April 5, 2019

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Secretariat of the International Organization of Securities Commissions
Oquendo 12
28006 Madrid
Spain

Re: Margin Requirements for Non-Centrally Cleared Derivatives – Final Stage of Initial Margin Phase-In

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association (SIFMA), the American Bankers Association (ABA), the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) and the Institute of International Bankers (IIB) (together, the Associations[1]) appreciate the efforts of regulators towards developing and implementing margin requirements for non-centrally cleared derivatives. Standards for initial margin ("IM") requirements for non-centrally cleared derivatives (commonly referred to as the "Uncleared Margin Rules" or "UMR") are being phased in globally under the Basel Committee on Banking Supervision and International Organization of Securities Commissions

[1] See Appendix for description of the Associations.

(BCBS-IOSCO) *Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives* (the "Margin Framework"). These requirements are a key aspect of the G20's financial regulatory reform agenda covering the over-the-counter derivatives markets and market participants, the goals of which our members fully support.[2]

We appreciate the March 5, 2019 BCBS-IOSCO statement noting that "the [Margin Framework] does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's €50 million initial margin threshold."[3] This statement should lead toward a common approach among jurisdictions in this regard. We also welcome BCBS and IOSCO reiterating that they "will continue to monitor the effect of meeting the final stage of phase-in, scheduled for 2020." We understand that further analysis of Phase 5 IM requirements[4] and discussion are currently underway.

However, while the statement offers helpful clarification, we are concerned that it does not address the fundamental issue that the current Phase 5 requirements will present. As we have previously raised to global regulators[5], we and our members have serious concerns that the final phase of IM requirements set to begin in September 2020 will bring into scope a large number of relatively small counterparties whose inclusion for IM under the Margin Rules will impose significant cost and operational burdens on many market participants but provide little (if any) additional benefit towards meeting the policy objectives of regulators towards mitigating systemic risks. Many potential Phase 5 entities may in fact be dissuaded from engaging in derivatives transactions which help hedge and manage their risk, in order to reduce their derivatives exposure, given the cost and operational burden of complying with UMR.

We therefore respectfully reiterate our request that policy makers consider recalibration of the current Margin Framework, to more appropriately achieve the goal of mitigating systemic risk by:

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[2] G20 Pittsburgh Summit (Sept. 24-25, 2009).

[3] See https://www.bis.org/press/p190305a.htm.

[4] The Phase 5 threshold for inclusion in the IM requirements is an average annual aggregate amount ("AANA") of €8 billion. Counterparties above that threshold will be required to post IM when it would exceed €50 million.

[5] See SIFMA and ISDA White Paper Initial Margin for Non-Centrally Cleared Derivatives: Issues for 2019 and 2020 (July 19, 2018) at https://www.sifma.org/wp-content/uploads/2018/07/Initial-Margin-for-Non-Centrally-Cleared-Derivatives-Issues-for-2019-and-2020.pdf and SIFMA, GFMA and other associations letter (September 12, 2018) at https://www.sifma.org/wp-content/uploads/2018/09/Margin-Requirements-for-Non-Centrally-Cleared-Derivatives-%E2%80%93-Final-Stages-of-Initial-Margin-Phase-In.pdf. As demonstrated in data analysis highlighted therein, approximately 1,100 counterparties with an estimated 9,500 bilateral relationships are expected to come into scope of the margin rules at the Phase 5 date. Depending on the method used to calculate the IM amount, between 70-80% of these Phase 5 relationships will not exceed the €50mm threshold at least two years into their regulatory IM obligation, if ever.

- Modifying the current €8 billion notional threshold for inclusion in Phase 5 by making the threshold more risk sensitive in order to clearly exclude counterparty relationships that pose little or no systemic risk; and
- Removing physically-settled foreign exchange swaps and forwards from the AANA calculations for Phase 5, since market participants are not required to post IM on these FX products.

Further, although as noted above, the recent BCBS-IOSCO statement is a helpful clarification, delaying some of the burden for those counterparty pairs that do not breach the €50 million IM exchange threshold, these parties will still be subject to significant ongoing risks and operational burdens:

- Initial and bi-annual AANA calculations (due to different global and US timing requirements)
- Initial (and future, if change of status) self-disclosure to its dealers in applicable jurisdictions after each AANA calculation period
- Implementation or employment of an IM calculator, identify in-scope transactions, identify and tag trade features for IM calculation and regularly run an IM calculation (based on ISDA SIMM™ and/or regulatory schedule) to monitor whether the relationship is at risk of exceeding the allowable €50 million exchange threshold.[6]

As mentioned, the burdens and risks associated with the above may incentivize smaller Phase 5 counterparties to reduce their derivatives exposure, potentially limiting their ability to effectively hedge and manage their risk.[7]

[6] We would also note previously requested relief connected with the use of internal IM, such as prudential-style model governance designed for bank capital standards as well as model approval (and/or pre-approval) under EU and Japanese UMR.

