



1100 15th Street NW, Washington, DC 20005

+1 202 919 4940

info@aima.org

aima.org

The Honorable Caroline Pham
Acting Chair
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Submitted via email to: cpham@cftc.gov

January 27, 2025

Dear Caroline,

On behalf of our members, the Alternative Investment Management Association Limited (“AIMA”)¹ and the Alternative Credit Council (“ACC”)² would like to congratulate you on your appointment as Acting Chair of the U.S. Commodity Futures Trading Commission (“CFTC”). As the global representative of the alternative investment industry and global body for private credit and direct lending industries, AIMA and the ACC, respectively, look forward to working with you and your colleagues as you look to further improve the derivative markets ecosystem in the U.S. and achieve the balance required to strengthen regulatory integrity.

Your appointment presents an opportunity to address several items, which are discussed further below, that are important to many of our members, market participants and derivatives markets in general. We encourage you and your fellow Commissioners to act swiftly to pause, review and/or remediate these issues.

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 just over \$4 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 programs 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 \$2 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 specialized 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 The Alternative Credit Council (ACC) is a global body that represents asset management firms in the private credit and direct lending space. It currently represents 250 members that manage over US\$2 trillion of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy. They provide finance to mid-market corporates, SMEs, commercial and residential real estate developments, infrastructure as well the trade and receivables business. The ACC’s core objectives are to provide guidance on policy and regulatory matters, support wider advocacy and educational efforts and generate industry research with the view to strengthening the sector’s sustainability and wider economic and financial benefits.

1. We respectfully request that the CFTC extend the compliance date for the pending amendments to Form PF until September 12, 2025.

When the CFTC and Securities and Exchange Commission (“SEC”) jointly adopted the revisions to Form PF on February 8, 2024, they set March 12, 2025 as the effective date and the compliance date. The SEC staff has since released FAQs, which include an interpretation that the revised Form PF must be used for all filing purposes after the effective date, regardless of whether the filing is making amendments to a previously filed Form PF based on the earlier version of the form.

Most private fund advisers, who are also CPOs/CTAs, file their Form PF shortly after their annual audits are completed and Form ADV updates are filed in April. As a result, our members will face a number of both technical and compliance difficulties if required to use the new Form PF by March 12.

As an initial matter, the technical specifications for the new Form PF have not yet been finalized, and our members will need more time than they are currently allowed to make the appropriate adjustments once those changes are finalized. Equally, our members still have a number of unresolved interpretive questions that need clarification beyond the published FAQs prior to completing the new Form PF.

In terms of timing, please understand that the compliance and IT staff working to make new Form PF changes are concurrently working to comply with other new reporting requirements as a result of recently promulgated SEC rules. Extending the compliance date to September 12, 2025 will provide necessary time to address these interpretative and technical challenges and will result in better, more consistent reporting on the new Form PF. We believe that extending the compliance date beyond March 12 would be consistent with the Executive Order issued by President Trump on January 20, 2025, calling for postponing for 60 days the effective date for any rules that have already been published in the Federal Register but that have not yet taken effect.³

Finally, if practicable, we also would encourage use of any extended period to revisit the valuable points you made in conjunction with SEC Acting Chairman Mark Uyeda on the appropriateness of the MOU, which provides the CFTC with access to non-registrant data and lacks adequate provisions for handling confidential Form PF data.⁴ We strongly agree with your call to limit the scope of information sharing, particularly given the proliferation and sophistication of cyber threats to government networks.

2. We strongly encourage you to replace “regulation via enforcement” with an approach that prosecutes bad actors while rewarding responsible innovators.

AIMA ardently agrees with your calls for sensible crypto regulation promulgated through a transparent process rather than the “regulation via enforcement” approach. As you clearly and forcefully articulated in your dissent in the Falcon Labs case, an overly broad enforcement approach only served to obfuscate a compliant path for the industry and detract from meaningful progress in crypto regulation. We therefore urge the CFTC to pause and carefully review its current enforcement efforts regarding the crypto industry. While robust enforcement is essential to address bad actors, it is important to ensure that regulation does

³ Presidential Executive Order, Regulatory Freeze Pending Review, 90 Fed. Reg. [page number] (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>.

