January 17, 2024

Submitted electronically via the CFTC Comments Portal

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Comments to Proposed Amendments to CFTC Regulation 1.25 (RIN 3038-AF24)

Dear Mr. Kirkpatrick:

The members of the Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**")[1] [2] appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") on the proposed amendments to CFTC Regulation 1.25 (the "**Proposal**").[3]

Under the Proposal, the Commission would (i) expand the scope of permissible investments of Customer Funds (defined below) to include U.S. Treasury exchange-traded funds ("**U.S. Treasury ETFs**") and certain foreign sovereign debt; (ii) limit the scope of money market fund ("**MMF**") interests that qualify as permitted investments; (iii) replace the London Interbank Offered Rate ("**LIBOR**") with the Secured Overnight Financing Rate ("**SOFR**") as a permitted benchmark for variable and floating interest rates for securities that qualify as permitted investments; (iv) clarify that derivatives clearing organizations ("**DCOs**") are responsible for losses resulting from investments of cleared swap customer collateral in permitted investments; (v) eliminate provisions that require futures commission merchants ("**FCMs**") to deposit Customer Funds with depositories that agree to provide Market Participants Division staff with

---

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] SIFMA AMG appreciates the advice and drafting assistance provided by Penny Christophorou, Sarah Riddell, and Michael Philipp of Morgan, Lewis & Bockius.

[3] Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations, 88 Fed. Reg. 81,236 (Nov. 21, 2023).

direct, read-only electronic access to accounts holding Customer Funds; and (vi) make other changes in connection with the new categories of proposed permitted investments.

I. Executive Summary

SIFMA AMG supports the Proposal and the updating of CFTC Regulation 1.25 to include foreign sovereign debt and U.S. Treasury ETFs as permitted investments of Customer Funds. The Proposal, however, could be enhanced with some modifications set out below:

- FCMs and DCOs should be permitted to use a third-party authorized participant ("**AP**")[4] as their agent to purchase and redeem shares of U.S. Treasury ETFs or to purchase such shares on the secondary market, in each case, on a delivery-versus-payment basis.
- Redemptions in-kind of U.S. Treasury ETF shares should be allowed.
- The limitation of U.S. Treasury ETFs to those that a DCO accepts as performance bond risks importing criteria for this permitted investment that go beyond the CFTC's objectives of liquidity and safety. The limitation should therefore be removed.
- The proposed concentration limits for U.S. Treasury ETFs and for permissible MMFs should be less restrictive to avoid unnecessary operational burdens on FCMs and DCOs investing Customer Funds.
- The Commission should consider necessary changes to CFTC Regulation 1.25 in light of the Securities and Exchange Commission ("**SEC**") Treasury Clearing Rules.

SIFMA AMG believes the above modifications will ensure liquidity, ease of convertibility of the permitted investments into cash and operational flexibility without affecting principal preservation. Thus, the modifications that SIFMA AMG is proposing would be consistent with the CFTC's stated goals for investments permitted under CFTC Regulation 1.25.

II. Background

CFTC Regulation 1.25 sets forth the types of investment instruments in which an FCM or DCO may invest "Customer Funds" (i.e., money, securities, and property received by an FCM or DCO from, for, or on behalf of futures, cleared swaps, or foreign futures customers to margin, guarantee, or secure futures and options on futures transactions traded on a CFTC-designated

---

[4] SEC Rule 6c-11(a)(1) defines "authorized participant" to mean "a member or participant of a clearing agency registered with the [Securities and Exchange] Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units." 17 C.F.R. § 270.6c-11. Registered broker-dealers, but not DCOs, are often authorized participants.

contract market, cleared swaps, or foreign futures, as applicable, and all money accruing to such customers as a result of trading these instruments).[5] Historically, the CFTC has permitted investments of Customer Funds that were creditworthy, highly liquid and readily marketable (i.e., readily convertible to cash to meet a margin call).[6]

SIFMA AMG members, as providers of margin that becomes Customer Funds, share the Commission's objectives with respect to the types of investments that should be eligible for Customer Funds. SIFMA AMG members also may be the providers of the various permitted investments into which Customer Funds may be made. As such, SIFMA AMG is well positioned to provide comments on the Proposal.

