

17 C.F.R. §§ 1.17(c)(5)(viii), 1.20(i)(5), 1.23(a)(1), 1.32(b), 1.44, 22.2(f)(5), 22.2(e)(3)(i), 22.17, and 30.7(f)(2) and (g)(6)

December 8, 2025

Via E-mail

Mr. Thomas Smith
Acting Director
Market Participants Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Withdrawal of Staff Advisory 20-34 and No-Action Position Concerning CFTC Regulations 1.17(c)(5)(viii), 1.20(i)(5), 1.23(a)(1), 1.32(b), 1.44, 22.2(f)(5), 22.2(e)(3)(i), 22.17 and 30.7(f)(2) and (g)(6)

Dear Mr. Smith:

Coinbase Financial Markets, Inc. (CFM)¹ is writing to request that the Market Participants Division (**MPD** or the **Division**) of the Commodity Futures Trading Commission (**Commission** or **CFTC**) take action to permit CFM and other registered futures commission merchants (**FCMs**) to accept payment stablecoins and other digital assets as customer collateral, consistent with the initiative recently launched by Acting Chairman Caroline D. Pham² and recommendations contained in the President’s Working Group on Digital Asset Markets report on “Strengthening American Leadership in Digital Financial Technology” (**PWG Report**).³ Among other objectives, this request is intended to help enable the Commission to appropriately prepare for and enable the implementation of the Guiding and Establishing National Innovation in U.S. Stablecoins Act (the **GENIUS Act**).

Specifically, we respectfully request that the Division: (i) withdraw its Staff Advisory titled “Accepting Virtual Currencies from Customers into Segregation” (**Staff Advisory**

¹ NFA ID: 0542717. CFM’s main business address is 1 Madison Ave., 24th Floor, New York, NY 10010. CFM’s main business phone number is 888-908-7930.

² See CFTC, Press Release, *Acting Chairman Pham Launches Tokenized Collateral and Stablecoins Initiative* (Sept. 23, 2025) (“CFTC Announcement of Tokenized Collateral and Stablecoins Initiative”).

³ PWG Report at 36, 52-53 (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>.

20-34 or the **Advisory**);⁴ and (ii) issue a no-action letter pursuant to 17 C.F.R. § 140.99 confirming that the Division will not recommend that the Commission commence enforcement action against an FCM for (a) taking into account the value of non-securities digital assets, including payment stablecoins,⁵ when (x) determining whether or to what extent a customer account is undermargined for purposes of Commission Regulations 1.17(c)(5)(viii) and 1.44⁶ and (y) performing segregation calculations as required by Commission Regulations 1.20(i)(5), 1.32(b), 22.2(f)(5) and 30.7(f)(2)⁷ or (b) depositing its own payment stablecoins into segregated customer accounts as residual interest, notwithstanding the restrictions in Commission Regulations 1.23(a)(1), 22.2(e)(3)(i), 22.17, and 30.7(g)(6)⁸ (together with Regulations 1.17(c)(5)(viii), 1.44, 1.20(i)(5), 1.32(b), 22.2(f)(5) and 30.7(f)(2), the **Relevant Regulations**), under the circumstances and subject to the conditions set out below.

I. Relevant Background

A. Background on Coinbase

Coinbase Global, Inc. (together with its subsidiaries, **Coinbase**) provides crypto trading, custody, and infrastructure services. Its mission is to increase economic freedom in the world. Coinbase was founded in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the United States and provide an easy-to-use platform relied on by millions of verified retail and institutional investors in over 100 countries to access the broader crypto economy. Our technology is critical infrastructure for the crypto economy.

Coinbase is committed to building an open financial system and reimagining the future

⁴ CFTC Market Participants Division (f/k/a Division of Swap Dealer and Intermediary Oversight), *Accepting Virtual Currencies from Customers into Segregation*, CFTC Letter No. 20-34 (Oct. 21, 2020).

⁵ See Guiding and Establishing National Innovation in U.S. Stablecoins Act of 2025 (the “GENIUS Act”), 12 U.S.C. § 5901. For purposes of this request, the term “payment stablecoin” means: (i) prior to the effective date of the GENIUS Act, a USD-denominated stablecoin that (x) is issued by a state regulated money transmitter or trust company; (y) maintains reserve assets limited to direct or indirect investments in cash, U.S. treasury securities or overnight U.S. Treasury repurchase agreements; and (z) publishes monthly attestations regarding the composition of the reserve assets and whether the fair value of the assets held in reserve is equal to the amount of stablecoins in circulation; and (ii) following the effective date of the GENIUS Act, a stablecoin that meets the requirements contained in the GENIUS Act’s definition of “payment stablecoin” and is issued by a “permitted payment stablecoin issuer” or a “foreign payment stablecoin issuer” that complies with the GENIUS Act’s requirements applicable to such issuers.

⁶ 17 C.F.R. §§ 1.17(c)(5)(viii); 1.44.

⁷ 17 C.F.R. §§ 1.20(i)(5); 1.32(b); 22.2(f)(5); 30.7(f)(2).

