Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York | Brussels | London

October 10, 2023

Submitted electronically

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

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; RIN 3038-AF36

Dear Mr. Christopher Kirkpatrick:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") in response to the Commission's request for comment on the proposed amendments to the margin requirements for uncleared swaps applicable to swap dealers ("**SDs**") and major swap participants ("**MSPs**") for which there is no prudential regulator ("**Proposal**").[2]

MFA fully supports the Proposal and appreciates the Commission's efforts to update its margin rules. Specifically, we agree with the Commission's proposed rule to provide for relief from the margin rules for seeded funds (as defined below). This will bring the Commission's margin rules in line with the BCBS-IOSCO framework and other global jurisdictions and provide a level playing field domestically and globally for seeded funds. We also support the Commission's proposed rule to eliminate a provision disqualifying the securities issued by certain money market funds from being used as eligible initial margin ("**IM**") collateral. We

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1 MFA, based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 170 member firms, including traditional hedge funds, credit funds, and crossover funds, that collectively manage nearly $2.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

2 *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 88 Fed. Reg. 53409 (Aug. 8, 2023), available at: https://www.govinfo.gov/content/pkg/FR-2023-08-08/pdf/2023-16572.pdf.

believe the Proposal offers helpful solutions to market participants complying with the Commission's rules regarding IM requirements for uncleared swaps.[3]

In the following, we address each aspect of the Proposal. We encourage the Commission to continue to consider regulatory initiatives that may address challenges faced by market participants in complying with margin requirements for non-cleared swaps.

I. Seeded Funds Proposal

The proposed amendment would revise the definition of "margin affiliate" to provide that certain collective investment vehicles that receive all of their start-up capital, or a portion thereof, from a sponsor entity ("**seeded funds**") would be deemed not to have any margin affiliates for the purposes of calculating certain thresholds that trigger the requirement to exchange IM for uncleared swaps. This proposed amendment ("**Seeded Funds Proposal**") would effectively relieve SDs and MSPs from the requirement to post and collect IM with certain eligible seeded funds for their uncleared swaps for a period of three years from the date on which the eligible seeded fund's asset manager first begins making investments on behalf of the fund ("**trading inception date**").

We support the Seeded Funds Proposal because not only is it consistent with international harmonization efforts, but it also is consistent with the Commission's margin rule risk-based approach of imposing margin requirements that are commensurate with the risk of uncleared swaps entered into by SDs and MSPs. Without this relief, seeded funds with margin affiliates with material swap exposure ("**MSE**")[4] would have to post IM, while other seeded funds sponsored by entities without MSE (and that are not otherwise affiliated with a group that has MSE) would not have to post IM. This creates a disparate treatment for seeded funds that puts them at a disadvantage domestically and globally as most of the United State's global competitors have adopted the BCBS-IOSCO framework's recommendation that all investment funds be exempt from consolidation with their parent, sponsor, or affiliate, provided the seeding entity does not guarantee such fund's obligations.[5]

For these reasons, we support the Seeded Funds Proposal.

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[3] The Proposal is consistent with recommendations made in a report in May 2020 to the CFTC's Global Markets Advisory Committee ("**GMAC**") by the GMAC Subcommittee on Margin Requirements for Uncleared Swaps, which was formed to identify challenges associated with the uncleared margin implementation phases. *See* Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020) ("**GMAC Subcommittee Report**"), available at: https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.

[4] The CFTC margin rules require covered swap entities to post and collect IM with counterparties that are SDs, MSPs, or financial end users with MSE in accordance with a compliance schedule set forth in Commission regulation 23.161.

[5] *See* GMAC Subcommittee Report at 7.

II. Money Market Funds Proposal

The Commission also is proposing to eliminate a provision disqualifying the securities issued by certain pooled investment funds ("**money market and similar funds**") that transfer their assets through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, and similar arrangements from being used as eligible IM collateral. This would expand the scope of assets that qualify as eligible collateral for purposes of the uncleared margin requirements ("**Money Market Funds Proposal**").[6]

We believe the Money Market Funds Proposal would appropriately expand the scope of assets that qualify as eligible collateral as it would remove a restriction that has unintentionally and severely restricted the use of securities of money market funds ("**MMFs**") that transfer their assets through repurchase and similar arrangements.[7] The Commission's current margin rules severely restrict the use of securities of MMFs that transfer their assets through repurchase and similar arrangements. However, nearly all U.S. MMFs are engaged in these activities in some form or are authorized to do so. The impact of the restriction is that only securities of four U.S. MMFs would meet the requirements to be used as eligible collateral.[8]

As the GMAC Subcommittee Report correctly notes, without relief from the Commission, there will be a number of negative effects, including:

- This efficient form of IM widely used by financial end users may be severely undermined and unduly disrupted;
- Any MMF IM pledged to covered swap entities ("**CSEs**")[9] may be concentrated in only a few eligible MMFs (which presents other systemic risks);
- Financial end users may be forced to use other less efficient or ideal forms of non-cash IM collateral (thus, increasing costs, settlement delays, tracking errors and operational burdens); and
- Absent the use of substituted compliance or any further actions by other regulators, financial end users may be forced to use different MMFs or other forms of eligible IM when trading with U.S. and EU CSEs and also potentially causing asset managers to be forced to break up block trades across U.S. and non-U.S. clients with similar

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[6] In addition, the Commission is proposing an amendment to the haircut schedule set forth in a Commission Regulation to add a footnote that was inadvertently omitted when the rule was originally promulgated. We support this amendment.

[7] *See* GMAC Subcommittee Report at 24.

[8] *See id*.

[9] Under CFTC margin rules, CSEs are registered SDs or MSPs that are not subject to the margin requirements of the prudential regulators.

strategies when trading with a single CSE (applying different margin calculations) due to pricing differentials as a result of the different form of IM being pledged.[10]

For these reasons, we support the Money Market Funds Proposal.

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MFA appreciates the opportunity to provide comments to the Commission on the Proposal. If you have any questions about these comments, please do not hesitate to contact Matthew Daigler, Vice President & Senior Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/S/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: The Honorable Rostin Behnam, Chairman
The Honorable Kristin Johnson
The Honorable Christy Goldsmith Romero
The Honorable Summer Mersinger
The Honorable Caroline Pham

[10] *See* GMAC Subcommittee Report at 24-25.