III. SIFMA AMG Supports the Expansion of Permitted Investments

A. U.S. Treasury Exchange-Traded Funds Should Be Permitted Investments, With Certain Modifications

SIFMA AMG agrees with the Commission that Qualified ETFs (defined below) should be permitted investments of Customer Funds, since they have characteristics consistent with those of current permitted investments and provide an opportunity for further diversification, but respectfully requests that the Proposal be modified to permit FCMs and DCOs to purchase U.S. Treasury ETFs through an authorized participant acting as their agent or on the secondary market, to eliminate the performance bond requirement and to permit in-kind redemptions.

The Proposal's expansion of permitted investments to include U.S. Treasury ETFs is appropriate in light of the ETF market's development over the past several years and the benefits of adding this form of investment. At the time of the Commission's last review of permitted investments more than a decade ago,[7] the U.S. Treasury ETF market was not well-developed. Now, the market for U.S. Treasury ETFs provides several options and the necessary liquidity to

---

5 The term "Customer Funds" includes futures customer funds, cleared swaps customer collateral, and 30.7 (or foreign futures) customer funds. CFTC Regulation 1.3 defines "futures customer funds" to mean money, securities, and property received by an FCM or DCO from, for, or on behalf of futures customers to margin, guarantee, or secure futures and options on futures transactions traded on a CFTC-designated contract market, and all money accruing to such customers as a result of trading futures and options on futures. 17 C.F.R. § 1.3. CFTC Regulations 1.3 and 22.1 define "cleared swaps customer collateral" to mean all money, securities, or other property received by an FCM or a DCO from, for, or on behalf of, a cleared swaps customer to margin, guarantee, or secure cleared swap positions. 17 C.F.R. §§ 1.3, 22.1. The term "30.7 customer funds" means any money, securities, or other property received by an FCM from, for, or on behalf of a U.S. person or foreign domiciled person (i.e., a "30.7 customer") to margin, guarantee, or secure futures or options on futures positions executed on a foreign board of trade. 17 C.F.R. § 30.1.

6 *See, e.g.,* CFTC Interpretative Letter No. 86-21, Investment of Customer Funds in Municipal Securities, Comm. Fut. L. Rep. (CCH) ¶23,266 (Sep. 17, 1986).

7 Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 Fed. Reg. 78,776 (Dec. 19, 2011).

meet the "highly liquid" standards under CFTC Regulation 1.25.[8] Moreover, the Commission's inclusion of Qualified ETFs as permitted investments will provide FCMs and DCOs the opportunity to diversify their investments. At the same time, investment by FCMs and DCOs in Qualified ETFs will be operationally efficient and cost-effective; rather than having to individually purchase U.S. Treasuries, FCMs and DCOs can instead invest in a U.S. Treasury ETF holding a portfolio of those U.S. Treasuries.

Under the Proposal, shares in U.S. Treasury ETFs that satisfy certain conditions ("**Qualified ETFs**") would be permitted investments under CFTC Regulation 1.25. To be a Qualified ETF and for an FCM or DCO to be able to invest in that Qualified ETF:

- The FCM or DCO must be an AP of the U.S. Treasury ETF;
- Interests in the U.S. Treasury ETF must be redeemable in cash by the FCM or DCO in its capacity as an AP at a price based on the net asset value determined in accordance with the Investment Company Act of 1940 and regulations thereunder and on a delivery-versus-payment basis;[9]
- The U.S. Treasury ETF must invest at least 95% of its assets in securities comprising the short-term U.S. Treasury index whose performance the fund seeks to replicate;[10]
- The U.S. Treasury ETF's interests must be acceptable as performance bond by a DCO;[11]
- The U.S. Treasury ETF must be an investment company registered with the SEC under the Investment Company Act of 1940 and hold itself out to investors as an ETF;[12]
- The U.S. Treasury ETF must be sponsored by a federally regulated financial institution, a bank under Section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation;[13]

---

8 CFTC Regulation 1.25(b)(1) (requiring investments of Customer Funds to be "highly liquid" with the ability to be converted into cash within one business day without a material discount in value).

