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January 17, 2024

Submitted via email to:
Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Dear Mr. Kirkpatrick,

AIMA comments on RIN 3038–AF24 – Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations

The Alternative Investment Management Association ("AIMA")[1] appreciates the opportunity to respond to the Commodity Futures Trading Commission's ("CFTC" or "Commission") notice of proposed rulemaking regarding "Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations" (the "Proposing Release").[2]

AIMA generally supports the CFTC's proposal to modernize its list of permitted Investments that futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") may enter into with

[1] The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$3 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides**.** AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US$1 trillion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

[2] 88 Fed. Reg. 81236 (Nov. 21, 2023).

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customer funds. From AIMA's perspective, the three principal changes in the CFTC's Proposing Release include: 1) expanding the permitted investments in sovereign debt to include Canada, Japan, the United Kingdom, France, and Germany, 2) adding ETFs under certain circumstances and limiting the scope of permitted money market fund ("MMF") investments to government MMFs, and 3) imposing new capital charges, concentration limits, and other restrictions to the new investment categories. AIMA supports adding these new investment options as they are consistent with Regulation 1.25's objective of ensuring the investment of customer funds in safe, short-term investments that preserve the funds' principal and liquidity.[3] However, we recommend changes to the proposed restrictions and limitations on these new investment options as they would significantly limit their availability and utility given current market practice.

The overhaul and expansion of the range of permissible investments would enable a more diversified portfolio of investments for customer funds. Currently, Rule 1.25 permits investments in seven categories: 1) U.S. government securities, 2) general obligation securities of municipal governments, 3) obligations of U.S. sponsored enterprises, 4) bank certificates of deposit ("CDs"), 5) commercial paper guaranteed by the U.S. Temporary Liquidity Guarantee Program ("TLGP"), 6) corporate securities guaranteed by the TLGP, and 7) money market mutual funds. The Proposing Release would add sovereign foreign debt of five G-7 countries, reduce the eligibility of money market funds, add certain government exchange-traded funds ("ETFs") with short-term assets, and remove commercial paper and bank certificates of deposit. The Proposing Release would appropriately update the list of permitted investments in line with sound risk management practices, allow DCOs and FCMs greater flexibility to manage risks and reduce currency and concentration risk.

Especially for non-U.S. clients, allowing FCMS and DCOs to invest foreign-denominated customer funds in short-term sovereign bonds of the same currency would reduce the currency risk associated with investing those funds in U.S. dollar-denominated investments. This option would also be more prudent than depositing the funds with a foreign depository institution that provides less insolvency protection, as those balances would be at greater risk of being treated as unsecured claims compared to securities held in custody.

AIMA supports the addition of qualified government ETFs to the list of permitted investments but recommends that the proposed restrictions for government ETFs not significantly deviate from market practice, as this may negatively impact the availability and usefulness of this new investment option. To ensure same-day and avoid transferring customer funds to a third party, the Proposing Release would require a DCO to be an authorized participant of the ETF. However, these policy objectives could be addressed by alternative, market-based solutions, such as allowing for DCOs to provide a letter of credit to the ETF and the ETF could agree to pay a penalty for late redemptions. Similarly, instead of requiring that redemptions be limited to only in cash, allowing redemptions in kind would avoid meaningfully negative tax consequences. To address the risk of delays, ETFs have begun to adopt a T+0 redemption cycle. These market solutions would meet the regulatory objectives without severely restricting the

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[3] 17 CFR § 1.25.

availability and utility of this investment option. AIMA also believes that reducing the proposed requirement that 95% of a government ETF consist of U.S. treasury securities should be adjusted to 80% to be consistent with the current market practice for such funds.

AIMA supports excluding Prime MMFs and limiting permitted investments to government MMFs. However, we recommend changes to the proposed asset and issuer-based concentration limits as they are overly restrictive and inconsistent with current market practice that reflect the very low risk and high liquidity of government MMF and ETF assets.[4] The proposed combination of asset and issuer concentration limits would significantly reduce the availability of qualified MMFs (and ETFs) and arbitrarily limit the effectiveness of these permitted investments. For instance, the proposed five percent issuer concentration limit for government MMFs and ETFs but allowing up to 25% in a single family of funds is not consistent with market practice given that there are very few families of eligible MMFs or ETFs that offer more than two eligible individual funds. Increasing the individual issuer limit to 25% would be more consistent with current market practice and still allow the 50% asset limit to sufficiently address concentration risk.

We would be happy to elaborate further on any of the points raised in this response. For further information, please contact Joe Engelhard at (jengelhard@aima.org) or 202-304-0311.

Yours faithfully,

Jiří Król
Deputy CEO
Global Head of Government Affairs

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[4] Proposing Release, *supra* note 2, at 81256-59. The proposal would update the separate concentration limits for cleared swaps collateral, futures customer funds, and 30.7 customer funds to a 50% asset concentration limit for large government MMFs and ETFs (smaller government MMFS would have a 10% asset concentration limit). The proposed individual issuer-based limits would be 5% in any single ETF or MMF issuer and 25% in any single family of government MMFs.