INVESTMENT COMPANY INSTITUTE

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October 10, 2023

Mr. Christopher Kirkpatrick
Secretary
US Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038–AF36)

Dear Mr. Kirkpatrick:

The Investment Company Institute[1] appreciates the opportunity to comment on the proposed amendments by the Commodity Futures Trading Commission (CFTC) to its initial margin (IM) requirements for uncleared swaps relating to the treatment of seeded funds and eligibility of certain money market funds (MMFs) as eligible collateral.[2] The Proposal would implement, with certain modifications, two recommendations in the CFTC's Global Markets Advisory Committee's (GMAC) 2020 subcommittee report on scoping and implementation of the IM requirements for uncleared swaps.[3] The Proposal would also implement a standardized haircut calculation methodology for qualifying MMFs and similar funds.

[1] The Investment Company Institute (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $31.5 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional $8.8 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London, and carries out its international work through ICI Global.

[2] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 88 Fed. Reg. 53409 (Aug. 8, 2023) ("Proposal"), *available at* https://www.govinfo.gov/content/pkg/FR-2023-08-08/pdf/2023-16572.pdf.

[3] Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020) ("GMAC Subcommittee Report"), *available at* https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.

ICI has consistently supported international efforts to implement margin requirements for uncleared swaps, including the CFTC's efforts.[4] Two-way margin is essential for managing the risk of swaps transactions as well as reducing systemic risk; the collection of IM is especially effective in reducing the risk of counterparty credit risk and provides each counterparty with protection against the future replacement cost in case of a counterparty default. ICI members—regulated funds[5] ("funds") and their advisers—have devoted considerable time and resources to implement margin requirements, which are significant and include adopting initial margin models, calculating average aggregate notional amounts among different accounts, amending bilateral documentation, and establishing third-party segregated accounts. Notably, funds have benefited greatly from the steps that the CFTC has taken to promote this progress, such as measures to further harmonize the CFTC's rules with the international framework for uncleared swaps margin. These measures have helped to mitigate the complexity of implementation and avoid disruptions to funds' ability to continue using uncleared swaps. While we support the Proposal, we provide additional perspectives and offer several recommendations below to further this progress.[6]

I. Treatment of Seeded Funds

The Proposal would amend the definition of "margin affiliate" under CFTC Regulation 23.151 to provide that a seeded fund that meets certain specified conditions ("eligible seeded fund")[7]

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[4] *See, e.g.* Letter from Dan Waters, Managing Director, ICI Global, to Robert deV. Frierson, Board of Governors of the Federal Reserve System, et al., *Margin and Capital Requirements for Covered Swap Entities, Proposed Rule; Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, Proposed Rule* 5 (Nov. 24, 2014) ("2014 ICI Global Letter"); Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, SEC, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker Dealers* 3-4 (Feb. 4, 2013); Letter from Karrie McMillan, General Counsel, ICI, and Dan Waters, Managing Director, ICI Global, to Wayne Byres, Secretary General, BCBS, and David Wright, Secretary General, IOSCO, *Consultation Paper on Margin Requirements for Non-Centrally Cleared Derivatives* 4-5 (Sept. 27, 2012); Letter from Karrie McMillan, General Counsel, ICI, to David A. Stawick, Secretary, CFTC, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants* 3-4 (Sept. 13, 2012); Letter from Karrie McMillan, General Counsel, ICI, to David A. Stawick, Secretary, CFTC, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants* 3-4 (July 11, 2011).

[5] The term "regulated fund" refers to both US-registered investment companies, such as mutual funds, ETFs, and other funds regulated under the Investment Company Act of 1940 ("registered funds"), and non-US regulated funds. "Non-US regulated funds" refers to funds organized or formed outside the US that are substantively regulated to make them eligible for sale to retail investors, such as funds domiciled in the European Union and qualified under the UCITS Directive (EU Directive 2009/65/EC, as amended), Canadian investment funds subject to National Instrument 81-102, and investment funds subject to the Hong Kong Code on Unit Trusts and Mutual Funds.

[6] To the extent applicable to regulated funds and advisers, we agree with the applicable rationales set forth in the GMAC Subcommittee Report, upon which the Proposal is based.