9 CFTC Regulation 1.25(c)(6); Proposed CFTC Regulation 1.25(c)(8)(i).

10 Proposed CFTC Regulation 1.25(c)(8)(ii).

11 Proposed CFTC Regulation 1.25(c)(8)(iii).

12 Proposed CFTC Regulation 1.25(a)(1)(vi).

13 Proposed CFTC Regulation 1.25(c)(1).

- The FCM or DCO would be required to obtain an acknowledgment letter from the U.S. Treasury ETF's sponsor or a depository acting as custodian for the U.S. Treasury ETF interests, neither of which may prohibit pledging of the U.S. Treasury ETF shares;[14]

- The U.S. Treasury ETF's net asset value must be computed and made available to FCMs or DCOs by 9:00 a.m. of the business day following each business day;[15]

- The U.S. Treasury 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, with no exceptions from this requirement for extraordinary circumstances as currently apply for MMFs;[16] and

- As registered investment companies, Qualified ETFs must comply with SEC financial reporting requirements and liquidity risk management program obligations.

SIFMA AMG notes that Qualified ETFs also have the advantage, as permitted investments, of price and investment transparency, as well as intra-day trading and liquidity. For FCMs and DCOs to have the benefit of these additional characteristics of Qualified ETFs, however, the Proposal would need to be modified to allow FCMs and DCOs to use other market-standard ways to purchase and sell investments in Qualified ETFs.

<u>1.</u> <u>Access to Qualified ETFs Should Be Permitted on An Agency Basis Through Authorized Participants or on the Secondary Market, in each case, on a Delivery-Versus-Payment Basis</u>

SIFMA AMG respectfully requests that the Commission allow FCMs and DCOs to purchase and redeem Qualified ETFs not only through themselves as APs but also through an agency arrangement with an AP or on the secondary market, in each case, by settling on a delivery-versus-payment basis.

As noted in the Proposal, APs are the only market participants that directly place orders with the fund to create and redeem creation units (<u>i.e.</u>, a specified number of shares) of a U.S. Treasury ETF (the "**Primary Market**"). The creation and redemption mechanism role of the AP serves to maintain the price of shares of a U.S. Treasury ETF.[17] To be an AP, SEC regulations

[14] CFTC Regulation 1.25(c)(7).

[15] CFTC Regulation 1.25(c)(4).

[16] CFTC Regulation 1.25(c)(5)(i).

[17] The creation and redemption mechanism allows APs to monitor the price of a U.S. Treasury ETF's shares and take advantage of changes to the share price by creating or redeeming shares. If a U.S. Treasury ETF's share price deviates from the fair value of its assets, APs will arbitrage the difference, which helps keep the share price closely aligned with the value of the U.S. Treasury ETF's assets.

require that the market participant be a member or participant of an SEC-registered clearing agency and have a written agreement with the U.S. Treasury ETF or one of its service providers allowing the AP to place orders for the purchase and redemption of creation units.[18] APs may enter into agency arrangements to allow non-APs to access the Primary Market. Shares also trade on a national securities exchange in the secondary market at market prices, allowing for intra-day trading.

Despite the availability of these other trading methods, the Commission has proposed that an FCM or DCO be an AP of a U.S. Treasury ETF because of concerns about the safety and integrity of Customer Funds in a Qualified ETF under an agency arrangement.[19] In particular, the CFTC was concerned that an FCM or DCO would need to remove Customer Funds from the segregated account to purchase shares from an AP, and that the redemption of a Qualified ETF's shares might take longer than one day if an unaffiliated AP were used.[20]

These concerns can, however, be effectively addressed. An FCM or DCO would be able to acquire shares of a Qualified ETF on a delivery-versus-payment basis without being an AP but by using an AP as an agent. In our experience, APs often engage in agency transactions for U.S. Treasury ETF creations and redemptions. The FCM or DCO would not provide Customer Funds to the agent AP until the shares are received by the FCM or DCO or its bank that holds segregated funds, and vice versa.

An agreement between an FCM or DCO and an AP also could solve for any concern about the next-day redemption requirement. Recently amended SEC rules also could solve for any concern about the next-day redemption requirement for transactions in the secondary market. The new rules shorten the standard settlement cycle for most institutional securities transactions from two business days after the trade date (T+2) to one (T+1), with a May 28, 2024, implementation date.[21] Moreover, because of the shortened settlement cycle, secondary market transactions to sell Qualified ETF shares should similarly be permitted so long as they are effected on a delivery-versus-payment basis.

This type of delivery-versus-payment arrangement is no different from what is applicable to repurchase agreements entered into today using Customer Funds. Pursuant to CFTC Regulation 1.25(d)(9), a repurchase agreement must provide for the transfer of securities or cash on a delivery-versus-payment basis to a customer segregated account.[22] Since the CFTC is already comfortable with FCMs and DCOs entering into repurchase agreements involving

---

[18] 17 C.F.R. § 270.6c-11.