⁴ CFTC press release, Joint Statement of CFTC Commissioner Caroline D. Pham and SEC Commissioner Mark T. Uyeda: Memorandum of Understanding Between the SEC and the CFTC Regarding the Use of Form PF Data (Feb. 8, 2024), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamjointsecstatement020824>.

not inadvertently stifle innovation or create unnecessary obstacles for responsible participants in the industry.

We would also highlight concerns about the extraterritorial application of CFTC authority over crypto investment activity. Overreach of this kind risks creating legal uncertainty and addressing these jurisdictional issues is critical for ensuring that the CFTC's actions remain fair, proportionate and within the bounds of its mandate. We hope that, under your leadership, the CFTC will demonstrate a more thoughtful and constructive approach in this regard.

We firmly support your continuing efforts to make real progress on a comprehensive crypto-asset regulatory regime for the CFTC as well as jointly with other regulators. Until this goal can be achieved, we recommend providing no-action relief or a safe harbor as a means of addressing the questions of law that have thwarted healthy growth of the crypto industry to date. AIMA, serving as the global voice of the alternative investment management industry in the digital assets space, stands ready to offer you its considerable expertise and member views on digital assets where this input would be helpful in achieving your laudable objectives for crypto regulation.

3. We urge you to amend the Japan Securities Clearing Corporation's ("JSCC") Exemptive Order from registration as a Derivatives Clearing Organization ("DCO"), which currently prevents U.S. customers from clearing JPY-IRS at the JSCC due to an issue regarding the U.S. Bankruptcy Code.

At present, AIMA's U.S. person members are not permitted to clear Japanese Yen ("JPY") denominated interest rate swaps ("JPY-IRS") at JSCC due solely to an issue in relation to the application of the U.S. Bankruptcy Code to JSCC's Japanese operations. Although almost all of the major U.S. banking groups have already established local subsidiaries in Japan that are clearing members of JSCC, these subsidiaries cannot register as futures commission merchants ("FCMs") due to the concurrent application of U.S. and Japanese bankruptcy laws, which also prevents JSCC from registering as a DCO.

Absent an amendment to the Exemptive Order, these U.S. persons are deprived of the opportunity to fully access the competitive pricing and liquidity available in the full cleared JPY-IRS market that non-U.S. person market participants can access with no such prohibition. Furthermore, this lack of access has come at a time when market conditions exacerbate the need for U.S. market participants to hedge JPY interest rate risk, pushing U.S. customers toward alternative solutions that are more costly and although permitted by CFTC rules, are at odds with 2009 G20 commitments to promote central clearing of OTC derivatives.

We urge the CFTC to use its authority to grant the requested amendments to the Exemptive Order, permitting U.S. market participants' access to JSCC for the clearing of JPY-IRS. We submitted a letter in this regard on December 19, 2024 to former Chairman Rostin Benham and would welcome the opportunity to discuss its contents with you and your staff and provide further color as desired.⁵ An expedited resolution to this issue will enhance and maintain U.S. customers' competitiveness and provide greater tools for effective risk management, while reducing counterparty credit risk of U.S. persons who are forced to seek alternative clearing solutions.

⁵ A copy of this letter was also shared with you, your fellow Commissioners and relevant staff. This was the second letter AIMA submitted on this subject, with the first letter being sent in February 2024.

We would greatly appreciate the opportunity to meet with you to discuss in greater detail the above topics and others that are impacting our members. Please do not hesitate to reach out to us.

We would also be happy to elaborate further on any of the points raised in this response. For further information, please contact Daniel Austin (daustin@aima.org) or Joe Engelhard (jengelhard@aima.org).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jack Inglis". The signature is fluid and cursive, with the first name "Jack" being more prominent than the last name "Inglis".

Jack Inglis
CEO

A handwritten signature in black ink, appearing to read "Jiří Król". The signature is fluid and cursive, with the first name "Jiří" being more prominent than the last name "Król".

Jiří Król
Deputy CEO
Global Head of Government Affairs