[7] Further, many counterparties coming into scope for Phase 5 are large institutional clients, like pension plans and endowments, who often hire multiple asset managers in addition to managing funds internally. These clients will typically hire these managers to exercise investment discretion over a portion of the client's assets referred to as assets under management (or AUM) for management in accounts referred to as “separately managed accounts.” Each separately managed account that trades uncleared derivatives will typically have its own netting set corresponding to the ISDA master agreement entered into by the relevant dealer and relevant asset manager with respect to such separately managed account. As a result, collateral movements for initial or variation margin are not netted across the client’s separately managed accounts that exist across these asset managers. Managers of these separately managed accounts do not have knowledge of exposures for other separately managed accounts for the same client and therefore are unaware of whether the client’s exposure across all of the separately managed accounts of the customer are in excess of the €50 million IM exchange threshold. The March 5 clarification did not provide any guidance with respect to these relationships which impact a significant amount of entities coming into scope for Phase 5.

For these reasons, the Associations do not believe that the March 5 statement alone is sufficient to compensate for the need for re-calibration to exclude from IM obligations Phase 5 firms which pose little or no systemic risk and, for the most part, will not be required to exchange IM.

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The Associations support regulatory reform efforts and margin requirements for derivatives and the global coordination underway to reconsider and, as we recommend, recalibrate the requirements to appropriately address the risks posed whilst still achieving key regulatory and policy objectives. As previously noted, without regulatory action, many Phase 5 entities are likely to face significant challenges if brought within scope of IM in 2020, which may limit their access to the derivatives market.

We look forward to an ongoing dialogue to find and implement solutions to the challenges raised in this letter. Please do not hesitate to contact the undersigned to discuss, or if you have any questions.

Sincerely,

Kenneth E. Bentsen, Jr.
President & CEO, SIFMA
President & CEO, GFMA

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

Ananda Radhakrishnan
VP, Center for Bank Derivatives Policy
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Chief Executive Officer
Institute of International Bankers

CC:

Financial Stability Board	
Australian Prudential Regulatory Authority	Australia
Australian Securities and Investments Commission	Australia
Authorité des Marchés Financiers	France
Autorité de Contrôle Prudentiel et de Résolution (ACPR)	France
Autoriteit Financiele Markten	Netherlands
Bangko Sentral ng Pilipinas	Philippines
Bank Indonesia	Indonesia
Bank Negara Malaysia	Malaysia
Bank of England	United Kingdom
Bank of Italy	Italy
Bank of Japan	Japan
Bank of Korea	Republic of Korea
Bank of Mexico	Mexico
Bank of Spain	Spain
Bank of Thailand	Thailand
Board of Governors of the Federal Reserve System	United States
Canadian Securities Administrators	Canada
Central Bank of Argentina	Argentina
Central Bank of Brazil	Brazil
China Banking Regulatory Commission	China
Commissione Nazionale per le Società e la Borsa	Italy
De Nederlandsche Bank	Netherlands
Deutsche Bundesbank	Germany
European Banking Authority	European Union
European Central Bank	European Union
European Commission	European Union
European Insurance & Occupational Pensions Authority	European Union
European Parliament	European Union
European Securities and Markets Authority	European Union
Farm Credit Administration	United States
Federal Deposit Insurance Corporation	United States
Federal Financial Supervisory Authority (BaFin)	Germany
Federal Housing Finance Agency	United States
Financial Conduct Authority	United Kingdom
Financial Sector Conduct Authority	South Africa
Financial Services Commission	Republic of Korea
Her Majesty's Treasury	United Kingdom
Hong Kong Monetary Authority	Hong Kong
Japan Financial Services Agency	Japan
Korea Financial Supervisory Service	Republic of Korea

Monetary Authority of Singapore	Singapore
National Futures Association	United States
Office of the Comptroller of the Currency	United States
Office of the Superintendent of Financial Institutions	Canada
Prudential Regulatory Authority	United Kingdom
Reserve Bank of Australia	Australia
Reserve Bank of India	India
Reserve Bank of New Zealand	New Zealand
Securities and Exchange Board of India	India
Securities and Futures Commission of Hong Kong	Hong Kong
Securities Commission Malaysia	Malaysia
Swiss Financial Market Supervisory Authority (FINMA)	Switzerland
The People's Bank of China	China
The Prudential Authority	South Africa
Trésor Public	France
U.S. Commodity Futures Trading Commission	United States
U.S. Department of the Treasury	United States
U.S. Securities and Exchange Commission	United States

APPENDIX: About the Associations

The **American Bankers Association** is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $14 trillion in deposits and extend more than $10 trillion in loans.

GFMA brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, please visit http://www.gfma.org.

The **GFXD** was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global foreign exchange (FX) market participants collectively representing around 80% of the FX inter-dealer market. The GFXD and its members are committed to ensuring a robust, open and fair FX marketplace and welcome the opportunity for continued dialogue with global bodies and regulators. For more information, visit http://www.gfma.org/initiatives/Foreign-Exchange.

IIB is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions. Further information is available at www.iib.org.

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.