August 1, 2019

To: Commodity Futures Trading Commission
Board of Governors of the Federal Reserve System
Department of the Treasury/Office of the Comptroller of the Currency
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Housing Finance Agency

Re: Posting Cash and Money Market Funds for Initial Margin

Ladies and Gentlemen,

The International Swaps and Derivatives Association ("ISDA"), Managed Funds Association ("MFA"), Securities Industry and Financial Markets Association's Asset Management Group ("SIFMA AMG"), Investment Company Institute ("ICI"), Institutional Money Market Funds Association ("IMMFA"), and Securities Industry and Financial Markets Association ("SIFMA") are requesting that US regulators provide relief or amendments pertaining to posting money market funds ("MMF"s) as initial margin to covered swap entities, including swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants (collectively, "CSEs") and their counterparties which will become subject to the initial margin ("IM") requirements of the *Margin and Capital Requirements for Covered Swap Entities*[1] ("USPR rule") and the *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*[2] ("CFTC rule") (collectively, the "US Margin Rules.") Specifically, we request that the US prudential regulators and the CFTC provide relief or rule amendments to expand the types of money market funds that can be used as eligible collateral, including allowing non-US MMFs. We also request that the US prudential regulators permit substituted compliance with EU margin rules.

[1] 80 Fed. Reg. 74840 (November 30, 2015)
[2] 81 Fed. Reg. 636 (January 6, 2016)

Both in the United States and European Union, MMF regulations allow for the use of repurchase and reverse repurchase agreements, and the prospectuses for a large majority of MMFs in both jurisdictions contemplate the use of these transactions to properly manage short term liquidity. The US Margin Rules restrict such activity in the conditions for use of MMFs as eligible collateral, even though these same restrictions do not apply to use of MMFs as collateral for cleared swaps. EU margin rules for uncleared derivatives transactions also do not restrict MMFs' use of repurchase or reverse repurchase transactions[3]. Consequently, parties subject to both EU and US margin requirements have limited options for using MMFs as collateral absent US regulators granting substituted compliance with the EU margin rules. Unless remedied, the use of MMFs as eligible collateral for IM will be extremely limited and the global market will be bifurcated by regulatory regime.

<u>Industry's Use of Cash as Collateral with MMF Sweep</u>

Cash is widely used as collateral in the derivatives market. According to the latest ISDA Margin Survey[4], 75.3% of derivatives collateral posted is cash. Cash settlement processing is efficient, fungible, and a high quality and highly liquid asset.

Posting cash is a necessity for entities both directly and indirectly subject to the IM requirements.

1) Firms may not have ready access to eligible non-cash collateral.
2) Firms may not have the operational infrastructure and/or the capacity to efficiently transform cash to eligible collateral.
3) Transformation outside the custodian can be costly for firms with less scale.
4) Holding securities specifically in anticipation of collateral calls creates a drag on performance and decreases investment performance for end investors.
5) There are situations where transformation is not possible or practical prior to posting e.g. due to reinvestment/custodian cut-off times.

For both voluntary and also mandatory IM, buyside market participants have steadily increased the use of third party IM segregation arrangements and margin transfer deadlines continue to contract from a regulatory perspective, and as a consequence, there has been an increased use of MMFs as a secure and efficient reinvestment option with cash margin.

As a result, the expected mechanism for reinvestment of cash is a custodian "sweep," where the custodian reinvests the cash within the segregated account into another eligible collateral asset via standing instructions.

Buyside market participants using the custodian sweep process can efficiently meet margin calls with cash in compressed timeframes without having dedicated resources and overhead costs to manage the MMF investment process directly.