[19] *See, e.g.*, Proposed CFTC Regulation 1.25(c)(8)(i).

[20] 88 Fed. Reg. at 81,250-51.

[21] Shortening the Securities Transaction Settlement Cycle, SEC Release Nos. 34-96930; IA-6239 (Feb. 15, 2023); 88 Fed. Reg. 13,872 (Mar. 6, 2023).

[22] CFTC Regulation 1.25(d)(9).

Customer Funds on a delivery-versus-payment basis, a similar arrangement should be permitted for an FCM or DCO that purchases or redeems U.S. Treasury ETF shares through an agency arrangement or on the secondary market, in each case done on a delivery-versus-payment.

2. The Proposal's Performance Bond Condition is Not Necessary

The Proposal's requirement that a DCO must accept a U.S. Treasury ETF as performance bond for that ETF to be a Qualified ETF is unnecessary to ensure the safety of Qualified ETF permitted investments.

SIFMA AMG appreciates that DCOs are subject to regulatory requirements as to the types of assets that they may accept as initial margin but these requirements are subject to each DCO's unique considerations, including specific risk-reducing properties that particular assets have in a particular portfolio.[23] Instead of 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, the Commission should rely on factors that address preservation of principal, liquidity, and redemption already specified in CFTC Regulation 1.25.

Using a DCO's performance bond criteria as a gatekeeper to what are Qualified ETFs unnecessarily constrains the diversification determination that should be made by each FCM and other DCO using the factors set out by the Commission. In addition, the application of a DCO's criteria to permitted investments could reduce the certainty associated with CFTC Regulation 1.25 and could present compliance challenges for FCMs and DCOs.

Accordingly, SIFMA AMG respectfully requests the Commission to reconsider this condition and adopt rules that do not include the performance bond requirement.

3. Redemptions In-Kind Should Be Permitted

The Proposal would require an FCM or DCO to redeem shares in a Qualified ETF in cash, with no option to redeem shares in-kind, because, according to the Commission, cash redemptions "may allow for a more expeditious liquidation of the shares than in-kind redemptions."[24]

One historical purpose of the next-day redemption requirement is to provide an FCM with liquidity to satisfy margin calls.[25] However, some DCOs accept U.S. Treasuries as margin and an FCM might want to have the option to redeem shares in-kind to post U.S. Treasuries with

---

23 *See, e.g.*, CFTC Regulation 39.13(g)(10).

24 88 Fed. Reg. at 81,251.

25 *See, e.g.*, CFTC Interpretative Letter No. 86-21, *supra* n.4.

the clearinghouse or to return U.S. Treasury collateral to customers.[26] Moreover, when an AP makes an in-kind redemption request, whether for itself or on behalf of another market participant with whom it has an agency arrangement, it is our understanding that a Qualified ETF is able to effectuate settlement within one business day.

Redemptions in-kind serve important purposes for U.S. Treasury ETFs and should be allowed for Qualified ETFs. For example, redemptions in-kind are a key feature of a U.S. Treasury ETF's pricing mechanism, helping keep the fund's net asset value in line with its share price. An in-cash redemption mandate could distort the price of a Qualified ETF, meaning that an FCM or DCO may be subject to a settlement price that is not at the fund's net asset value (i.e., not at its fair value).

In-kind redemptions also avoid certain transaction fees, keeping costs lower for investors. Providing FCMs and DCOs with the option to redeem in cash or in kind for instruments that are permitted investments and eligible margin collateral gives FCMs and DCOs the flexibility to determine how to manage their customer-held assets and associated risk. The Commission should provide FCMs and DCOs with this flexibility rather than imposing constraints on them and on the Qualified ETFs that would become subject to these redemption restrictions. As proposed, the conditions applicable to U.S. Treasury ETFs risk creating parameters so prescriptive that FCMs and DCOs realistically might not be able to nimbly invest Customer Funds in these ETFs.

SIFMA AMG respectfully requests that the Commission remove the redemption constraint in the final rules and tailor the conditions in a way that will facilitate investments of Customer Funds in Qualified ETFs.