⁸ 17 C.F.R. §§ 1.11(e)(3)(i)(D); 1.22(c)(3); 22.2(f)(6)(iii).

of finance through new technologies and innovative products, and is doing so with the strongest regulatory compliance and security protocols available.

Coinbase’s FCM subsidiary, CFM, has been registered with the Commission and a member of the National Futures Association (NFA) since August 15, 2023. As a registered FCM, CFM is subject to Commission risk management, net capital, and segregation requirements, including the Relevant Regulations, among other obligations. Consistent with Coinbase’s broader mission, CFM would like to expand access to the digital economy by accepting digital assets as FCM customer collateral. However, this is currently blocked by the Relevant Regulations and Staff Advisory 20-34, which unnecessarily interprets Commission regulations in a restrictive manner for digital assets relative to other forms of collateral.

B. Benefits of Digital Asset Collateral

The PWG Report, the CFTC’s Global Markets Advisory Committee’s Digital Asset Markets Subcommittee (GMAC DAMS) report on tokenized non-cash collateral,⁹ and the CFTC’s Acting Chairman¹⁰ have each recognized the substantial benefits that digital asset collateral offers to CFTC-regulated derivatives markets. Specifically, digital asset collateral enables real-time, 24/7/365 settlement with minimal intermediation, which increases collateral mobility by reducing operational frictions inherent in asset transfers. The demand for digital asset collateral acceptance by derivatives market intermediaries is clear. In March 2025, Coinbase, in collaboration with EY-Parthenon, conducted a survey of 352 institutional investors, finding that 85% of respondents had increased their allocations to digital assets and digital asset-related products in 2024, and a similar portion either used or expressed interest in using payment stablecoins.¹¹

In non-U.S. derivatives markets, there already is significant experience with use of payment stablecoins and other digital assets as collateral for listed and cleared derivatives, including clearing organizations that accept payment stablecoins for settlement purposes on a daily and sometimes intraday basis. Especially for markets that operate globally across multiple time zones and over weekends, accepting digital assets as collateral reduces risk by enabling more frequent and timely margining and settlement. Coinbase believes there is significant demand to bring these markets onshore, under appropriate U.S. regulation.

⁹ GMAC DAMS, *Recommendations to Expand Use of Non-Cash Collateral Through Use of Distributed Ledger Technology* 6, 7 (Nov. 21, 2024), https://www.cftc.gov/media/11581/GMAC_DAM_UseofDLTasDerivativesCollateral_112124/download (GMAC DAMS Recommendations).

¹⁰ See, e.g., CFTC Announcement of Tokenized Collateral and Stablecoins Initiative.

¹¹ Coinbase, EY-Parthenon, *Increasing Allocations in a Maturing Market: 2025 Institutional Investor Digital Assets Survey* 6, 27 (March 2025), <https://coinbase.bynder.com/m/8362167ae26ecf/original/EY-CB-Institutional-Investor-Survey.pdf>.

Further, risks historically associated with accepting digital asset collateral have been mitigated and even, in many cases, obviated by recent market and legal developments that have contributed to the growing maturity of the digital asset industry. For example, the comprehensive framework for U.S. stablecoin regulation established by the GENIUS Act will impose guardrails and requirements on permitted payment stablecoin issuers relating to, among other things, payment stablecoin reserves; the issuer’s capital, liquidity, and risk management; and insolvency protections for holders of the issuer’s payment stablecoins.¹² As part of this new framework, the GENIUS Act contemplates payment stablecoins issued by a permitted payment stablecoin issuer being eligible as cash or cash equivalent margin for FCMs, derivatives clearing organizations (**DCOs**), broker-dealers, registered clearing agencies and swap dealers.¹³ The GENIUS Act reflects forward-looking regulation of digital asset markets and is yet another indicator that the restrictions imposed by the Advisory are overly burdensome and unnecessary.

If subject to an appropriate risk-based and fit-for-purpose regulatory framework, digital asset collateral stands to increase the speed and liveness of collateral asset transfers relative to cash and traditional noncash collateral, which could reduce credit risk, decrease the need for collateral liquidations in stressed market conditions, and enhance the liquidity of derivatives markets for all market participants.¹⁴ However, these benefits cannot be realized without clarification and modernization of certain rules and elimination of outdated guidance governing the handling of customer collateral by derivatives market intermediaries, including but not limited to FCMs. As discussed below, existing regulations and guidance have hindered market adoption of digital asset collateral by imposing overly burdensome or impossible to comply with requirements and restrictions on the acceptance of customer digital asset collateral by FCMs. The requests set forth in this letter provide an opportunity for the Division to take the first step towards harnessing the potential of digital asset collateral to improve the functioning and integrity of derivatives markets.

In addition, permitting FCMs to accept digital asset collateral would enable them to offer “inverse” contracts. These are contracts that are based on a specified amount of a digital asset where the settlement of profit and losses is denominated in the digital asset itself (*i.e.*, a contract that is both based on and denominated in the digital asset). An example would be a contract based on a specified amount (*e.g.*, 10) of Bitcoin in

¹² See 12 U.S.C. § 5903.

