



asset management group

June 3, 2019

To: Commodity Futures Trading Commission
Board of Governors of the Federal Reserve System
Department of the Treasury/Office of the Comptroller of the Currency
Securities and Exchange Commission
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Housing Finance Agency

Re: Uncleared Swap Margin Requirements – March 5, 2019 BCBS-IOSCO Statement

Ladies and Gentlemen,

The International Swaps and Derivatives Association¹ (“ISDA”), the Securities Industry and Financial Markets Association (“SIFMA”), the Global Foreign Exchange Division of the Global Financial Markets Association (“GFXD”) and the Securities Industry and Financial Markets Association’s Asset Management Group (“SIFMA AMG”) (together, the “Associations”) are requesting that U.S. regulators provide clarification that covered swap entities (“CSEs”) and their counterparties which will become subject to the initial margin (“IM”) requirements of the *Margin and Capital Requirements for Covered Swap Entities*² (“USPR rule”) or the *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*³ (“CFTC rule”) (collectively, “US rules”) as of September 1, 2019 (“Phase IV”) and on or after September 1, 2020 (“Phase V”) do not have to comply with the documentation requirements described therein unless the bilateral IM amount exceeds \$50 million.

On March 5, 2019, BCBS and IOSCO published a joint statement on the final implementation phases of the margin requirements for non-centrally cleared derivatives. The statement specifically noted that “the

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 71 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

² 80 Fed. Reg. 74840 (November 30, 2015)

³ 81 Fed. Reg. 636 (January 6, 2016)

framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework of €50 million initial margin threshold.”⁴

We welcome this statement and request that the US financial regulatory agencies provide clarification that US market participants may rely on the March 5th BCBS and IOSCO statement in interpreting their obligations under the US rules⁵. Due to the massive documentation and operational burden facing counterparties, any US regulatory action clarifying the applicable requirements needs to be done expeditiously in light of the upcoming September 2019 deadline for Phase IV firms.

Many Phase IV and V counterparties will not, in the near term, exceed the \$50 million threshold and therefore, will not need exchange regulatory IM as they come into scope in September of 2019 and 2020. Delaying application of the documentation requirements for pairings that do not exceed posting thresholds will greatly reduce the strain on available industry resources and, allow firms, custodians and vendors to prioritize counterparties that are actually likely to exchange regulatory IM as of their respective phase-in dates in September 2019 or 2020.

With respect to Phase IV firms, a substantial number of the affected counterparties trade primarily FX swaps and forwards, which are included in the material swaps exposure calculation but are out of scope for exchanging regulatory IM. Consequently, many Phase IV firms will have a lengthy period of time post September 1, 2019 before any regulatory IM is likely to be required. Given the steep drop in the material swap exposure threshold for Phase V, ISDA estimates that over 70% of the Phase V counterparty relationships will not exchange regulatory IM for a significant period of time following September 1, 2020, if ever.

Importantly, although not expressly provided in the relevant rules, in practice, the documentation requirements anticipate completion of custodial arrangements because the documentation requirements apply to the party’s relationship with its custodian. It is the custodial choice which drives CSA and other documentation selection and the two cannot be disaggregated or tiered from a timing perspective. This poses operational and financial challenges for many firms that will not have to exchange regulatory IM in the first place. ISDA analysis shows that in the US, approximately 472 counterparties with 3628 relationships will come into scope of the regulatory IM requirements in Phase V. If each of these relationships are required to finalize the negotiation of bilateral collateral documentation⁶ (CSAs) with each counterparty and trilateral custodial account control agreements (ACAs) regardless of whether they

⁴<https://www.bis.org/bcbs/publ/d317.pdf>

⁵ We note that the Hong Kong Monetary Authority has provided guidance to all Authorized Institutions that the clarifications provided by the BCBS and IOSCO are applicable in the context of its rules: <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190318e2.pdf>