B. More Flexible Concentration Limits are Necessary.

1. Background on Current and Proposed Concentration Limits

The Commission has proposed asset- and issuer-based concentration limits relating to Permitted MMFs (defined below) and Qualified ETFs that SIFMA AMG believes are too restrictive and will pose operational risk outweighing the concerns the CFTC cited for imposing the limits. SIFMA AMG recommends that the Commission maintain the current issuer-based concentration limits and make them applicable to the Qualified ETFs as well.

---

[26] For example, CME and ICE Clear U.S. accept U.S. Treasuries, including bills, floating rate notes, notes, and bonds as margin collateral. *See* https://www.cmegroup.com/solutions/clearing/financial-and-collateral-management/acceptable-collateral.html and https://www.ice.com/publicdocs/clear_us/ICUS_Collateral_Information.pdf.

The Proposal would revise the MMF permitted investment basket in CFTC Regulation 1.25 to reflect the CFTC's current position set out in staff letters.[27] For an MMF to qualify as a permitted investment ("**Permitted MMFs**"), the MMF must be a government money market fund within the meaning of SEC Rule 2a-7(a)(16) which requires that at least 99.5% of the fund's investment portfolio be comprised of cash, U.S. government securities, including U.S. agency obligations, or repurchase transactions that are fully collateralized by government securities. Consistent with the Commission's positions in its staff letters, MMFs that elect to impose discretionary liquidity fees are <u>not</u> permitted investments.[28]

The CFTC has proposed the following asset- and issuer-based concentration limits for both Permitted MMFs and Qualified ETFs:

- <u>Asset-based concentration limits</u>:

  Both Permitted MMFs and Qualified ETFs will become subject to asset-based concentration limits tied to the size of the issuing funds and related management companies. Today, Permitted MMFs comprising only U.S. government securities are not subject to any such limits. Going forward, however, the maximum investment by a FCM or DCO at any time in either Permitted MMFs or Qualified ETFs that have at least $1 billion in assets and management companies that manage at least $25 billion in assets would be 50% of the total assets held in segregation.[29] The maximum investment by an FCM or DCO at any time in Permitted MMFs or Qualified ETFs that do not meet either of the above asset tests would decrease to 10% of total assets held in segregation.[30]

- <u>Issuer-based concentration limits</u>:

  The Commission also has proposed issuer-based concentration limits applicable to both Permitted MMFs and Qualified ETFs such that investment in (a) any single family of Permitted MMFs or Qualified ETFs is set at 25% of total assets held in segregation by the FCM or DCO (remaining unchanged from the current limit) and (b) individual Permitted MMFs or Qualified ETFs is set at a 5% limit (currently, the applicable limit to MMFs is 10%).[31] To the extent that the same issuer or an affiliate of an issuer sponsors a Permitted MMF or a Qualified ETF in

[27] CFTC Staff Letter Nos. 16-68 and 16-69.

[28] *Id.*

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

[30] Proposed CFTC Regulation 1.25(b)(3)(i)(F). (SIFMA AMG notes that CFTC Regulation 1.25(b)(3)(i)(G) does not appear to be necessary should the CFTC adopt clause (F) as proposed.)

[31] Proposed CFTC Regulation 1.25(b)(3)(ii)(C)-(D).

which an FCM or DCO has invested Customer Funds, it appears that these interests would be aggregated.[32]

2. The Commission Has Not Adequately Supported the 5% Lower Concentration Limit

In support of the proposed concentration limits, the Commission cites the potential for operational and cybersecurity risks, but SIFMA AMG does not believe these risks warrant the 5% issuer concentration limit proposed given the overall regulatory framework governing Permitted MMFs and Qualified ETFs.

The Commission notes that a MMF is "susceptible to cyber-attacks and operational incidents that may adversely impact their normal operating capabilities, including delaying or otherwise preventing them from processing redemption requests of FCMs and DCOs in a timely manner."[33] In such a scenario, the Commission believes that an FCM's or DCO's ability to satisfy its regulatory obligations might be affected. The Commission cites to the ION cyberattack that occurred in early 2023 as justification for its concentration limits.[34] The Commission does not provide any examples of cyberattacks that have adversely affected MMFs or U.S. Treasury ETFs or that have caused delays to redemptions to support these concerns.

