



December 7, 2019

Via Electronic Submission

Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Farm Credit Administration
Federal Housing Finance Agency

Re: Margin and Capital Requirements for Covered Swap Entities – Office of the Comptroller of the Currency (RIN: 1557-AE69); Board of Governors of the Federal Reserve System (RIN: 7100-AF62); Federal Deposit Insurance Corporation (RIN: 3064-AF08); Farm Credit Administration (RIN: 3052-AD38); Federal Housing Finance Agency (RIN: 2590-AB03)

Dear Sirs and Madams:

Managed Funds Association¹ (“MFA”) welcomes the opportunity to comment on the proposed rule and request for comment entitled “Margin and Capital Requirements for Covered Swap Entities” (“**Proposal**”)², issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and Federal Housing Finance Agency (the “**Prudential Regulators**”). MFA appreciates and supports the amendments in the Proposal that would adopt the recent statements of the Basel Committee on Banking Supervision (“**BCBS**”) and the Board of the International Organization of Securities Commissions (“**IOSCO**”) to clarify the timing of required trading documentation and to change the implementation schedule for the final phases of initial margin (“**IM**”) requirements for non-cleared derivatives (commonly referred to as the “**Uncleared Margin Rules**” or “**UMR**”). These changes are consistent with MFA’s prior requests to the Prudential Regulators to ease implementation challenges and to avoid a cliff-edge effect in the final implementation phase.³

¹ MFA 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.

² 84 Fed. Reg. 59970 (Nov. 7, 2019), available at: <https://www.fdic.gov/news/board/2019/2019-09-17-notice-dis-b-fr.pdf> (“**Proposal Release**”).

³ See BCBS and IOSCO “Margin Requirements for non-centrally cleared derivatives,” (July 2019), available at: <https://www.bis.org/bcbs/publ/d475.pdf>. See also MFA letter to the Prudential Regulators, June 20, 2019, available

While the Proposal's changes to the IM implementation requirements will help market participants manage and prioritize their resources and mitigate trading disruptions, we believe they will not address all of the buy-side's unique implementation challenges. For a more complete regulatory solution, MFA respectfully requests that the Prudential Regulators coordinate with other regulators to adopt the following additional changes:

- (1) Expand the use of money market funds ("MMFs") by removing the unduly restrictive conditions to their use as eligible IM collateral;
- (2) Provide a deferral or grace period of six months after a given counterparty relationship involving a financial end user, including any separately managed account (or "SMA"),⁴ first exceeds the initial margin exchange threshold to put the necessary UMR-compliant documentation and systems in place;
- (3) Authorize annual calculation, testing and monitoring of the \$50 million regulatory IM exchange threshold ("IM Threshold") for in-scope counterparty relationships involving SMAs. Doing so will facilitate a controlled and orderly implementation process for SMAs that will reduce the costs and operational burdens of daily monitoring and minimize unexpected breaches of IM Thresholds by SMAs that would cause trading disruptions;
- (4) Work with market participants to develop a feasible, standardized approach for allocating IM Thresholds across multiple asset managers for a given SMA client; and
- (5) Exclude physically settled foreign exchange ("FX") swaps and forwards in calculations of aggregate average notional amounts ("AANAs") for determining whether counterparties are subject to regulatory IM requirements.

MFA believes that it is important for the Prudential Regulators to incorporate these changes before UMR IM requirements come into effect for buy-side participants in the final phases to avoid any potential confusion or market disruption.⁵

1. Expand the Use of MMFs as Eligible IM Collateral

MFA requests that the Prudential Regulators coordinate with the Commodity Futures Trading Commission ("CFTC") and other regulators to eliminate the restrictions and conditions in the Uncleared Margin Rules on the use of MMFs as eligible IM collateral.⁶ Both in the US and

at: <https://www.managedfunds.org/wp-content/uploads/2019/06/MFA-Letter-to-US-Prudential-Regulators-on-UMR-IM-Implementation-Relief-Final-.pdf>.