⁶ ISDA has published multiple forms of bilateral documentation for use with different governing laws, including forms of Credit Support Annex, Credit Support Deeds and Collateral Transfer Agreement and related Security Agreements. We refer to these collectively as “CSAs” for convenience.

will in practice exchange regulatory IM, regulators would be adding significant compliance burdens without commensurate regulatory benefit. When viewed globally, the challenges associated with Phase V rise to an even higher order of magnitude. Absent consistent global regulatory clarification, an estimated 1,100 Phase V counterparties and their 9,500 relationships will be required to simultaneously complete their documentation and custodial arrangements prior to September 1, 2020 - an exercise that is likely unattainable and may grind trading with such impacted counterparties to a halt.

Delaying application of these requirements – e.g., the negotiation of CSAs and ACAs with each counterparty and custodian – until the margin exchange threshold has been reached will greatly reduce the strain on available industry resources, allowing firms to focus on counterparties that will actually need to exchange regulatory IM in September 2019 or 2020.⁷

In his April 29, 2019 letter to Vice Chairman Randal K. Quarles, CFTC Chairman Giancarlo recommended that US regulators issue “guidance clarifying that a US regulated entity need not have in place systems and documentation to exchange initial margin on uncleared swaps with a given counterparty if its calculated bilateral initial margin amount with that counterparty is less than \$50 million”.⁸ The Associations support the Chairman’s recommendations for US regulators (and for global regulators) to provide the certainty which will allow market participants to prioritize their preparation in accordance with the March 5th BCBS and IOSCO statement.

Absent this, if the documentation requirements remain unchanged in the US for Phase IV and Phase V, US market participants and their counterparties will be placed on an unlevel playing field. Phase IV and V entities may simply opt to consolidate trading with counterparties in jurisdictions where documentation is not immediately required.

With three months remaining prior to the compliance date for Phase IV, it is particularly important that US regulators promptly clarify whether documentation requirements must be met by September 1, 2019 regardless of whether regulatory IM is required to be exchanged. Until clarity and assurance is provided that it is not, market participants in the US may be forced to prioritize the completion of relevant CSAs and ACAs regardless of the need to exchange regulatory IM, diverting industry resources from the completion of the requisite arrangements for global relationships that are expected to exchange regulatory IM and some market participants may opt to trade with non US dealers to delay unnecessary documentation effort and expense.

Separately, it has been suggested that in lieu of a CSA, the parties to each relationship could enter into a “CSA-lite” agreement. Such an agreement would not provide a CSE and its counterparty with the contractual right to collect and post initial margin in such amounts as required by the margin regulations.

⁷ This would not affect the amount of regulatory IM actually collected, because the documentation, once entered into, would require calculation of regulatory IM based on transactions entered into on or after the relevant September 1 compliance date.

⁸ <https://www.cftc.gov/system/files/2019/05/02/PhaseFiveImplementationLetter043019.pdf>

Temporarily replacing the current regulatory documentation requirements with a less restrictive version would not only require extensive work to develop and get counterparties to adhere to such an agreement (which does not exist today), but would also raise serious questions regarding the binding nature of the agreement and its relationship to the CSA that is later negotiated between the parties. Thus, a “CSA-lite” agreement is not a viable option and would render any documentation relief meaningless to industry participants.

Accordingly, for the reasons indicated above, the Associations request that US regulators provide certainty to CSEs and their counterparties that documentation requirements do not apply until the aggregate regulatory IM amount of a CSE and its consolidated entities for a set of trading relationships with a counterparty and its consolidated entities exceeds the \$50 million threshold.

Thank you for your consideration of this important matter.



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About the Associations

The International Swaps and Derivatives Association

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 70 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and depositories, as well as law firms, accounting firms and other service providers. Additional information on ISDA is available at <http://www.isda.org>.

The Securities Industry and Financial Markets Association

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>.

Global Foreign Exchange Division, GFMA

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 <https://www.gfma.org/foreign-exchange/>.

The Securities Industry and Financial Markets Association's Asset Management Group

SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.