*5*) United Kingdom;

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

(F) Interests in government money market funds.

* * * * *

16. 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 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 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 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 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:

17. 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 the Shares are in a fund that holds itself out to investors as a government money market fund, in accordance with 17 C.F.R. § 270.2a-7. In addition, you acknowledge and agree that the Shares are in a fund that does not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of 17 C.F.R. § 270.2a-7(c)(2)(i).

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 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 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 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 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:

Issued in Washington, DC, on [date] by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.