⁴ Large institutional investors, such as pension plans and endowments, typically hire multiple asset managers to exercise investment discretion over a portion of such investor's assets for management in accounts referred to as "separately managed accounts". Asset managers do not know the positions of other asset managers trading derivatives for the same underlying investor under multiple SMAs and do not act in coordination. Swap dealers will only know the derivatives transactions that they have executed with an SMA's asset managers.

⁵ MFA's additional regulatory changes respond to the following comment question on page 59980 of the Proposal Release: "Does the proposed one-year extension of the final implementation timeline to September 1, 2021 substantially address all implementation challenges? Please explain."

⁶ See MFA joint letter to U.S. regulators, August 1, 2019, available at: <https://www.managedfunds.org/wp-content/uploads/2019/08/ISDA-Joint-Letter-to-US-Regulators-Cash-and-Money-Market-Funds-as-Initial-Margin->

European Union (“EU”), the regulatory requirements for the margining of uncleared derivatives allow for the use of MMFs as collateral. However, each regulatory regime imposes restrictions that, in practice, mean that there are no MMFs that are eligible under both the EU margin rules⁷ and either the CFTC’s UMR⁸ or the Prudential Regulators’ UMR⁹ (referred to collectively as “US UMRs”). As a result, when an entity in scope of the US UMRs faces an entity in scope under the EU regulatory regime, neither counterparty may post cash to be reinvested into an MMF nor directly post an MMF as collateral. Where substituted compliance is available, the conditions on use of substituted compliance mean that, depending on the location of the parties, either U.S. or EU MMFs can be posted, but not both. This restriction significantly decreases the options for viable eligible collateral considering settlement and transfer timing limitations and global fragmentation. 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.

A. Industry Use of Cash and MMFs as Collateral

Cash is widely used as collateral in the derivatives market. According to the latest ISDA Margin Survey,¹⁰ 75.3% of derivatives collateral posted is cash. Cash settlement processing is efficient, fungible, and a high quality and liquid asset. Cash is often then swept into an MMF to reduce custodian risk, among other reasons. Posting cash is a necessity for entities both directly and indirectly subject to the IM requirements because:

- (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; and
- (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 mandatory IM, clients have steadily increased the use of third-party IM segregation arrangements. In addition, regulatory margin transfer deadlines continue to contract.

[8.1.19-Final.pdf](#). See also MFA letter to EU regulators, October 24, 2019 (“EU MMF Letter”), available at: <https://www.managedfunds.org/wp-content/uploads/2019/11/EMIR-Margin-RTS-Final-MFA-Letter-10-24-19.pdf>.

⁷ European Commission Delegated Regulation (EU) 2016/2251 in the context of the EMIR Refit framework, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0834&from=EN>.

⁸ CFTC Final Rule, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” 81 Fed. Reg. 636 (Jan. 6, 2016).

⁹ Final Rule, “Margin and Capital Requirements for Covered Swap Entities,” 80 Fed. Reg. 74840 (Nov. 30, 2015).

¹⁰ Available at: <https://www.isda.org/a/nIeME/ISDA-Margin-Survey-Year-End-2018.pdf>.

As a consequence, there has been 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. Buy-side 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.

We appreciate that the US UMRs 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’s rule and §__.6(b)(9)(ii) of the Prudential Regulators’ 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 UMRs, and this limitation is also inconsistent with other regulations such as Commission Regulation 1.25 (which governs the investment of customer money by futures commission merchants (“FCMs”) without similar restrictions). It is important to note here that MMFs are significant cash providers in the US repurchase agreement (“repo”) market, particularly in the tri-party and sponsored repo markets.¹¹ As such, MMFs are a well-established source of non-dealer repo funding and liquidity that provide strength and stability in the overnight repo market. Given the recent disruption in the US repo market, MFA believes it is critically important for US regulators to ensure that MMF funding of tri-party and sponsored repos is not unduly restricted.¹²

In contrast to the US UMRs, EU margin rules for uncleared derivatives do not restrict MMFs’ use of repos or reverse repos.¹³ Therefore, we request that the Commission coordinate with the U.S. prudential regulators to eliminate this limitation to expand the types of MMFs that buy-side market participants can post as eligible IM collateral, including non-US MMFs. MFA has also requested that EU regulators expand the scope of MMFs that market participants may post as IM to include