In fact, MMFs and U.S. Treasury ETFs are sponsored by SEC-registered investment advisers that are subject to their own cyber safeguards and regulatory obligations in this regard.[35] Our members have confidence in the regulatory regime applicable to MMFs and U.S. Treasury ETFs and therefore commend the CFTC to maintain the existing 10% threshold for MMFs and apply the same to U.S. Treasury ETFs. Further, to SIFMA AMG's knowledge, cybersecurity risk has not been raised as a limiting investing factor under other authorities' rules. SIFMA AMG is concerned that introducing cybersecurity risk as a reason for proposing a regulation unrelated to cybersecurity could provide an unfounded, unquantifiable precedent for future rulemakings.

Moreover, the Commission has not explained why a 5% limit—rather than the current 10% limit—more appropriately addresses its concern over redemption and liquidity risks. The result of a lower limit necessarily will require FCMs and DCOs to utilize a greater number of Permitted MMF and Qualified ETF providers, resulting in operational inefficiency. Stringent

---

32 Proposed CFTC Regulation 1.25(b)(3)(ii)(E).

33 88 Fed. Reg. at 81,256.

34 *Id.* at n.238.

35 *See* Regulation S-P; 17 C.F.R. § 248.30(a). In addition, the SEC has proposed comprehensive cybersecurity rules applicable to investment advisers. Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, 87 Fed. Reg. 13,524 (Mar. 9, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-09/pdf/2022-03145.pdf.

limits on the allocation of Customer Funds to either a single Permitted MMF or Qualified ETF or fund family will in fact potentially complicate liquidity management for FCMs and DCOs when they need to purchase or liquidate their underlying MMF or Qualified ETF holdings. FCMs and DCOs will need to place multiple purchase or redemption orders, as the case may be, which will generate multiple wire transfers to occur upon redemption.

Further, with such a low issuer-based limit, FCMs and DCOs will need to monitor for compliance with concentration limits and the Commission's conditions applicable to MMFs and U.S. Treasury ETFs across a greater number of funds. An increased number of transaction fees, and potentially a wider spread in fees, could result. In addition, an FCM's or DCO's credit or risk team would need to evaluate other investment options once the issuer-based concentration limit is met and continue to monitor these additional investments, unnecessarily draining resources because of the proposed lower 5% limit.

In the Qualified ETF basket, available investment options would be over-circumscribed under an arbitrary 5% limit. Only five ETFs are today accepted to support a performance bond to a DCO. That means that only 25% of the assets of the FCM or DCO may thereby be invested in a Qualified ETF, even though the concentration limit overall is 50% for Qualified ETFs.[36] 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.

SIFMA AMG further believes that the SEC's most recent MMF reform initiatives, which increased the minimum standards for liquidity on both an overnight and weekly holdings basis, will provide for a beneficial concentration of high-quality liquid assets maintained in seven-day and shorter securities. Pursuant to the SEC's rulemaking, overnight minimum standards will increase from 10% to 25%, and weekly minimum standards will increase from 30% to 50% beginning April 2, 2024.[37] Given the assets in which a Permitted MMF can invest, lowering the limit to protect against operational and other risks is unnecessary. Permitted MMFs may make direct investments in, and potentially enter into repurchase agreements on, a broad array of U.S. Treasuries and agency securities, giving flexibility to the sponsor to avoid any assessed risks. Moreover, most Permitted MMFs have access to the New York Federal Reserve's Reverse Repo Facility and can place a significant portion of their portfolios (up to $160 billion/day) at the facility when other options become less attractive.

---

[36] *See, e.g.*, CME Advisory Notice, Modifications to Schedule of Acceptable Performance Bond—Addition of Short-Term U.S. Treasury ETFs (Aug. 2, 2022), https://www.cmegroup.com/notices/clearing/2022/08/Chadv22-293.pdf.

[37] Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N–CSR and Form N–1A, SEC Release Nos. 33-11211; 34-97876; IA-6344; IC-34959 (Jul. 12, 2023); 88 Fed. Reg. 51,404 (Aug. 3, 2023).

Because there is no factual basis for a proposed 5% limit and Permitted MMFs and Qualified ETFs have characteristics that reduce the risks that the CFTC has cited, SIFMA AMG members respectfully request the Commission reconsider at least the proposed 5% issuer-based concentration limit applicable to individual Permitted MMFs and Qualified ETFs and raise that level to the current 10% limit. Such a level is unlikely to create risk to an FCM's or DCO's ability to redeem its interests should the Permitted MMF or Qualified ETF sponsor experience an operational issue. The reality of lower limits, as noted, is more likely to introduce weaknesses in the system than would the remote possibility of an operational or cyber event.