¹³ See 12 U.S.C. § 5902(g)(2).

¹⁴ GMAC DMAC Recommendations at 7; see also ISDA, *Response to the FSB Consultation report “Liquidity Preparedness for Margin and Collateral Calls”* 3 (June 19, 2023), <https://www.isda.org/a/DT8gE/ISDA-response-to-FSB-NBFI-consultation.pdf> (“[I]nnovation in collateral and tokenization may offer improvements in collateral mobility and reduce the need for collateral holders to liquidate collateral to realize cash”).

which daily mark-to-market settlement payments are made in Bitcoin. Requiring an FCM to accept margin in these contracts in a different asset, such as U.S. dollars, would expose the FCM and the customer to additional risk. So would applying a haircut to the digital asset when used as collateral.¹⁵ Permitting an FCM to accept the underlying digital asset for an inverse contract would be consistent with the Commission’s decision, in the context of uncleared margin rules, to permit margining in a swap’s “currency of settlement,” which is not subject to any haircut.¹⁶

C. Regulatory Guardrails for Digital Asset Collateral

Commission regulations already impose comprehensive requirements and minimum standards on the types of digital asset collateral that an FCM may accept from customers and an FCM’s treatment of such collateral.

First, as discussed below, the requested no-action letter would only apply with respect to digital assets that are accepted as collateral or for settlement purposes by the applicable board of trade or clearing organization. Commission regulations establish a robust, principles-based regime regarding the types of non-cash assets that a board of trade or clearing organization registered with the Commission may accept for these purposes. For example, Commission Regulation 39.13(g)(10) limits the types of assets that a DCO may accept to “those that have minimal credit, market, and liquidity risks.”¹⁷ Relatedly, foreign boards of trade (**FBOTs**) registered with the Commission must clear contracts through a clearing organization (whether the FBOT itself or a third party) that either (i) is registered with the Commission as a DCO and, accordingly, subject to Regulation 39.13(g)(10) or (ii) observes the of the Committee on Payment and Settlement Systems of the Technical Committee of the International Organization of Securities Commissions (**Recommendations for Central Counterparties**), which provides that a “[central counterparty] generally should limit the assets accepted as margin to those with high liquidity.”¹⁸

¹⁵ The primary reason for a haircut is to account for market risk associated with using one asset (e.g., USD or a stablecoin) to cover a liability in another asset (e.g., Bitcoin). In the case of a BTC inverse contract position collateralized by Bitcoin, the asset and the liability are perfectly matched in the base currency. Any drop in the USD price of Bitcoin simultaneously lowers the value of the Bitcoin collateral and the value of the margin liability at a perfectly correlated rate, ensuring the margin coverage remains in lockstep.

¹⁶ See 17 C.F.R. §§ 23.151 (defining “currency of settlement”) and 23.156 (classifying the currency of settlement as an eligible form of margin that is not subject to any cross-currency haircut).

¹⁷ 17 C.F.R. § 39.13(g)(10). See, also 17 C.F.R. § 39.14 (addressing DCO settlement procedures).

¹⁸ See 17 C.F.R. § 48.7(d); Bank of International Settlements Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, *Recommendations for Central Counterparties* Recommendation 4 (Nov. 2004), <https://www.bis.org/cpmi/publ/d64.pdf>. See, also *id.* at Recommendations 9 (money settlements) and 10 (physical deliveries).

Additionally, Commission Regulation 1.11 requires an FCM to have a risk management program to address segregation, operational, settlement, and capital risk. Importantly, this must include policies and procedures for assessing the liquidity, marketability and mark-to-market valuation of all non-cash assets held as segregated funds by an FCM.¹⁹ Such policies and procedures must also ensure that all non-cash assets held in customer segregated accounts are readily marketable and highly liquid.²⁰ Accordingly, pursuant to Regulation 1.11, an FCM may only accept as customer collateral a particular digital asset following a determination that such digital asset is readily marketable and highly liquid.

The efficacy of an FCM's risk management program is subject to continual supervision. FCMs must monitor collateral on an ongoing basis, including daily measurement of liquidity needs with respect to customers, assessment of procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price, and application of appropriate collateral haircuts that accurately reflect market and credit risk.²¹ FCMs must also develop periodic risk exposure reports, which are issued to both senior management and the Commission.²² Regulation 1.11 requires frequent review and testing of the risk management program to ensure continued effectiveness.²³

These guardrails would continue to apply with equal force should the Division take the actions we request below, ensuring that appropriate, risk-adjusted controls are in place with respect to an FCM's acceptance and treatment of customer digital asset collateral.

II. Request to Withdraw Staff Advisory 20-34

Issued by the Division in October 2020, Staff Advisory 20-34 places significant restrictions on FCM acceptance of virtual currency as customer collateral. Relying on technical and market realities that have since become outdated, the Advisory concluded that "the Division has determined that receiving virtual currency from a customer and holding that currency as segregated funds creates additional risks for other customers in the same origin."²⁴

The Advisory was part of a series of Commission Staff actions that placed artificial limits on the ability for Commission registrants to engage with the virtual currency

¹⁹ 17 C.F.R. § 1.11(e)(3)(i)(J). Note that the risk management requirements of Regulation 1.11 also apply to instruments that are permitted investments under Regulation 1.25.