[3] *See* Recital 27 of REGULATION (EU) 2017/1131 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on money market funds

[4] https://www.isda.org/a/nIeME/ISDA-Margin-Survey-Year-End-2018.pdf

We appreciate that the US Margin Rules allow for the use of redeemable securities in a pooled investment fund that holds only US Treasuries (or securities unconditionally guaranteed by the US Treasury) and cash funds denominated in US dollars, however, this form of eligible collateral is subject to the undue limitation within §23.156 (a)(ix)(C) of the CFTC rule and §__.6(b)(9)(ii) of the USPR rule: "*Assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee.*" This limitation severely reduces the number of eligible MMFs that could be used under the US Margin Rules, and this limitation is also inconsistent with other regulations such as CFTC Regulation 1.25[5] (which governs the investment of customer money by futures commission merchants ("FCMs") without similar restrictions).

Substituted Compliance

MMFs are generally permitted to be posted and collected as eligible collateral under both EU Margin Rules and US Margin Rules, provided they meet certain conditions. However, MMFs that would typically satisfy those conditions under the EU Margin Rules would not constitute eligible collateral under the US Margin Rules because MMFs subject to the European legislative framework are permitted to invest in repurchase agreements or reverse repurchase agreements, which is expressly prohibited by the US Margin Rules.

Equally, taking the approach under the EU Margin Rules that MMFs would need to constitute UCITS, which means that non-EU MMFs may not qualify as eligible collateral under EU Margin Rules because they are not established in the European Union, as required by UCITS Directive.

Therefore, as a practical matter, counterparties to transactions that are subject to both the EU Margin Rules and US Margin Rules are unlikely to be permitted to post and collect MMFs.

On October 13, 2017, the CFTC issued a determination that it found the EU Margin Rules comparable in outcome to the CFTC Rules and the European Union adopted an implementing decision recognizing the CFTC Rules as equivalent to the EU Margin Rules. As a result, the conflicts discussed herein associated with use of MMFs as collateral may be mitigated by the application of substituted compliance provided that all relevant parties are able to avail themselves of it and satisfy all applicable conditions.

In order to afford CSEs subject to the USPR rules the same opportunity to use MMFs for cross-border transactions via the application of substituted compliance, we urge the US Prudential Regulators to issue a comparability determination for the EU Margin Rules, similar to that of the CFTC comparability determination.

Providing for the use of MMFs with the ability to use securities lending, securities borrowing, repurchase agreements, and reverse repurchase agreements, including the use of comparable

[5] 76 Fed. Reg 78776 (December 19, 2011), 77 Fed. Reg. 66288 (November 2, 2012), and 78 Fed. Reg. 68506 (November 14, 2014)

non-US MMF issuers and allowing substituted compliance with the EU Margin Rules will ensure global access to liquid eligible collateral offerings for cash reinvestment.

Summary

Accordingly, for the preceding reasons indicated, ISDA, MFA, SIFMA AMG, ICI, IMMFA, and SIFMA requests that US regulators:

- allow the use of a broader range of MMFs meeting the conditions set out above; and
- allow the use of comparable EU MMFs in cases where substituted compliance is available through the issuance of a comparability determination by the US Prudential Regulators.

Thank you for your consideration of this important matter.

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International Swaps and Derivatives Association

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About the Associations

ISDA - Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 71 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

MFA – The Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

SIMFA AMG - Securities Industry and Financial Markets Association's Asset Management Group 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.

ICI - The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$23.3 trillion in the United States, serving more than 100 million US shareholders, and US$6.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

IMMFA – The Institutional Money Market Funds Association represents the European institutional money market fund industry that manages and promotes investment funds regulated by the MMF Regulation. All IMMFA members' funds are UCITS and predominantly Short-term money market funds. All but one is domiciled in Luxembourg or the Republic of Ireland (there is one UK fund).

A list of members may be found at www.immfa.org

The money market fund industry in Europe totals €1.1 Trillion (ECB figure from 31st March 2019) of which we know the larger part €656.7 Bn eq. (60%) was managed by IMMFA member funds. Of that IMMFA managed part the split was denominated in USD €345.2 Bn eq. (54%), in GBP €216.1 Bn eq. (34%) and in EUR €82.0 Bn eq. (13 %).

SIFMA – The Securities Industry and Financial Markets Association is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.