October 22, 2020

Christopher Kirkpatrick
Secretary of the Commission
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–AF05 and RIN 3038-AF06

Dear Secretary Kirkpatrick,

The International Swaps and Derivatives Association (ISDA), the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association and the Securities Industry and Financial Markets Association (SIFMA) (the "Associations") [1], appreciate the opportunity to respond to the Notices of Proposed Rulemaking[2] ("NPRs") issued by the Commodity Futures Trading Commission (the "CFTC" or "Commission") in respect of the *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants* (the "Margin Rules") in response to the *Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps*[3] adopted by the Global Markets Advisory Committee (the "GMAC Report") and recommended to the Commission. We appreciate the swift action taken by the CFTC to consider the GMAC Report and propose corresponding amendments in respect of several of the recommendations. As discussed below, the Associations and their members are broadly supportive of the NPRs with the exception of the restriction in proposed §23.154(a)(5) which only allows a covered swap entity (CSE) to rely on the risk-based model initial margin (IM) calculation of a swap entity for uncleared swaps entered into for the purpose of hedging. We also request that §23.154(a)(5) be extended to allow reliance on the IM calculation of the financial end user affiliate of a swap entity.

We encourage the CFTC to propose further amendments to the Margin Rules to address the other recommendations in the GMAC Report which are valuable for the preparation for the final IM phase-in periods commencing September 1, 2021 ("Phase 5) and September 1, 2022 ("Phase 6") and for continued compliance with the Margin Rules.

Minimum Transfer Amount
The Associations support the proposed amendments to the definition of minimum transfer amount (MTA) which codify the terms of CFTC Letter No. 17-12 ("Letter 17-12") and CFTC Letter No. 19-

[1] See Appendix A for descriptions of the Associations.
[2] 85 Fed. Reg. 59470, September 22, 2020; 85 Fed. Reg. 59702, September 23, 2020
[3] https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download

25 ("Letter 19-25") issued by staff from the Division of Swap Dealer and Intermediary Oversight (DSIO) to address certain operational and compliance challenges related to the application of MTA.

In accordance with Letter 17-12, the amended definition of MTA allows for the application of an MTA of up to $50,000 for each separately managed account (SMA), as defined in the proposed addition to §23.151. We support this practical accommodation since each SMA is governed by a separate investment manager agreement and the assets are managed solely at the account level under an individual eligible master netting agreement. Due to confidentiality requirements and logistical impediments, it is not possible for the IM and variation margin (VM) of all SMAs of a beneficial owner to be managed and settled in respect of an MTA which would require aggregation across the SMAs. Although Letter 17-12 is not time-limited, no-action letters are subject to revocation. Codifying this relief will provide certainty to market participants that the approach they take to agreeing MTAs for SMAs will remain acceptable by the Commission.

The Associations are grateful for Letter 19-25 which DSIO issued in response to ISDA's request to allow SDs to apply separate MTAs to each of IM and VM with each swap counterparty, provided the combined MTA does not exceed $500,000. This is another practical accommodation which recognizes that the settlement of IM and VM are separate flows, notably due to the requirement in the Margin Rules to segregate IM with a third-party custodian. This relief is scheduled to expire on December 31, 2021 or the effective date of a final rule addressing the application of the MTA. We appreciate the Commission's effort to proactively address codification of Letter 19-25 by revising the MTA requirement in §23.153 and the margin documentation requirement in §23.158 to allow a CSE and a swap entity or financial end user to agree separate MTA amounts for IM and VM which in aggregate do not exceed $500,000.

MSE Calculation and Post Phase-in Compliance Dates

The Associations support the proposed amendments to the definition of material swaps exposure (MSE) which revise the timing and method for the MSE calculation and the post phase-in IM compliance dates to align with the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commission's (IOSCO) *Margin Framework for Margin Requirements for Non-Centrally Cleared Derivatives*[4] (the "Margin Framework") and thereby further harmonize the Margin Rules with other global jurisdictions. As shown in the comparison chart included as Appendix B[5], the U.S. is the only jurisdiction which requires the calculation of an average aggregate notional amount (AANA) between June and August of the preceding year. In addition, the U.S. is the only jurisdiction besides Brazil which requires the AANA to be calculated using daily averaging rather than month-end averaging over the three-month period. The U.S., EU and Switzerland[6] contradict the Margin Framework by shifting the annual compliance dates for IM which follow the phase-in period to a calendar-year cycle (i.e. January 1 to December 31) rather than retaining the September 1 to August 31 cycle established for the phase-in period as adopted by all other jurisdictions.