C. SIFMA AMG Supports the Inclusion of Foreign Sovereign Debt as Permitted Investments and Replacing LIBOR with SOFR as a Permitted Benchmark

SIFMA AMG supports the expansion of permitted investments to include foreign sovereign debt.

As proposed, an FCM or DCO would be permitted to invest in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom ("**Specified Foreign Sovereign Debt**").[38] The Specified Foreign Sovereign Debt represents safe investment choices with very low risk to customers. Further, FCMs and DCOs will be responsible, under the proposed rule and CFTC Regulation 1.29, for investment losses should there be any associated with the investment of Customer Funds in such sovereign debt.

SIMFA AMG also supports replacing LIBOR with SOFR as a permitted benchmark for variable and floating interest rates for securities that are permitted investments.

IV. The SEC's Treasury Clearing Rules Will Necessitate Revisions to the CFTC's Customer Protection Rules

On December 13, 2023, the SEC adopted rule amendments referred to as the Treasury Clearing Rules that are designed to improve risk management in clearance and settlement and to facilitate additional central clearing for the U.S. Treasury market and that will affect the secondary cash and repo markets in which FCMs and DCOs operate to enter into permitted investments.

Under the Treasury Clearing Rules, eligible secondary transactions that will be required to be cleared would include, subject to narrow exclusions: (1) all repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities to which a direct participant is a counterparty; (2) all purchase and sale transactions of U.S. Treasury securities (cash transactions) for direct participants who are acting as interdealer brokers; and (3) all cash transactions between

[38] Proposed CFTC Regulation 1.25(a)(1)(vii).

a direct participant and any of a registered broker-dealer or a government securities dealer or broker. There is no exclusion for FCMs.

With the requirement that such transactions be cleared, the CFTC should consider changing the eligible counterparty requirement in CFTC Regulation 1.25 for Treasury securities and repurchase and reverse repurchase agreements to provide that FICC is an acceptable counterparty. The merit for such a change may prove compelling as the SEC's clearing mandate is implemented, and regulatory, risk, and operational enhancements to the FICC clearing platform are achieved.

V. Conclusion

SIFMA AMG supports the Proposal, particularly the inclusion of foreign sovereign debt as a permitted investment and the replacement of LIBOR with SOFR as a permitted benchmark. In addition, SIFMA AMG appreciates the expansion of permitted investments to include U.S. Treasury ETFs and the Commission's recognition that this recently matured market is safe for investments of Customer Funds.

As proposed, however, some of the conditions applicable to FCMs and DCOs that wish to invest Customer Funds in U.S. Treasury ETFs or permitted MMFs are not necessary for the Commission to achieve its objectives and actually could hinder investments in these products. SIFMA AMG respectfully requests the Commission to consider modifying the Proposal to: (1) permit FCMs and DCOs to purchase U.S. Treasury ETF shares on a delivery-versus-payment basis through APs or on the secondary market, rather than being required to be APs themselves; (2) eliminate the requirement that a U.S. Treasury ETF be accepted by a DCO as performance bond to be qualified for the investment of Customer Funds; (3) allow in-kind redemptions, (4) maintain the current 10% issuer-based concentration limit for MMFs, and apply this limit to Qualified ETFs; and (4) add the Fixed Income Clearing Corporation as an eligible counterparty for Treasuries and Treasury repurchase and reverse repurchase agreements in light of the SEC's final Treasury Clearing Rule, to be effective only once the CFTC has made other requisite changes to accommodate the Treasury Clearing Rule.

With these modifications, the rule will work effectively for FCMs, DCOs, and the sponsors of Permitted MMFs and Qualified ETFs and, most importantly, will continue to keep Customer Funds safe.

*   *   *

On behalf of SIFMA AMG, we appreciate the opportunity to provide our comments to the Proposal. If you have questions or require additional information, please do not hesitate to contact William Thum at (202) 962-7381 or bthum@sifma.org.

Sincerely,

William C. Thum
Managing Director and Associate General Counsel
Asset Management Group

cc: Honorable Rostin Behnam, Chair
Honorable Kristin N. Johnson, Commissioner
Honorable Christy Goldsmith Romero, Commissioner
Honorable Summer K. Mersinger, Commissioner
Honorable Caroline D. Pham, Commissioner