



222 South Riverside Plaza, Suite 1200  
Chicago, IL 60606  
(866) 438-7564 | NFA ID: 0000187

October 2, 2020

**Sent via email to [dsioletters@cftc.gov](mailto:dsioletters@cftc.gov)**

Mr. Joshua B. Sterling  
Director, Division of Swap Dealer & Intermediary Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Request for No-Action Relief from CFTC Regulation 1.25 for SOFR-Linked Securities**

Dear Mr. Sterling:

R.J. O'Brien & Associates LLC ("RJO"), a registered futures commission merchant ("FCM"), requests that the Division of Swap Dealer and Intermediary Oversight ("DSIO") of the Commodity Futures Trading Commission ("CFTC" or "Commission") take a no-action position regarding the investment of customer money in floating rate securities linked to the Secured Overnight Financing Rate ("SOFR") under Commission Regulation 1.25.

RJO believes that the requested relief is consistent with the Commission's recent actions for swap dealers and other swap market participants to "smooth the transition away from interbank offered rates (IBORs)" and "remove regulatory obstacles."<sup>1</sup> The Alternative Reference Rate Committee ("ARRC"), a group of private-market participants convened by the Federal Reserve Board and the Federal Reserve Bank of New York to help ensure a successful transition from U.S. Dollar LIBOR to a more robust reference rate, has concluded that the "transition is essential to a more sound and resilient financial system and requires a significant, coordinated effort."<sup>2</sup> While Letter Nos. 20-23,<sup>3</sup> 20-24,<sup>4</sup> and 20-25<sup>5</sup> are focused on swaps, corresponding relief is necessary for FCMs to similarly engage in prudent commercial activity without risk of regulatory noncompliance.

---

<sup>1</sup> Press Release, CFTC Provides Additional Relief to Market Participants Transitioning from LIBOR (No. 8228-20), CFTC (Aug. 31, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8228-20> (internal quotations omitted).

<sup>2</sup> *Transition from LIBOR*, ARRC, <https://www.newyorkfed.org/arrc/sofr-transition> (last accessed Oct. 2, 2020).

<sup>3</sup> CFTC Letter No. 20-23 (Aug. 31, 2020).

<sup>4</sup> CFTC Letter No. 20-24 (Aug. 31, 2020).

<sup>5</sup> CFTC Letter No. 20-25 (Aug. 31, 2020).

Regulation 1.25 permits the investment of customer money in a list of enumerated instruments, “consistent with the objectives of preserving principal and maintaining liquidity,”<sup>6</sup> including certain adjustable rate securities. However, Regulation 1.25 only identifies certain benchmarks: “Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section.”<sup>7</sup>

The Federal Reserve Bank of New York publishes SOFR as a risk-free reference rate for U.S. Dollars.<sup>8</sup> As market participants move away from LIBOR-linked securities, SOFR-linked securities are becoming more prevalent. Since 2018, issuance of SOFR-linked securities has grown to about \$900 billion, with more than \$600 billion issued in 2020 alone. By contrast, according to the ARRC, on a typical day, the volume of three-month wholesale funding LIBOR transactions by major global banks was about \$500 million.<sup>9</sup> Government-sponsored enterprises (“GSEs”), like Fannie Mae and Freddie Mac, are rarely issuing debt linked to LIBOR beyond 2021.

Further, SOFR-linked investments are being used by government agencies and government-sponsored entities. The Federal Housing Finance Agency (“FHFA”) has instructed all Federal Home Loan Banks to “no longer enter into new financial assets, liabilities, and derivatives that reference LIBOR and mature after December 31, 2021.”<sup>10</sup> The GSEs have “focused solely on the LIBOR transition” and are working to transition “[a]ny floating-rate product currently referencing LIBOR . . . , including: Single-Family ARMs and PCs/MBS, Multifamily ARMs and Securities, Single-Family CAS (for Fannie Mae) and Single-Family STACR (for Freddie Mac), Multifamily CRT, Collateralized Mortgage Obligations (CMOs), early funding, Structured Transactions, floating-rate debt, and derivatives.”<sup>11</sup>

Regulation 1.25 limits FCMs investments to certain adjustable-rate securities, including certain LIBOR-linked securities. However, as LIBOR markets continue to become smaller and less liquid, and SOFR-linked transactions become more common, FCMs are more likely to move (along with the rest of the financial marketplace) from LIBOR- to SOFR-linked adjustable rate securities. Absent clarity from the Commission or DSIO, RJO faces a risk that it will be held in noncompliance with Regulation 1.25 for investing customer funds in these SOFR-lined securities,

---

<sup>6</sup> 17 CFR § 1.25(b).

<sup>7</sup> *Id.* at §1.25(b)(2)(iv)(A).