¹¹ A repo is the sale of a security, or a portfolio of securities, combined with an agreement to repurchase the security or a portfolio on a specified future date at a prearranged price. It is economically similar to a collateralized loan. In the tri-party repo market, a clearing bank acts as a third party to facilitate repo settlement. If there is a dealer default, clearing banks also ensure that collateral will be available. The Fixed Income Clearing Corporation (FICC) also clears some interdealer repos, which further mitigates risk. See A. Copeland et al., FRBNY Economic Policy Review, “Key Mechanics of the U.S. Tri-Party Repo Market,” November 2012. Under so-called “sponsored” repos, dealers may also sponsor non-dealer repo counterparties onto FICC’s cleared repo platform.

¹² See, e.g., Repo Turmoil Prompts U.S. Regulators to Scrutinize Market Dangers, Bloomberg, Dec. 4, 2019, available at: <https://www.bloomberg.com/news/articles/2019-12-04/repo-turmoil-prompts-fsoc-to-open-review-into-market-risks>.

¹³ See Recital 27 of REGULATION (EU) 2017/1131 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on money market funds.

non-EU MMFs and other issuing entities that have similar MMF regulatory oversight within their applicable regime.¹⁴

2. Provide Deferral Period for In-Scope Counterparty Relationships Below IM Thresholds

MFA requests that the Prudential Regulators coordinate with the CFTC and other regulators to provide a six-month deferral or grace period for any in-scope counterparty relationship involving a financial end user, including SMAs,¹⁵ that will not exceed the IM Threshold as of the applicable compliance date of the new regulatory IM regime (such entities, the “**Below IM Threshold Subgroup**”).

MFA expects that the Below IM Threshold Subgroup will likely be placed relatively low in the priority queue due to the resource constraints of swap dealers and custodians. Such resource constraints would require that swap dealers and custodians prioritize those entities that will exceed the IM Threshold to ensure their regulatory-compliant documentation and custodial arrangements are in place by the time regulatory IM exchange is required. To address such expected resource prioritization, MFA believes that a grace period of six months after an entity first exceeds the IM Threshold would be a reasonable deferral period for the Below IM Threshold Subgroup to put the necessary UMR-compliant documentation and systems in place.

MFA notes that the Securities and Exchange Commission (“SEC”) adopted a two-month deferral period before a security-based swap dealer (“SBSD”) must collect the required IM amount from its counterparty following the first breach of the \$50 million IM threshold.¹⁶ The SEC’s rationale for this deferral period is to provide “sufficient time for [SBSDs] and their counterparties to implement any documentation, custodial, or operational arrangements that they deem necessary” to comply with the SEC’s non-cleared security-based swap margin requirements.¹⁷ MFA encourages the Prudential Regulators, in coordination with the CFTC, to adopt a similar deferral period for closer harmonization with the SEC. However, we believe the deferral period should be longer than two months under the US UMRs, given that the US UMRs impose specific margin documentation requirements, whereas the SEC margin rules do not.¹⁸

¹⁴ See EU MMF Letter, *supra* n. 6.

¹⁵ See *infra* n. 20.

¹⁶ SEC Final Rule, “Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers,” 84 Fed. Reg. 43872 (Aug. 22, 2019), at 44069, §240.18a-3(c)(1)(iii)(H)(2) (one-time deferral for up to two months following the month in which a counterparty no longer qualifies for the \$50 million threshold exception for the first time).

¹⁷ *Id.* at 43929.

¹⁸ *Id.* at 43928, fn. 570.