²⁰ *Id.*

²¹ 17 C.F.R. § 1.11(e)(3)(i)(J).

²² 17 C.F.R. § 1.11(e)(2).

²³ 17 C.F.R. § 1.11(f).

²⁴ Staff Advisory 20-34 at 3.

markets. For example, CFTC Staff Advisory 18-14 imposed heightened review standards on virtual currency derivatives listings by a designated contract market (DCM), swap execution facility (SEF), or DCO.²⁵ Similarly, CFTC Staff Advisory 23-07 subjected DCOs to heightened supervisory standards with respect to digital assets.²⁶ Earlier this year, Commission Staff withdrew those advisories, citing “additional staff experience in intervening years, and increasing market growth and maturity”²⁷ and the desire to “ensure that it does not suggest that its regulatory treatment of digital asset derivatives will vary from its treatment of other products.”²⁸

The same considerations justify withdrawal of Staff Advisory 20-34. The Advisory’s principal rationale for its assertion that virtual currency customer collateral “creates additional risks” is that “[c]ustodians of virtual currencies are typically not subject to a system of comprehensive federal or state regulation and oversight.”²⁹ That rationale is not true today, if indeed it ever was true. Many firms engaged in digital asset custody services, including an affiliate of CFM, Coinbase Custody Trust Company, LLC, have obtained state banking charters,³⁰ and/or are currently pursuing national bank

²⁵ CFTC Division of Market Oversight and Division of Clearing and Risk, *Advisory with respect to Virtual Currency Derivative Product Listings*, CFTC Letter No. 18-14 (May 21, 2018).

²⁶ CFTC Division of Clearing and Risk, *Review of Risks Associated with Expansion of DCO Clearing of Digital Assets*, CFTC Letter 23-07 (May 30, 2023).

²⁷ CFTC Division of Market Oversight and Division of Clearing and Risk, *Withdrawal of Staff Advisory No. 18-14 with Respect to Virtual Currency Derivative Product Listings*, CFTC Letter No. 25-07 (Mar. 27, 2025).

²⁸ CFTC Division of Clearing and Risk, *Withdrawal of Staff Advisory 23-07*, CFTC Letter No. 25-08 (Mar. 28, 2025).

²⁹ Staff Advisory 20-34 at 3.

³⁰ State-chartered digital asset custodians are subject to robust regulatory and supervisory regimes including license eligibility requirements, ongoing periodic examination, minimum capital requirements, activities restrictions, reporting and recordkeeping requirements, and more. Additionally, digital asset custody technologies and the controls and procedures adopted by digital asset custodians have matured substantially since adoption of the Advisory. Recognizing the evolution of the digital asset custody industry, SEC staff recently issued a no-action letter clarifying that state-chartered trust companies are permissible custodians under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. See Office of Chief Counsel Division of Investment Management, *Response to the Request for No-Action Relief Under Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2 thereunder and Sections 17(f) and 26(a) of the Investment Company Act of 1940 with Respect to State Trust Companies that Provide Crypto Asset Custody Services of Simpson, Thacher & Bartlett LLP* (Sept. 30, 2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025>.

charters.³¹

The Advisory goes on to place extensive restrictions on an FCM's ability to accept virtual currency as customer collateral, which go well beyond what would have been necessary to address any of the custody-related risks that the Advisory asserts:

- Reminder 8 of the Advisory (i) requires an FCM to limit its acceptance of virtual currency collateral from a customer to only the particular types of virtual currency that underlie the customer's positions in physically settled futures, options on futures or cleared swaps contracts, and (ii) requires that the amount of virtual currency collateral accepted from the customer "reasonably relates" to the customer's level of trading in such contracts.³²
- Reminder 9 of the Advisory prohibits an FCM from counting the virtual currency collateral it accepts as margin value for any contracts except physically settled contracts relating solely to such virtual currency.³³
- Reminder 10 of the Advisory requires an FCM to return any virtual currency it holds for a customer within 30 days after the customer ceases trading in the contracts to which such virtual currency relates for a period of 90 days.³⁴
- Reminder 11 of the Advisory provides that each withdrawal of virtual currency from a depository upon demand by an FCM to liquidate FCM customer accounts or return customer funds should be completed within one day, unless otherwise specified by the procedures of the depository.³⁵
- Reminder 12 requires an FCM to provide 45 days prior written notice to all of its futures and cleared swaps customers before accepting any virtual currency into segregation and, thereafter, to include the total amount of customer virtual currency activity supported by virtual currency collateral as part of its required disclosures under Regulation 1.55.³⁶

³¹ The Office of the Comptroller of the Currency (the **OCC**) has already approved one such national bank charter application. OCC, *Preliminary Conditional Approval of Erebor Bank, National Association* (Oct. 15, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-101a.pdf>.