[7] An "eligible seeded fund" would be a collective investment vehicle that has received all or part of its start-up capital from a parent and/or affiliate (each, a sponsor entity) where: (i) the fund is a distinct legal entity from each sponsor entity; (ii) one or more of the fund's margin affiliates is already required to post and collect initial margin pursuant to CFTC Regulation 23.152; (iii) the fund is managed by an asset manager pursuant to an agreement that

would be deemed not to have any margin affiliates for purposes of calculating a fund's material swaps exposure (MSE) and the IM threshold amount,[8] for a period of three years from the fund's trading inception date. Notably, these conditions include requirements that (1) the seeded fund is a distinct legal entity from each sponsor entity; (2) the fund is managed by an asset manager pursuant to an agreement that requires the fund's assets to be managed according to a specified written investment strategy; and (3) the fund's asset manager has independence in carrying out its management responsibilities and exercising its investment discretion and, to the extent applicable, has independent fiduciary duties to other investors of the fund.

We generally support the proposed amendment, which will help to minimize potential negative impacts of IM requirements on the performance of seeded funds, including mitigating the competitive disadvantage to US seeded funds and their advisers or sponsors, without diminishing the inherent safeguards that the CFTC's requirements for uncleared swaps margin provide regarding systemic risk. Importantly, the proposed amendment would place US seeded funds and their advisers or sponsors on better competitive footing relative to non-US seeded funds, which are not subject to the same limitations.

An investment adviser or sponsor commonly provides the initial "seed" capital necessary to launch a new fund, in return for which it receives all or nearly all the shares of the fund. Seeded funds typically are used to implement and test new investment strategies for a certain period prior to making them accessible to the public.[9] Such funds must operate in accordance with the comprehensive regulatory regime administered by the SEC under the Investment Company Act and other federal securities laws. Among other requirements, they are subject to oversight by an

requires the fund's assets to be managed according to a specified written investment strategy; (iv) the fund's asset manager has independence in carrying out its management responsibilities and exercising its investment discretion, and to the extent applicable, has independent fiduciary duties to other investors of the fund; (v) the fund's written investment strategy includes a written plan for reducing each sponsor entity's ownership interests in the fund that stipulates divestiture targets over the three-year period after the seeded fund's trading inception date; (vi) regarding any of the seeded fund's obligations, the fund is not collateralized, guaranteed, or otherwise supported, directly or indirectly, by any sponsor entity, any margin affiliate of any sponsor entity, other collective investment vehicles, or the fund's asset manager; (vii) the fund has not received any of its assets, directly or indirectly, from an eligible seeded fund that has relied on the proposed exception; and (viii) the fund is not a securitization vehicle.

[8] Covered swap entities are required to exchange IM with each counterparty that is a SD, MSP, or financial end user with "material swaps exposure" (MSE) (collectively, "covered counterparties"). An entity has MSE when, together with its "margin affiliates," it has an average aggregate notional amount of exposure (AANA) in certain uncleared derivatives that exceeds $8 billion over a prescribed period. The regulatory definition of "margin affiliate" is based on financial accounting concepts of consolidation.

[9] Most registered funds need to establish a three-year track record before analysts such as Morningstar will cover them, or consultants to institutional investors and pension plans will recommend them. Additionally, registered funds' investment strategies sometimes may be "out of favor" with investors in the funds' early years, but the adviser believes they will be successful investment options when market conditions change. These timing issues make it necessary for registered funds' sponsors to have the ability to leave seed capital in a fund for a period of time.

independent board of directors,[10] strong conflict of interest protections through prohibitions on affiliated transactions,[11] and strict restrictions on leverage.[12] The investment adviser, which manages the seeded fund, is a fiduciary and must act in the best interest of the fund at all times.[13] The adviser is legally obligated to manage the fund's assets in accordance with a specified investment strategy, policies, and limitations, and may not take into account the positions of other funds or client accounts that it also manages. Importantly, seeded funds are legally and operationally distinct from one another as well as their respective advisers or sponsors—outside of the initial seed capital provided, seeded funds are not guaranteed or supported by, other investment funds and/or other sponsors or the investment adviser.