3. Authorize Annual Calculation, Testing and Monitoring of IM Thresholds for SMAs

MFA believes that daily calculations of IM Thresholds for SMAs would result in significant costs, operational burdens and complications for swap dealers and asset managers for SMA clients. Rather than imposing daily calculations, MFA requests that the Prudential Regulators coordinate with the CFTC to clarify that IM Thresholds for SMAs may be calculated, tested and monitored annually, using the same calculation periods (i.e., June, July, and August of the previous year) for determining whether counterparty relationships exceed AANA thresholds. If the IM Threshold for a given counterparty relationship is not exceeded, there would be no requirement to exchange regulatory IM during the corresponding compliance period. For asset managers' SMAs, annual calculations would thus reduce the frequency of costly and disruptive fire-drills to complete UMR-compliant documentation and systems set-ups after a swap dealer notifies the asset manager that a given SMA client's aggregate regulatory IM across all asset managers approaches or exceeds the IM Threshold. This solution would thus provide a controlled and orderly implementation process for SMAs that will minimize unexpected breaches of IM Thresholds and the resulting risk of trading disruptions. As explained further in the next section, SMAs have distinct complexities from private funds and other financial end users that warrant regulatory relief.

4. Work with Industry on a Standardized Solution for Allocating IM Thresholds for SMAs

MFA supports the recent request of the Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**") for regulators to work with market participants to formulate a feasible, standardized solution for swap dealers to manage the ongoing allocation of IM Thresholds for SMA clients.¹⁹ The key challenge for many MFA members and other asset managers of SMAs is that they lack visibility into the aggregate uncleared derivatives exposures of their SMA clients across multiple asset managers.²⁰ Without the requisite aggregate visibility, asset managers of SMA clients cannot calculate or verify calculations of either the IM Threshold or the allocation of the IM Threshold across asset managers and a swap dealer (and any of the swap dealer's affiliates) for purposes of determining the correct regulatory IM amount to be collected from each SMA client. As the AMG UMR Letter explains, swap dealers will have the requisite visibility to make such calculations for their counterparty relationships involving SMAs. However, swap dealers will face serious operational and documentation complexities in managing the ongoing allocations of IM Thresholds for SMAs. These complexities increase as the number of asset managers and/or the volume of trading activity in uncleared derivatives change for a given SMA client. MFA is unaware of any feasible, standardized approach for swap dealers to manage these allocation complexities. In the interest of a functional market, we encourage the Prudential

¹⁹ See SIFMA AMG letter to global regulators, dated September 13, 2019 ("**AMG UMR Letter**"), available at: <https://www.sifma.org/resources/submissions/margin-requirements-for-non-centrally-cleared-derivatives-remaining-stages-of-initial-margin-phase-in/>.

²⁰ In fact, the same lack of visibility issue presents itself in other structures, such as managers of funds of one. For example, in circumstances where the fund of one is a Cayman company and the Cayman company/investor holds the management shares, the fund of one would be consolidated on the investor's financial statements. If the investor has funds of one structured in this way with multiple managers, the \$50 million threshold would need to be tracked and allocated across the funds of one with different managers. Thus, we believe other structures, such as funds of one that are margin affiliates of the underlying investor should be extended the same treatment as SMAs.

Regulators and other regulators to adopt our recommendations in sections 2 and 3 above to help relieve allocation challenges of IM Thresholds for SMAs and to coordinate with swap dealers and asset managers for SMAs to develop standard allocation methods.

5. Exempt FX Swaps and Forwards from AANA Calculations

As MFA recommended in its letter to BCBS and IOSCO,²¹ the exclusion of physically settled FX swaps and forwards in AANA calculations for determining whether counterparties are subject to the UMR IM requirements is logical and would smooth implementation by avoiding the inclusion of products that should not otherwise be affected by the rules into the process. A regulatory exemption for such products would be an impactful scoping solution that would substantially mitigate the resource-intensive implementation challenges for in-scope buy-side entities, swap dealers and custodians. Excluding such products from AANA calculations will also better serve a key policy objective of the UMR by narrowing the pool of in-scope counterparty relationships involving financial end users to those that may present a material level of systemic risk in their uncleared derivatives trading activities.

MFA thanks the Prudential Regulators for the Proposal and for considering MFA's recommendations for additional changes to address implementation challenges. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact the undersigned at (202) 730-2600 with any questions the Prudential Regulators or their respective Staffs might have regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han
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Managed Funds Association

²¹ See MFA letter to BCBS and IOSCO, dated October 25, 2018, available at: <https://www.managedfunds.org/wp-content/uploads/2018/11/MFA-Letter-UMR-Implementation-Challenges-for-Final-Stages-of-IM-Phase-in.pdf>.