³² Staff Advisory 20-34 at 5.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.*; 17 C.F.R. § 1.55.

As its legal justification for these restrictions, the Advisory cites Regulation 1.11(e)(3)(i)(J), which, as discussed above, requires an FCM to have “[p]olicies and procedures for assessing the liquidity, marketability and mark-to-market valuation of all securities or other non-cash assets held as segregated funds . . . to ensure that all non-cash assets held in the customer segregated accounts . . . are readily marketable and highly liquid.”³⁷ The Advisory does not, however, cite any basis for concluding that virtual currencies are not readily marketable and highly liquid. By contrast, major digital assets such as Bitcoin and Ether trade in markets with substantial global daily trading volumes and narrow bid-ask spreads, with market quality metrics that in certain cases exceed those of many of the stocks that comprise the S&P 500.³⁸

As a result of the Advisory, FCMs generally cannot accept payment stablecoins as customer collateral, despite the benefits noted above. With payment stablecoins increasingly embodying a risk-profile akin to that of cash, a trend that will accelerate through implementation of the GENIUS Act, this outcome is counterproductive to the underlying customer asset protections goals of the Commodity Exchange Act (CEA) and Commission Regulations as well as the policy goals and principles underlying the GENIUS Act.³⁹ The Advisory also prevents FCMs from accepting virtual currencies as customer collateral for cash-settled contracts, even when doing so would be risk-reducing (*e.g.*, accepting Bitcoin as collateral for a cash-settled Bitcoin futures contract). The Advisory’s unnecessary restrictions are the primary reason that the market has not seen significant adoption in the use of digital asset collateral in the past five years.

For the reasons discussed above, the Advisory runs counter to the goals outlined by the PWG and undermines the Acting Chairman’s stated goals of “using innovation and blockchain technology [to] drive progress in derivatives markets, especially for modernization of collateral management and greater capital efficiency.”⁴⁰ Given the substantial evolution in maturity of digital asset markets, including with respect to USD payment stablecoins and custody, since 2020, the Division should withdraw the Advisory.

³⁷ 17 C.F.R. § 1.11(e)(3)(i)(J).

³⁸ See, *e.g.*, Coinbase, *Comment Letter to SEC regarding Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)* 13-15 (Feb. 21, 2024).

³⁹ See Note 14, *supra*, and accompanying text.

⁴⁰ CFTC Announcement of Tokenized Collateral and Stablecoins Initiative.

III. Request for No-Action Letter

A. Need and Rationale for No-Action Letter

A primary objective of the CEA and Commission Regulations is the establishment of a framework to safeguard the funds of customers engaged in CFTC-regulated derivatives transactions.⁴¹ To this end, Sections 4d(a)(2), 4d(f)(2) and 4(b)(2)(A) of the CEA and the CFTC’s implementing regulations, including but not limited to the Relevant Regulations, require an FCM to treat and deal with customer funds it receives as margin for listed contracts as belonging to the customer and prohibits an FCM from using one customer’s funds to margin another customer’s trades.⁴² However, the Relevant Regulations do not expressly address the treatment of digital assets used as margin for listed and cleared derivative contracts, resulting in regulatory uncertainty that has made acceptance of digital asset collateral by FCMs challenging and often unworkable. This has prevented the benefits of digital asset collateral from being realized in U.S. derivatives markets.

1. Regulations 1.17 and 1.44

Regulation 1.17 establishes minimum capital requirements for FCMs. Regulation 1.17 generally requires each FCM to maintain a minimum level of liquid assets in excess of the firm’s liabilities, in order to provide resources for the FCM to meet its financial obligations in the regulated futures and cleared swaps markets.⁴³ An FCM’s capital requirements under Regulation 1.17 include a minimum level of adjusted net capital that an FCM must satisfy at all times. As relevant for this letter, under Regulation 1.17(c)(5)(viii), an FCM’s required adjusted net capital for undermargined customer accounts is subject to a capital charge in the amount of any deficiency in margin value held by the FCM for the respective account.⁴⁴ For non-cash collateral, Regulation 1.17(c)(5)(viii)(D) provides that the margin value attributable to such collateral shall be the lesser of (1) the value attributable to the asset pursuant to the margin rules of the

⁴¹ CFTC, Notice of Proposed Rulemaking, *Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations*, 88 Fed. Reg. 81236 (Nov. 21, 2023).

⁴² 7 U.S.C. 6d(a)(2) (requiring FCM segregation of futures customer collateral); 7 U.S.C. § 6d(f)(2) (providing analogous protections to Section 4d(a)(2) for cleared swaps customer collateral); 7 U.S.C. § 6(b)(2)(A) (authorizing the CFTC to adopt regulations imposing requirements on FCMs regarding the safeguarding of funds received by an FCM from, for, or on behalf of a U.S. person or foreign-domiciled person (a “30.7 customer”) to margin, guarantee or secure futures or options on futures positions executed on foreign boards of trade)

⁴³ 17 C.F.R. § 1.17(a).