Requiring a seeded fund to exchange IM with its counterparty (typically a covered swap entity) is not only unnecessary to accomplish the regulatory objectives underlying the uncleared swaps margin requirements, but also undermines the ability to use seeded funds as a means for innovation in, and development of, new regulated fund products. As the GMAC subcommittee acknowledged, seeded funds generally do not pose significant risks to their swap counterparties or the financial system, given their modest capitalization and limited notional exposure in uncleared swaps.[14] If a fund must reserve its relatively limited capital to meet IM requirements, then its adviser or sponsor would be inhibited from fully testing the viability of investment strategies, which ultimately may disincentivize the introduction of new, regulated investment products that enable greater choice for investors.

Although we support the proposed exclusion for seeded funds, we urge the CFTC not to condition eligibility for the exclusion on one or more of a fund's margin affiliates being required to post and collect initial margin under CFTC regulations. The CFTC seeks to limit eligibility to only those seeded funds with a parent or affiliated entities who have MSE and would otherwise cause the seeded fund to become subject to IM requirements,[15] but doing so would unnecessarily lead to disparate treatment between a seeded fund who may qualify on this basis and a seeded fund that is part of a group where none of the entities may be subject to IM requirements on an individual basis, but may meet the threshold on a collective basis. Importantly, the condition is inconsistent with the distinct legal and operational character of each seeded fund described

[10] *See* Section 10(a) of the Investment Company Act (requiring a mutual fund or closed-end fund to have a board of directors, at least 40 percent of which must be independent directors).

[11] *See* Section 17(a) of the Investment Company Act.

[12] *See* Section 18 of the Investment Company Act (restrictions applicable to mutual funds and closed-end funds). UITs must issue only redeemable securities, "each of which represents an undivided interest in a unit of specified securities." *See* Section 4(2)(C) of the Investment Company Act. Thus, their legally mandated structure restricts them from using leverage.

[13] *See* Commission Interpretation Regarding the Standard of Conduct for Investment Advisers, 84 Fed. Reg. 33669 (July 12, 2019), *available at* https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf.

[14] Given their typical limited notional exposure, the CFTC should not consider a separate MSE and/or IM threshold amount for seeded funds, calculated based on the eligible seeded fund's individual exposure and proportionate to the perceived risks associated with funds' swap activities.

[15] Proposal at 53414.

above, which the CFTC acknowledges through other conditions, *e.g.*, the seeded fund is not collateralized, guaranteed, or otherwise supported by a sponsor or other related entities.[16] Such a condition could also impose operational challenges. Many firms establish, document, and maintain strict information barriers or information walls between affiliated funds and entities, often in compliance with other legal requirements.[17] Accordingly, these confidentiality obligations could make the sharing of swaps exposure information difficult for purposes of determining whether a seeded fund meets this condition.[18]

II. Money Market Funds as Eligible Collateral

The Proposal would amend CFTC Regulation 23.156(a)(1) to eliminate the asset transfer restriction that currently disqualifies many MMFs from being used as eligible collateral—those whose holdings are limited to US Treasuries (or securities unconditionally guaranteed by the US Treasury), and cash funds denominated in US dollars or similar quality government securities—if they engage in repurchase ("repo") or reverse repurchase ("reverse repo") agreements or similar arrangements.[19] We strongly support the proposed elimination of the restriction, which significantly and unnecessarily limits the ability to utilize government MMFs and other similar fund securities as eligible IM collateral. Based on data as of July 2023, the scope of MMFs that qualify as eligible collateral is limited to 21 MMFs with $649 billion in net assets. ICI estimates that eliminating the restriction would significantly increase that scope of eligible collateral to 45

[16] *See supra* note 7 for the conditions of an "eligible seeded fund."

[17] Many firms have invested resources to establish, document, maintain, and test (including, for some, through costly external audit procedures) strict "information barriers" or "information walls" among their affiliates, so that non-public holdings information or investment plans are not shared by investment professionals in different parts of the group. These barriers have been constructed over a multi-year period, based in part, for example, on SEC guidance with respect to regulated funds' and advisers' filing obligations under Section 13 of the Exchange Act.

