The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
1401 H Street, NW, Washington, DC 20005 USA

May 23, 2025

Mr. Christopher Kirkpatrick
Secretary
US Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis

Dear Mr. Kirkpatrick:

The Investment Company Institute[1] appreciates the opportunity to comment on the recent request by the staff of the Commodity Futures Trading Commission (CFTC or "Commission") seeking public comment to understand potential issues, benefits, and risks of trading and clearing derivatives on a 24/7 basis ("RFC" or "Request for Comment").[2] ICI's members—regulated funds[3] ("funds") and their advisers—are customers of futures commission merchants ("FCMs") or direct participants in derivatives clearing organizations ("DCOs"). Accordingly, our members have a strong interest in ensuring that any operational or regulatory risks that may arise from 24/7 trading and clearing are thoughtfully considered and appropriately mitigated so that funds may continue to trade and deploy assets in a manner that is consistent with their investment objective and does not materially impact returns for fund shareholders.

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[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. 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 $37.9 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.3 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, D.C., Brussels, and London.

[2] *See* Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis (Apr. 21, 2025), *available at* https://www.cftc.gov/media/12036/24_7_RFC042125/download.

[3] The term "regulated fund" refers to both US 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.

I. *Executive Summary*

ICI has significant concerns regarding the ability to trade and clear derivatives on a 24/7 basis and maintains that such change should not occur until the issues identified herein and by other market participants have been assessed and resolved pursuant to public comment and informed Commission action. Below, we identify a preliminary list of issues and discuss each in turn.

- Collateral management and margin calls
- Liquidity
- Staffing and operational challenges

II. *Discussion of Key Considerations*

A. Collateral Management and Margin Calls

The decision to move toward 24/7 derivatives trading will have significant implications on funds' collateral management practices and will likely require a complete re-documentation effort of trading agreements among funds and their FCMs.

As background, Section 17(f) of the Investment Company Act of 1940 (the "1940 Act") requires funds to custody securities and similar investments with an eligible custodian, such as a bank, or alternatively, and subject to certain rules under the 1940 Act, with broker-dealers or the fund itself. Generally, the Securities and Exchange Commission ("SEC") takes the position that margin or collateral is subject to Section 17(f) of the 1940 Act and that, absent exemptive relief, a fund must post margin or collateral with an eligible custodian. Rule 17f-6 under the 1940 Act provides an exemption from Section 17(f) to allow funds to maintain initial margin in the custody of an unaffiliated FCM registered with the CFTC subject to certain conditions. Among the conditions in Rule 17f-6 is that FCMs are only permitted to hold a *de minimis* amount of excess margin and must return the excess to the fund by the next business day.[4]

Additionally, funds typically negotiate certain provisions in their trading agreement with FCMs such as required notice periods for the imposition of additional margin requirements by the FCM and the requirement for the daily return of excess margin in accordance with Rule 17f-6 under the 1940 Act.

ICI members are concerned that a move toward 24/7 trading will permit FCMs to require dynamic margining or issue multiple margin calls per day which would mean there would be no clear cut-off time by which FCMs have to make a margin call or a defined period of time by which funds have to post margin. Funds may potentially be in heightened risk of default in meeting the intraday margin calls, which could have other knock-on effects such as triggering cross-default provisions in other trading agreements. In addition to heightened risk, the additional margin required for 24/7 trading will likely increase execution costs for funds and may prevent funds from efficient capital deployment, resulting in reduced returns for fund

[4] *See* Rule 17f-6(a)(2).

shareholders. Moreover, fund portfolio managers will need to constantly review their positions and may need multiple portfolio managers to manage the same investment mandate at different times of the day. Finally, auto-liquidation of positions by an FCM that holds open positions for funds during weekends or other periods where funds cannot make margin deposits should be considered a last resort option as forced liquidation of collateral would incur investment exposure slippage for portfolio managers, among other things.

B. Liquidity

ICI members have general concerns about liquidity during lower volume hours and potential market moving impacts of large trades. For example, what happens if liquidity is higher during the 3am to 6am ET window? Will this require portfolio managers to change their working hours or require additional personnel to settle positions and exchange collateral at different times of the day? In addition, what happens if liquidity disappears at 2am ET and additional margin cannot be sourced? These concerns should be carefully considered and addressed before 24/7 trading and clearing can be implemented.

C. Staffing and Operational Challenges

As discussed above, 24/7 trading and clearing will likely require additional staff across front, middle, and back offices and result in higher monitoring requirements and increased costs for ICI member firms.

ICI members also have concerns about clearinghouses and their ability to perform system upgrades and other maintenance in a 24/7 trading and clearing environment and recommend that any maintenance window be scheduled during a low volume period.

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We hope that this information is helpful to the Commission as it considers how to proceed with the Request for Comment. If you have any questions, please contact Kimberly Thomasson at kthomasson@ici.org.

Regards,

/s/ Kimberly Thomasson

Kimberly Thomasson
Assistant General Counsel

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

US Commodities Futures Trading Commission