⁴⁴ 17 C.F.R. § 1.17(c)(5)(viii).

applicable board of trade or (2) *the market value of the asset after application of the haircuts provided for in Regulation 1.17(c)(5).*⁴⁵

Because no rules or guidance have yet been promulgated by the Commission regarding the margin value haircuts applicable to payment stablecoins and other non-securities digital assets, it is unclear whether and how digital assets could be counted towards margin value for purposes of Regulation 1.17(c)(5)(viii) capital charge calculations. This lack of regulatory clarity hinders innovation in the derivatives markets by discouraging FCMs from accepting customer digital asset collateral, as a reading of Regulation 1.17(c)(5)(viii) to exclude digital asset collateral from margin value calculations would make doing so commercially infeasible.

Regulation 1.44 raises a similar issue. That Regulation imposes additional requirements on an FCM when it permits a customer to maintain separate accounts, including in particular requirements with respect to collection of margin and deposit of residual interest for undermargined accounts. Regulation 1.44(a) defines an “undermargined amount” based, in part, on the application of the haircuts specified in Regulation 1.17(c)(5) and 17 C.F.R. § 240.15c3-1(c)(2)(vi) (“securities haircuts”).⁴⁶ So, like Regulation 1.17(c)(5)(viii), Regulation 1.44 leaves FCMs in a quandary with respect to how to account for non-securities digital asset collateral.

Accordingly, the requested no-action letter is an opportunity for the Division to provide market participants with much-needed regulatory clarity, furthering the goals and directives of the PWG Report, by affirming that FCMs may count digital assets for these purposes to the extent those assets are accepted as collateral by boards of trade and clearing organizations.

2. Regulations 1.20, 1.32, 22.2 and 30.7

Similar clarity is needed with respect to Commission regulations governing FCM segregation calculations. Regulations 1.20 and 1.32 require an FCM to, respectively, maintain in segregation an amount equal to the sum of any credit and debit balances in futures customer accounts and calculate such amount at the close of each business day.⁴⁷ When calculating debit (*i.e.*, net negative) balances for this purpose, FCMs are permitted to offset any net deficits in futures customer accounts against the value of marketable securities less applicable securities haircuts.⁴⁸ Regulations 22.2(f)(5) and 30.7 likewise permit FCMs to offset negative account balances by the value of

⁴⁵ 17 C.F.R. § 1.17(c)(5)(viii)(D) (emphasis added).

⁴⁶ See 17 C.F.R. § 1.44(a).

⁴⁷ 17 C.F.R. § 1.20(i)(4); 17 C.F.R. § 1.32(a)(2).

⁴⁸ 17 C.F.R. § 1.20(i)(5); 17 CFR § 1.32(b); 17 C.F.R. § 240.15c3-1(c)(2)(vi).

marketable securities held as margin in customer accounts less applicable securities haircuts for purposes of determining segregation requirements for, respectively, cleared swaps customer accounts and 30.7 customer accounts.⁴⁹

These regulations provide for unnecessarily disparate regulatory treatment of marketable securities relative to digital asset collateral, resulting in FCMs accepting payment stablecoins and other non-securities digital asset collateral having to continuously top up customer accounts with residual interest. This outcome renders acceptance of such digital asset collateral commercially and operationally unworkable for FCMs. The requested no-action letter would equalize the treatment of marketable securities and eligible digital assets, consistent with the technology neutral, innovation friendly policy position advanced by the Administration.⁵⁰

3. Regulations 1.23(a)(1), 22.2(e)(3)(i), 22.17, and 30.7(g)(6)

In addition to the restrictions described above, the Advisory in Reminder 6 states that “[a]n FCM may not deposit its own virtual currencies in futures customer or cleared swaps customer segregated accounts for any reason, including in order to meet targeted residual interest requirements.”⁵¹ This limitation imposes substantial operational frictions on FCMs accepting digital asset collateral, preventing such FCMs from topping up customer accounts holding payment stablecoins with in-kind residual interest. Moreover, it hinders the ability of such FCMs to ensure that customer accounts are adequately margined through residual interest deposits, as required by Commission Regulations 1.11(e)(3)(i)(D), 1.22(c)(3), 22.2(f)(6)(iii) and 30.7(g).⁵²

However, withdrawal of the Advisory alone would be inadequate to eliminate this overly burdensome and unnecessary prohibition because, in this regard, the Advisory merely reiterates the effect of existing Commission regulations. Specifically, Regulations 1.23(a)(1), 22.2(e)(3)(i), 22.17, and 30.7(g)(6) only allow FCMs to deposit their own funds into segregated customer accounts to the extent that such proprietary funds are cash or permissible investments under Regulation 1.25.⁵³ Regulation 1.25 permits FCMs to invest customer funds in various enumerated

⁴⁹ 17 C.F.R. § 22.2(f)(5)(i); 17 C.F.R. § 30.7(f)(2)(v)(A).

⁵⁰ See *supra* note 4; see also Exec. Order No. 14178, *Strengthening American Leadership in Digital Financial Technology*, 90 Fed. Reg. 8647 (Jan. 31, 2025) (declaring that it is the policy of the current Administration to “support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy, including by ... providing regulatory clarity and certainty built on *technology-neutral* regulations...” (emphasis added)).