[18] These concerns also apply if a fund's sponsor or other margin affiliates are required to continue to include an eligible seeded fund's exposure in calculating their own respective MSE or IM threshold amount, as the CFTC has stated would be the case. *See* Proposal at 53413. For similar reasons, we urge the CFTC not to require such aggregation. Given the established and specific purposes for seeded funds—and the significant regulatory framework that applies to them—we believe that it would not be feasible that the proposed exception would be used to circumvent the applicability of the IM requirements. Additionally, not requiring aggregation would be consistent with the treatment of seeded funds under the Volcker Rule pursuant to staff guidance from the CFTC and other prudential regulators. *See Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Question Regarding Certain Requirements under Section 13 of the Bank Holding Company Act of 1956 and Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds* (July 16, 2015), https://www.cftc.gov/idc/groups/public/@externalaffairs/documents/file/volckerrule_faq071615.pdf (advising regulators not to treat a seeded fund as a banking entity solely based on of the level of ownership of the fund by a banking entity during a seeding period).

[19] CFTC Regulation 23.156(a)(1)(ix) currently limits the types of collateral eligible to be used for IM. The securities of certain MMFs that invest in high-quality underlying instruments, including securities issued or unconditionally guaranteed by the US Treasury, the European Central Bank, or certain other sovereign entities, and cash, may qualify as eligible collateral. The rule specifies, however, that the fund's asset manager may not transfer the fund's assets through securities lending, securities borrowing, repos or reverse repos, or other means that involve having rights to acquire the same or similar assets from the transferee (the "asset transfer restriction").

MMFs with $1.348 trillion in net assets,[20] which would enhance the ability of funds and other end users to utilize this efficient type of initial margin. Eliminating the restriction also would more closely align with the CFTC's recognition under CFTC Regulation 1.25 that government MMFs are a liquid, stable investment product that are suitable for investing customer margin.[21]

Qualifying MMFs—limited to certain government MMFs under SEC Rule 2a-7[22] (and similar funds that invest only in securities that are issued, or unconditionally guaranteed, by certain other sovereign entities)—regularly engage in repo involving Treasury securities. These transactions do not pose heightened risks to a fund's liquidity and value. The CFTC expresses concern that settlement fails in a repo transaction (*i.e.*, failure to deliver the securities or failure to subsequently repurchase the securities) in which the fund is a counterparty would adversely affect the fund's net asset value and potentially its ability to meet redemption requests.[23] The characteristics of government MMFs and other similar funds, and the manner in which they conduct Treasury repo, strongly mitigates those concerns. Government MMFs, pursuant to SEC Rule 2a-7, must invest 99.5% or more of their total assets in highly liquid investments, including cash, government securities, and/or repo that are "collateralized fully" with government securities.[24]

The Treasury repo market is an important means for MMFs to invest their excess cash on a secure, short-term basis. MMFs act as "buyers" that provide cash to other market participants with cash borrowing needs ("sellers") in exchange for Treasury securities, with an agreement by the fund to sell (or the seller to buy) back those securities after a specified period, typically overnight. Further, such repo transactions typically occur on a disclosed basis with other large and sophisticated market participants, including the Federal Reserve, with whom MMFs have

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[20] ICI calculations of SEC Form N-MFP data.

[21] Although the CFTC does not view this as dispositive in considering whether to eliminate the restriction, we note that these rules share a similar objective of ensuring that qualifying MMFs are liquid and maintain their value. *See* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 Fed. Reg. 78776, 78787 (Dec. 19, 2011) (citing the "overarching objective of preserving principal and maintaining liquidity"), available at https://www.govinfo.gov/content/pkg/FR-2011-12-19/pdf/2011-31689.pdf.

[22] A government MMF is defined, under SEC Rule 2a-7(a)(14), as a MMF that invests 99.5% or more of its total assets in very liquid investments, namely, cash, government securities, and/or repurchase agreements that are "collateralized fully." Qualifying collateral for such agreements includes (1) cash items; (2) government securities; or (3) securities that a fund's board (or delegate) determines that the issuer has an exceptionally strong capacity to meet its financial obligations and are sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days. SEC Rule 5b-3(c)(1)(iv).

[23] According to the CFTC, the potential failure of a MMF's repo counterparty to meet its obligation on the close leg would adversely affect the fund's net asset value and the price of the fund's securities—such that that the assets held by the fund "might not be easily resold or [] might not provide sufficient compensation for the assets tendered in the [repo] agreement[.]" Further, the CFTC expresses concern that the fund's inability to dispose of those assets, or otherwise "extract" assets that a fund may have originally tendered in a repo transaction would adversely affect its ability to "promptly respond" to redemption requests, thereby impairing market liquidity and making them less suitable as margin collateral. Proposal at 53417-18.