Although we recognize the CFTC's rationale for the current requirements, we feel strongly that the intended benefits are far outweighed by the negative impact of a jurisdiction-specific approach which creates additional effort for smaller counterparties to run a separate AANA calculation during a different time period using a different method and provide a separate notification to their

---

[4] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD651.pdf

[5] Also available on ISDA's website: http://assets.isda.org/media/5e7ce0f1/4f4fc9ed-pdf/

[6] The Associations will also request that authorities in the EU and Switzerland align with the Margin Framework.

counterparties for application or disapplication of IM requirements for the US. Jurisdictional differences are difficult to track and manage, leading to inadvertent errors or omissions in the calculations and the application of IM requirements.

The Commission has expressed concerns that a month-end averaging approach to AANA calculation would allow parties to "window-dress" their portfolios for each month-end in order to stay below the MSE. We do not believe this is a realistic risk since it would take considerable effort for parties to unwind and then reestablish their positions on a recurring basis over the three-month period, interrupting their hedging strategies and requiring them to absorb the costs of realized pnl changes. BCBS-IOSCO and other major jurisdictions have adopted the month-end averaging requirement, and we are not aware of any issues caused by this approach.

We acknowledge the intended value of establishing the MSE calculation period as June, July and August of the preceding year in order to provide a longer runway for preparation. However, the four-month lead time afforded to parties in the post phase-in period (September 1 to January 1), is not substantively longer than the three-month period provided in the Margin Framework (June 1 to September 1). In either case the time is insufficient to fully prepare to exchange regulatory IM[7] and therefore it is necessary for parties which anticipate they may come into scope of the IM requirements to run indicative calculations in advance and proceed with initial preparations prior to the official AANA calculation period. Therefore, the deviation on timing in the U.S. does not provide substantive benefit which outweighs the additional effort and complexity of running a distinct calculation.

Following Phase 6, the Margin Rules transition from an annual compliance period for IM requirements of September 1 to August 31, as specified in the Margin Framework, to one which aligns with the calendar year instead. This jurisdictional distinction adds substantial complexity to the efforts of swap dealers (SDs) and their counterparties to comply with the Margin Rules in the context of other global requirements since some subset of Phase 6 parties will come into or fall out of scope of the IM requirements each year as of a different date in the U.S. (January 1) as they will in other global jurisdictions (September 1). This will inevitably lead to differences between parties in the identification of which transactions are subject to the IM calculation of a particular jurisdiction and will cause discrepancies in IM amounts. It may also interfere with the ability to apply substituted compliance, since a party may become subject to the IM requirements under the Margin Rules on a different date than they become subject to the IM requirements in other jurisdictions.

ISDA estimates[8] show that 775 counterparties with a total of 5,443 relationships could come into scope of global IM requirements in Phase 6. ISDA analysis indicates that over 74% of those counterparties will qualify for IM requirements with less than EUR 25 billion AANA, and therefore may be in a position to recalculate their AANA each year to affirm the continued application of IM requirements. In addition, hundreds of other counterparties that do not initially breach the $8 billion threshold for Phase 6 will need to conduct annual AANA calculations to confirm whether they have come into scope of the IM requirements in one or more jurisdictions. Between their home jurisdiction and the jurisdictions of their dealer counterparties, these hundreds of counterparties will already need to calculate their AANA based on various jurisdictional thresholds and notify all their

---

[7] ISDA recommends allowing for a preparation time of 12-18 months, based on the scope of work required to exchange regulatory IM, as further described in the publication *Getting Ready for Initial Margin: The Steps to Take*, found here: https://www.isda.org/2020/09/16/getting-ready-for-initial-margin-the-steps-to-take/

[8] https://www.isda.org/a/JBWTE/IM-Phase-5-and-6-Estimates-10.16.19.pdf

dealer counterparties in the event of a change to status. Jurisdictional differences in the U.S. for the MSE calculations add to this burden and increase the likelihood of inconsistent interpretation and rule application.