⁵¹ Staff Advisory at 4.

⁵² 17 C.F.R. §§ 1.11(e)(3)(i)(D), 1.22(c)(3), 22.2(f)(6)(iii), and 30.7(g).

⁵³ 17 C.F.R. §§ 1.23(a)(1), 22.2(e)(3)(i), 22.17, and 30.7(g)(6).

investments, including U.S. government obligations, qualified money market funds, certain foreign sovereign debt and short-term U.S. Treasury exchange-traded funds (ETFs).⁵⁴

The Commission has recognized that, “by virtue of practical necessity,” FCMs must keep proprietary funds in customer accounts “in order to act as a buffer between futures [and other] customers whose funds are commingled in such accounts.”⁵⁵ Specifically, without an FCM’s ability to deposit proprietary funds into customer accounts, the funds of the FCM’s other customers within an account class would be used to guarantee any undermargined amounts of another FCM customer within the same account class. For this reason, Commission regulations permit FCMs to deposit proprietary funds, including securities that qualify as permitted investments under Regulation 1.25, into segregated customer accounts. The Commission has historically approved new instruments under Regulation 1.25 that are designed to minimize exposure to credit, liquidity and market risks and to preserve the availability of such funds to customers.⁵⁶

Payment stablecoins have similar risk profiles to the Regulation 1.25 securities that FCMs are permitted to deposit into segregated customer accounts to meet residual interest requirements under Regulations 1.11(e)(3)(i)(D), 1.22(c)(3), 22.2(f)(6)(iii), and 30.7(g). Payment stablecoins also meet the overarching requirement in Commission Regulation 1.25 that permissible investments be “consistent with the objectives of preserving principal and maintaining liquidity.”⁵⁷ Accordingly, permitting FCMs to use their proprietary holdings of payment stablecoins to meet residual interest requirements would eliminate unnecessary barriers to acceptance of digital asset collateral by FCMs, while maintaining the low risk profile that Regulations 1.11(e)(3)(i)(D), 1.22(c)(3), 22.2(f)(6)(iii), and 30.7(g) are designed to ensure.⁵⁸ Further, this would ensure that FCM customers with payment stablecoins in

⁵⁴ 17 C.F.R. § 1.25(a).

⁵⁵ See *Proposing Release, Enhancing Protections Afforded to Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 77 Fed. Reg. 87866, 67887.

⁵⁶ See *Adopting Release, Enhancing Protections Afforded to Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 76 Fed. Reg. 68506, 68510 (Nov. 14, 2013); see also *Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations*, Final Rule, CFTC Release No. 3038-AF24 (Dec. 3, 2024) (expanding the list of permitted investments under Regulation 1.25 to include certain foreign sovereign debt securities and short-term U.S. Treasury ETFs).

⁵⁷ 17 C.F.R. § 1.25(b).

⁵⁸ We note the same analysis also applies to tokenized representations of the enumerated permissible investments under Regulation 1.25, although such tokenized assets should already be eligible assets for FCMs to deposit into customer accounts as residual interest under Regulations 1.11(e)(3)(i)(D), 1.22(c)(3), 22.2(f)(6)(iii), and 30.7(g). See GMAC DAMS Recommendations at 7, 8 (explaining how tokenized representations of eligible collateral assets do not “envisage any change in the fundamental character of the

their segregated accounts are equally benefited by an FCM's provision of residual interest and do not suffer unnecessary losses due to the inability of an FCM to top up their (or another customer's) accounts with the same type of asset.

B. Requested No-Action Position

For the foregoing reasons, we request that the Division issue a no-action letter confirming that the Division will not recommend that the Commission commence an enforcement action under the Relevant Regulations against an FCM for

- (a) taking into account the value of non-securities digital assets, including payment stablecoins, when (i) determining whether or to what extent a customer account is undermargined for purposes of Commission Regulations 1.17(c)(5)(viii) and 1.44 and (ii) performing segregation calculations as required by Commission Regulations 1.20(i)(5), 1.32(b), 22.2(f)(5) and 30.7(f)(2), provided that:
 - (1) with respect to collateral held in futures customer accounts and cleared swaps customer accounts, the digital asset is accepted as collateral or for settlement purposes by a registered DCO and the FCM takes into account the value of the collateral as determined by, and subject to the haircuts of, the applicable DCO. To ensure a consistent approach, and subject to (3) below, if the FCM accepts a specific digital asset as collateral for two or more DCOs that accept that digital asset as margin collateral, the FCM shall apply the margin haircut of the DCO that imposes the highest haircut percentage on the digital asset for margin purposes.
 - (2) with respect to collateral held in 30.7 customer accounts, the digital asset is accepted as collateral or for settlement purposes by a registered DCO or a foreign clearing organization established in a jurisdiction that has implemented the Recommendations for Central Counterparties, or the digital asset is (a) a payment stablecoin or (b) an underlying commodity of a futures contract listed on a CFTC-registered DCM, and:
 - i. if the FCM accepts the digital asset as margin collateral for a registered DCO, the FCM takes into account the value of the collateral as determined by, and subject to the haircuts of, the applicable DCO. Subject to (3) below, if the FCM accepts a specific digital asset as collateral for two or more DCOs that accept the specific digital asset as margin collateral, the FCM shall apply the margin haircut of the DCO that imposes the highest haircut percentage on the digital asset for margin purposes; or

relevant asset,” but rather use distributed ledger technology only to “chang[e] the technology infrastructure pursuant to which asset entitlements are recorded and transferred”)

