

October 10, 2023

The Honorable Rostin Behnam  
Chair  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

Dear Chair Behnam:

I am writing to express my concerns about the Commodity Futures Trading Commission's (CFTC's) proposed rule regarding seeded funds' and money market funds' participation in the swaps market.<sup>1</sup> These rules would weaken margin requirements and restrictions on using money market funds in uncleared swaps that are currently in place to protect market participants.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 strengthened the CFTC's regulatory authority to oversee the swaps market – transactions that were previously unregulated and at the center of the 2008 financial crisis<sup>2</sup> – and “subject [swap dealers] to capital and margin requirements to lower risk in the system.”<sup>3</sup> However, the Commission is now proposing to weaken these existing margin requirements and collateral restrictions that apply to swap dealers and major swap participants, rolling back important Dodd-Frank Act reforms and increasing risks to the stability of our financial system.<sup>4</sup> I urge the Commission not to move forward with this proposed rule and maintain existing regulations for seeded funds and the use of money market funds in uncleared swaps.

Under the CFTC's current regulatory requirements, “seeded funds” that act as investment vehicles and receive start-up capital from a sponsor are treated as a margin affiliate of the sponsor for the purposes of triggering the initial margin requirement.<sup>5</sup> As such, swap dealers and major swap

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<sup>1</sup> Federal Register, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” U.S. Commodity Futures Trading Commission, August 8, 2023, <https://www.federalregister.gov/documents/2023/08/08/2023-16572/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants>.

<sup>2</sup> U.S. Government Accountability Office, “Understanding Derivatives One Swap at a Time,” June 13, 2018, <https://www.gao.gov/blog/2018/06/13/understanding-derivatives-one-swap-at-a-time>.

<sup>3</sup> U.S. Commodity Futures Trading Commission, “Dodd-Frank Act,” <https://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>.

<sup>4</sup> Federal Register, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” U.S. Commodity Futures Trading Commission, August 8, 2023, <https://www.federalregister.gov/documents/2023/08/08/2023-16572/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants>.

<sup>5</sup> *Id.*

participants that are not prudentially regulated must post and collect an initial margin with eligible seeded funds for uncleared swaps.<sup>6</sup> The CFTC initially finalized its framework for margin requirements in consistency with the U.S. federal prudential banking regulators (Prudential Regulators) and as part of the Dodd-Frank Act’s mandate to adopt “rules establishing margin requirements for uncleared swaps of [swap dealers] and [major swap participants]” that have no Prudential Regulator.<sup>7</sup> These regulations are in line with Dodd-Frank Act reforms that were “designed to reduce risk, to increase transparency, and to promote market integrity within the financial system” by requiring all uncleared swaps to be held to margin requirements, whether prudentially regulated or not.<sup>8</sup>

However, the CFTC’s Seeded Funds Proposal would change the definition of seeded funds by deeming them not to have any margin affiliates.<sup>9</sup> This change would relieve swap dealers and major swap participants from the requirement to post an initial margin when they engage in uncleared swaps in which the calculated margin amount is below \$50 million.<sup>10</sup> If finalized and implemented, the proposed rule would differentiate the rules governing swaps between those that are covered and not covered by Prudential Regulators, introducing inconsistency among U.S. banking regulators’ rules.<sup>11</sup> The CFTC proposal would loosen margin requirements that were designed as “the most basic risk management tool” and considered “best practice and a foundation for systemic stability”<sup>12</sup> – creating new potential vulnerabilities.

The Money Market Funds Proposal in the proposed rulemaking would allow swap dealers that are not subject to prudential regulation to use money market funds for eligible initial margin collateral.<sup>13</sup> Currently, the CFTC restricts using money market funds for repurchase or similar agreements. After the 2008 financial crisis, regulators “implemented reforms to make money market funds more stable and repurchase agreements more transparent.”<sup>14</sup> But in March 2022, the Covid-19 pandemic still led to stresses on money market funds when investors rushed to withdraw

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<sup>6</sup> *Id.*

<sup>7</sup> Federal Register, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” U.S. Commodity Futures Trading Commission, January 6, 2016, <https://www.federalregister.gov/documents/2016/01/06/2015-32320/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants>.

<sup>8</sup> *Id.*

<sup>9</sup> Federal Register, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” U.S. Commodity Futures Trading Commission, August 8, 2023, <https://www.federalregister.gov/documents/2023/08/08/2023-16572/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants>.

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Commodity Futures Trading Commission, “Dissenting Statement of Commissioner Christy Goldsmith Romero on Notice of Proposed Rule Making for Seeded Funds and Money Market Funds,” July 26, 2023, <https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072623e#fnt3>.

<sup>12</sup> Better Markets, “Statement Following CFTC Vote on Margin Rules,” press release, September 16, 2015, <https://bettermarkets.org/newsroom/statement-following-cftc-vote-margin-rules/>.


<sup>13</sup> Federal Register, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” U.S. Commodity Futures Trading Commission, August 8, 2023, <https://www.federalregister.gov/documents/2023/08/08/2023-16572/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants>.

<sup>14</sup> U.S. Commodity Futures Trading Commission, “Dissenting Statement of Commissioner Christy Goldsmith Romero on Notice of Proposed Rule Making for Seeded Funds and Money Market Funds,” July 26, 2023, <https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072623e#fnt3>.

money, forcing the Federal Reserve to step in and rescue the funds with taxpayer-backed bailouts.<sup>15</sup> These crises revealed that the “lack of sufficient regulations” in money market funds make them vulnerable to panic and massive runs that lead to “near-crippling turmoil in short-term funding markets.”<sup>16</sup> Furthermore, they suggest that the CFTC has not fully analyzed or prepared to mitigate the danger of enabling these risks in the financial system. Given these risks, CFTC should not remove the existing restrictions on swap dealers using money market funds for initial margin collateral.

The Global Markets Advisory Committee, largely made of industry insiders, recommended these proposed rules in its Margin Subcommittee Report in 2020 during the Trump administration.<sup>17</sup> It is unclear why the Commission is choosing to propose these rules now, three years later, without conducting its own additional analyses of whether the changes are necessary or will strengthen the stability of the domestic financial system. I strongly urge the Commission not to loosen the existing rules, and not to roll back important Dodd-Frank Act reforms.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>15</sup> New York Times, “Money Market Funds Melted in Pandemic Panic. Now They’re Under Scrutiny.” Jeanna Smialek, April 23, 2021, <https://www.nytimes.com/2021/04/23/business/economy/money-market-funds-reform.html>.

<sup>16</sup> Better Markets, “The Increasing Dangers of the Unregulated “Shadow Banking” Financial Sector: Money Market Funds,” August 11, 2022, [https://bettermarkets.org/wp-content/uploads/2022/08/BetterMarkets\\_Report\\_Dangers\\_of\\_the\\_Shadow\\_Banking\\_MMFs\\_August2022.pdf](https://bettermarkets.org/wp-content/uploads/2022/08/BetterMarkets_Report_Dangers_of_the_Shadow_Banking_MMFs_August2022.pdf).

<sup>17</sup> U.S. Commodity Futures Trading Commission, “Dissenting Statement of Commissioner Christy Goldsmith Romero on Notice of Proposed Rule Making for Seeded Funds and Money Market Funds,” July 26, 2023, <https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072623e#fnt3>; U.S. Commodity Futures Trading Commission, “CFTC’S Global Markets Advisory Committee to Meet on May 19,” <https://www.cftc.gov/PressRoom/Events/opaeventgmac051920>.