[24] SEC Rule 2a-7.

conducted an increasing amount of their Treasury repo activity in recent years through the Overnight Reverse Repo Facility.[25] Consistent with the "collateralized fully" requirement,[26] MMFs also typically require a counterparty to deliver Treasury securities with a market value that is equal to 102% of the cash provided, with the 2% representing embedded excess margin. Based on these attributes, ICI members believe that Treasury repo activity poses limited risks to the liquidity and value of their government MMFs.

Therefore, we urge the CFTC to eliminate the asset transfer restriction on MMFs as proposed without imposing further requirements such as additional haircuts, a percentage cap on repo transactions, or a clearing requirement. Such requirements would otherwise undermine the elimination of the restriction by significantly and unnecessarily limiting the scope of MMFs and other similar funds that qualify as eligible collateral. To the extent that funds and other market participants have availed themselves of Treasury repo clearing, these reasons are largely economic in nature and driven by commercial considerations, and not necessarily driven by a need to reduce counterparty risk. These reasons include inflows of cash to money market funds and their desire to obtain short-term returns on behalf of their investors, matched by the attractive lending rates offered by primary dealer banks wanting to avail themselves of central clearing to obtain balance sheet relief for repo activity.

We concur with the CFTC that any risks associated with repo and similar transactions would be addressed notwithstanding elimination of the asset transfer restriction. Among the various types

[25] The Federal Reserve uses its Overnight Reverse Repo Facility (ON RRP) for monetary policy purposes. *See* Board of Governors of the Federal Reserve System, Monetary Policy – Policy Tools – Overnight Reverse Repurchase Agreement Facility (updated Jan. 3, 2018), *available at* https://www.federalreserve.gov/monetarypolicy/overnight-reverse-repurchase-agreements.htm. Some estimates show that a vast majority of some MMFs' holdings consisted of repo activity involving the ON RRP. *See* Federal Reserve Bank of Kansas City, Many Money Market Funds Have Invested Heavily in the Fed's Overnight Reverse Repurchase Facility (June 2, 2023), *available at* https://www.kansascityfed.org/research/charting-the-economy/many-money-market-funds-have-invested-heavily-in-the-feds-overnight-reverse-repurchase-facility/.

[26] One of the requirements to be "collateralized fully" is that the value of the securities collateralizing the repurchase agreement is, and remains for the term of the repurchase agreement, at least equal to the repurchase price for the repurchase agreement transaction. *See* SEC Rule 5b-3(c)(1)(i).

of MMFs,[27] only certain government MMFs[28] (and similar funds that invest only in securities issued or unconditionally guaranteed by certain other sovereign entities) would continue to qualify as eligible collateral.[29] Other types of MMFs, such as prime funds that invest in a broader variety of instruments that include privately-issued short-term securities,[30] would continue to be excluded from the scope of eligible collateral under Regulation 23.156(a)(1). We note concerns that have been raised that eliminating the restriction may raise potential concerns regarding financial stability in light of, for example, the purported "stress" that certain MMFs faced in March 2020 during the COVID-19 pandemic. Contrary to those concerns, however, government MMFs in fact saw *substantial inflows* during that period—approximately $834 billion in March 2020 alone—which shows that they continue to serve as the liquidity vehicle of choice for investors seeking to preserve or bolster their liquidity.[31] Therefore, these qualifying funds continue to "present the fundamental characteristics of liquidity and value stability contemplated by the CFTC['s] [initial margin rules]."[32]

III. Amendments to the Haircut Schedule for MMFs and Similar Funds

The Proposal would amend the haircut schedule in CFTC Regulation 21.156(a)(3) to establish a standardized percentage discount (*i.e.*, haircut) for MMFs and similar funds used as eligible collateral for IM requirements. This methodology, which mirrors the prudential regulators' uncleared swaps margin requirements, specifies that the haircut for MMFs and similar funds

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[27] MMFs can be broadly classified using two features: tax treatment of interest income and investor base. Interest income, which is earned by a MMF and passed through to its shareholders in the form of dividends, is either taxable or tax-exempt, depending on the type of securities in which the fund invests. Taxable MMFs consist of government and prime MMFs. (*See infra* for definition of government MMF). Prime MMFs invest their assets in a variety of money market instruments, as permitted by Rule 2a-7, including short-term government securities, commercial paper, repos, certificates of deposit (CDs), and Eurodollar deposits. Consistent with Rule 2a-7, tax-exempt MMFs may invest in short-term municipal securities, primarily variable rate demand notes, issued by state and local governments, and the interest on the securities of tax-exempt MMFs is generally exempt from federal and state and local income taxes. Prime and tax-exempt MMFs are further classified as either retail or institutional, depending on their investor base.