- ii. if the digital asset is not accepted by the FCM as margin collateral for a registered DCO but is accepted by the FCM as margin collateral for a foreign clearing organization subject to the Recommendations for Central Counterparties, the FCM takes into account the value of the collateral as determined by, and subject to the haircuts of, the applicable foreign clearing organization that is subject to the Recommendations for Central Counterparties. Subject to (3) below, if the FCM accepts a specific digital asset as collateral for two or more foreign clearing organizations that accept that digital asset as margin collateral, the FCM shall apply the margin haircut of the foreign clearing organization that imposes the highest haircut percentage on the digital asset for margin purposes
 - iii. if the digital asset is not accepted by the FCM as margin collateral for a registered DCO or a foreign clearing organization subject to the Recommendations for Central Counterparties, the FCM takes into account the fair market value of the digital asset after applying a haircut equal to the capital charge applicable to the asset in accordance with Commission Regulation 1.17(c)(5), subject to (3) below. The FCM shall develop policies and procedures to determine the fair market value of the digital assets as part of the firm's risk management program.
- C. To the extent an FCM accepts a non-security digital asset that is not a payment stablecoin as collateral for a customer position in a contract that is both based on and denominated in that digital asset, the FCM shall solely be required to apply any haircut required for that digital asset by the applicable DCO or foreign clearing organization, but only to the extent the digital asset offsets a customer deficit in such a contract cleared by that DCO or foreign clearing organization. Use of the digital asset as collateral to offset a customer deficit in any other contract shall be subject to the haircut requirements set forth above.
- (b) depositing its own payment stablecoins into segregated customer accounts as residual interest, notwithstanding the restrictions in Commission Regulations 1.23(a)(1), 22.2(e)(3)(i), 22.17, and 30.7(g)(6), provided that the FCM imposes any applicable capital charge against the value of the payment stablecoins in accordance with Commission Regulation 1.17(c)(5). The FCM shall compute any applicable capital charge consistent with its assessment of liquidity, price volatility, and other risks in accordance with the firm's risk management program and obligations set forth in Commission Regulation 1.11.

In order to rely on this no-action position, an FCM would be required to:

- (c) prior to such reliance, file a notice of its intent to rely on this no-action position with MPD and the date at which it will commence accepting digital assets from customers as margin collateral. The FCM's notice shall be filed via the WinJammer electronic filing system.
- (d) for a period of three (3) months from the commencement of the FCM's reliance on this no-action letter as stated in the FCM's notice of intent submitted to MPD in accordance with condition (c) above, accept only digital assets in the form of payment stablecoins, Bitcoin, and Ether as margin collateral from customers and deposit only proprietary payment stablecoins as residual interest in futures, foreign futures, and 30.7 customer accounts. The FCM would take into account the value of the collateral in accordance with condition (a) above and take any applicable capital charge against the value of the payment stablecoins deposited as residual interest in accordance with condition (b) above.
- (e) for a period of three (3) months starting with the calendar month following the month in which the FCM files its notice of intent to rely on this no-action position in accordance with condition (c) above, file, as of the close of business each week, a report of the total amount of digital assets held in each of the futures, cleared swaps, and 30.7 customer funds accounts. The report shall list each digital asset type separately for each of the three customer account classes.
- (f) for a period of three (3) months from the commencement of the FCM's reliance on this no-action letter as stated in the FCM's notice of intent submitted to MPD in accordance with condition (c) above, provide prompt written notice of any significant operation or system issue, disruption, or failure, including any cybersecurity incident, that affects the use of digital assets as customer margin collateral.⁵⁹ The notice provided by this condition shall be filed via the WinJammer electronic filing system.

This no-action position would expire on the effectiveness of any Commission Regulation or order addressing these topics, including any such Commission action to implement the GENIUS Act.

* * *

Thank you for your consideration of this letter. Please do not hesitate to contact me with any questions you may have.

Pursuant to Regulation 140.99(c)(3), the undersigned hereby certifies that the material facts set forth herein are true and complete to the best of their knowledge, and undertakes that, if at any time prior to the issuance of a no-action letter, any material representation

⁵⁹ For purposes of this condition, a matter is "significant" if it involves a significant financial amount, significant number of customers, or indicates a control weakness with the potential to affect a significant financial amount or significant number of customers.

made in this letter ceases to be true and complete, they will promptly inform Commission Staff in writing of all materially changed facts and circumstances.

Respectfully submitted,

/s/ Eugene Ferrara

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