<sup>8</sup> See *Secured Overnight Financing Rate Data*, FED. RESERVE BANK OF NEW YORK, <https://apps.newyorkfed.org/markets/autorates/SOFR> (last accessed Oct. 2, 2020).

<sup>9</sup> See *supra* note 2.

<sup>10</sup> Memo from Andre D. Galeano, Deputy Director of the Division of Federal Home Loan Bank Regulation to Federal Home Loan Bank Presidents and Chief Executive Officers, FHFA (Sep. 27, 2019) at 5, available at [https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Supervisory-Letter\\_Planning-for-LIBOR-Phase-Out.pdf](https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Supervisory-Letter_Planning-for-LIBOR-Phase-Out.pdf).

<sup>11</sup> *Libor Transition FAQs*, FANNIE MAE AND FREDDIE MAC (Aug. 2020) at 5, available at [http://www.freddiemac.com/about/pdf/LIBOR\\_transition\\_faqs.pdf](http://www.freddiemac.com/about/pdf/LIBOR_transition_faqs.pdf).

notwithstanding widespread adoption, market liquidity, and the instruments generally meeting Regulation 1.25's principles of "preserving principal and maintaining liquidity."<sup>12</sup> The only distinction between SOFR and the other benchmarks permitted under Regulation 1.25 is that Regulation 1.25 does not specifically identify SOFR, which was not in existence when Regulation 1.25 was last amended by the Commission.

Despite efforts to ensure a smooth transition from LIBOR, absent no-action relief, an FCM faces two untenable options: (1) purchase SOFR-linked securities and subject itself to a potential CFTC enforcement action; or (2) opt not to invest in securities otherwise permitted under Regulation 1.25 but for the use of SOFR as a reference rate. The former exposes an FCM to the risk of a regulatory infraction, while the latter is a restraint on the ability of an FCM to efficiently engage in the repurchase market.

The inability to invest in SOFR-linked adjustable rate securities is also contrary to the Commission's public policy interests. As Chairman Heath Tarbert has noted, "failing to transition away from LIBOR is source of risk to your individual firm as well as the global financial system."<sup>13</sup> We appreciate the Commission's global leadership on LIBOR transition issues and note its "active dialogue with the ARRC on various issues affecting the transition."<sup>14</sup> We believe that no-action relief for FCMs seeking to invest in SOFR-linked securities constitutes "reasonable relief to market participants to both encourage the transition away from LIBOR and to make that transition as smooth as possible."<sup>15</sup>

RJO supports the Futures Industry Association petition for more flexibility for FCMs to invest customer funds in safe and liquid financial instruments under applicable CFTC rules.<sup>16</sup> However, the compressed timeframe related to the transition to SOFR makes obtaining no-action relief with respect to Regulation 1.25 a more pressing matter.

For the foregoing reasons, RJO respectfully requests that DSIO confirm that it will not recommend the Commission commence an enforcement action for failing to comply with Regulation 1.25 to the extent that RJO invests customer money in SOFR-linked adjustable rate securities.

---

<sup>12</sup> 17 CFR § 1.25(b).

<sup>13</sup> Statement of Chairman Heath P. Tarbert on LIBOR Transition Before the Market Risk Advisory Committee Meeting, CFTC (Dec. 11, 2019), *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement121119>.

<sup>14</sup> Opening Statement of Chairman Heath P. Tarbert Before the Market Risk Advisory Committee Meeting, CFTC (July 21, 2020), *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement072120>.

<sup>15</sup> *Id.*

<sup>16</sup> See Press Release, FIA's FMC requests flexibility for permissible investments for FCMs, FIA (Sep. 20, 2019), <https://www.fia.org/index.php/resources/fias-fmc-requests-flexibility-permissible-investments-fcms>. Not published on cftc.gov.

Mr. Joshua Sterling, Director  
Division of Swap Dealer & Intermediary Oversight  
October 2, 2020

Please contact the undersigned if you have any questions or require additional information.

Very truly yours,  


Augustine R. Perrotta  
Senior Director, Associate General Counsel  
R.J. O'Brien & Associates LLC

cc: Thomas Smith, Deputy Director, DSIO  
Mark Bretscher, Special Counsel, DSIO

**Certification Pursuant to Commission Rule 140.99(c)(3)(i)**

The undersigned hereby certifies that the material facts set forth in the attached letter, dated October 2, 2020, are true and complete to the best of my knowledge.

Pursuant to Commission Rule 140.99(c)(3)(ii), R.J. O'Brien & Associates LLC hereby undertakes that, if at any time prior to the issuance of such no-action letter, any material representation made in this letter ceases to be true and complete, it will promptly inform the Commission staff in writing of any material change in facts and circumstances.

R.J. O'Brien & Associates LLC

Dated: October 2, 2020

By:



Name: Augustine R. Perrotta

Title: Senior Director, Associate General Counsel