[28] A government MMF is defined, under Rule 2a-7(a)(14), as a MMF that invests 99.5% or more of its total assets in very liquid investments, namely, cash, government securities, and/or repurchase agreements that are "collateralized fully." *See* Rule 2a-7(a)(14). *See also* SEC, *Money Market Funds*, *available at* https://www.investor.gov/introduction-investing/investing-basics/investment-products/mutual-funds-and-exchange-traded-5.

[29] *See* "Experiences of US Money Market Funds During the COVID-19 Crisis," Report of the COVID-19 Market Impact Working Group (November 2020), *available at* https://www.ici.org/system/files/private/2021-04/20_rpt_covid3.pdf.

[30] By contrast, the Reserve Primary Fund, a prime MMF—whose shares fell from a net asset value of $1.00 to $.97 in September 2008—held a range of privately-issued debt in its portfolio, including commercial paper issued by Lehman Brothers.

[31] *See* "Experiences of US Money Market Funds During the COVID-19 Crisis," Report of the COVID-19 Market Impact Working Group (November 2020), *available at* https://www.ici.org/system/files/private/2021-04/20_rpt_covid3.pdf.

[32] *See* Proposal at 53418.

would be a monthly weighted average discount on all assets within the funds at the end of the prior month. The weights to be applied would be calculated as a fraction of each fund's total market value that is invested in each asset with a given discount amount. We acknowledge that this proposed amendment is meant to correct a prior omission and would harmonize the CFTC's approach with the prudential regulators' requirements.

While we appreciate the CFTC's objectives, we recommend that it reconsider this dynamic haircut approach, given the host of practical challenges that it imposes. The proposed methodology necessitates "look-through" treatment to a MMF's holdings, thus requiring manual monitoring of changing portfolios on an ongoing basis. The ability to perform such monitoring and calculations may be even more difficult because a fund's holdings may not be publicly disclosed in a sufficiently timely manner.[33] It is our understanding that these difficulties so far may have disincentivized the use of MMFs and similar funds as eligible collateral. In the alternative, the Commission should consider adopting a specific standard discount percentage applicable to MMFs and similar funds that appropriately reflects their stable and highly liquid profile.[34]

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We appreciate the opportunity to comment on the CFTC's proposal. If you have any questions, please contact Sarah Bessin at sarah.bessin@ici.org or Nhan Nguyen at nhan.nguyen@ici.org.

Regards,

/s/ Sarah A. Bessin

Sarah A. Bessin

Deputy General Counsel

[33] MMFs are required to report their prior month's portfolio holdings (as of month's end) and other relevant information to the SEC through Form N-MFP on a monthly basis. While the SEC makes these filings public immediately upon their filing to the SEC, they can be filed sometime up to fifth business day of the current month. *See* SEC, Form N-MFP, General Instructions, *available at* https://www.sec.gov/files/formn-mfp.pdf.

[34] The CFTC and the prudential regulators would benefit from seeking additional public comment on the most appropriate haircut for qualifying MMFs and similar funds. We note that the prudential regulators did not specify this look-through methodology in its 2014 re-proposal of its uncleared swaps margin requirements, as the scope of eligible collateral as originally proposed did not include "certain redeemable government bond funds," *i.e.*, government MMFs. *See* Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348, 57355 (Sept. 24, 2014), *available at* https://www.govinfo.gov/content/pkg/FR-2014-09-24/pdf/2014-22001.pdf. Based on public comments, the prudential regulators subsequently broadened the scope of eligible collateral to include government MMFs and similar funds and included the corresponding dynamic haircut to be applied. *See* Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840, 74910 (Nov. 30, 2015), *available at* https://www.govinfo.gov/content/pkg/FR-2015-11-30/pdf/2015-28671.pdf.

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

Amanda L. Olear, Director, Market Participants Division

Commodities Futures Trading Commission