The amendments to the MSE definition will benefit hundreds of smaller counterparties, reducing cost and effort and avoiding industry-wide confusion. We appreciate the CFTC's proposals which align with the Margin Framework and other global jurisdictions and strongly support the Commission's adoption of all of these amendments as proposed. We request the Commission work with the U.S. prudential regulators (USPRs) to encourage the proposal of corresponding amendments to the *Margin and Capital Requirements for Covered Swap Entities*[9] ("USPR Margin Rules") so that prudentially-regulated CSEs and their counterparties are not disadvantaged by requirements that are neither globally nor domestically harmonized.

Commercial Swap Dealer IM Calculation

The Associations support the proposed addition of §23.154(a)(5) to the Margin Rules which would allow a CSE to rely on the risk-based IM model calculations of their swap entity counterparties for the purpose of monitoring IM exposure against the IM threshold and for determining the amount of IM for collection and posting. However, we respectfully request that the Commission remove the condition which limits this option to transactions entered into solely for the purpose of hedging. We also request that the Commission extend §23.154(a)(5) to allow reliance on the IM calculation of the financial end user affiliate (FEU) of a swap entity.

Hedging restriction

Although swaps entered into between a SD already approved to use ISDA SIMM™ (SIMM) and a SD which will come into scope of the IM requirements in Phase 5 or 6 (a "commercial SD") may often be for the purpose of hedging, this may not be exclusively the case. In the event any portion of a commercial SDs portfolio is not hedging transactions, the opportunity to rely on the IM calculations of their SD counterparty may not be useful since they would need to separately calculate an IM amount for the non-hedging transactions. Unless the regulatory schedule was used for the non-hedging transactions, the commercial SD would still have to obtain approval to use an IM model like SIMM and support its implementation, maintenance and governance, thus negating the value of assigning calculation rights to its SD counterparty. In addition, any netting or diversification benefits under SIMM which may apply to the intersection of hedging and non-hedging transactions would not be available. Under either scenario, the amount of IM is likely to be higher, disadvantaging commercial SDs and their SD counterparties in a way that would not apply to SD portfolios with non-SDs.

As all swaps between a SD and a commercial SD which are subject to the IM requirements in the Margin Rules will be managed under a single Credit Support Annex, it would be operationally challenging for SDs to distinguish hedging from dealing swaps within the portfolio in order to run separate IM calculations. If this new functionality is not developed by a commercial SD and all its SD counterparties, then the value of the proposed amendments may be limited to commercial SDs which only ever trade swaps for the purpose of hedging.

We do not believe there is a material risk to allow both hedging and dealing swaps to be included in a single IM calculation conducted by a SD on behalf of the commercial SD. The IM amount calculated for the entire portfolio under SIMM would be the same regardless of whether it was

---

[9] 80 Federal Register 74840

calculated by the commercial SD or its SD counterparty. Therefore, there is no discernable rationale for allowing a SD to calculate the SIMM amount for the entire portfolio, but not allowing the commercial SD to rely on that amount for their monitoring or IM posting or collection requirement. SIMM has a robust governance process which monitors the sufficiency of calculated IM amounts to meet the requirements of the Margin Rules, and SDs licensed by ISDA and approved by the National Futures Association to use SIMM have established processes to monitoring their portfolios and remediate shortfalls, as appropriate.

FEU affiliates

Some SDs use special-purpose vehicles (SPVs) for the purpose of transacting swaps intended to hedge the risks of bespoke structured deals or commercial transactions on specific assets. Those SPVs may be classified as FEUs and margin affiliates of the SD and rely on the risk-based IM calculations produced by the SD affiliate under an approved model, like SIMM. Commercial SDs transact swaps with these affiliates in addition to, or instead of, transacting with the SD, and therefore also need the ability to rely on those IM calculations. If §23.154(a) is not extended to cover this scenario, then commercial SDs which transact with the FEU affiliates of SDs would be disadvantaged as they would need to rely on the regulatory schedule for that subset of trades with the SD group, negatively impacting the existing commercial relationship.

In conclusion, we request the Commission adopt the proposed amendment to add §23.154(a) to the Margin Rule but strike the text ", provided that initial margin calculated in this manner is used only with respect uncleared swaps entered into by the covered swap entity and the swap entity for the purpose of hedging the covered swap entity's swaps with non-swap entity counterparties" and amend this provision to include the risk-based IM calculations of the FEU affiliates of a swap entity. As §23.154(a)(5) also covers use of a risk-based model which is approved by a prudential regulator, we request that the CFTC engage with the USPRs to effect corresponding amendments to the USPR Margin Rules.

Sincerely,

Tara Kruse
Global Head, Infrastructure, Data and Non-Cleared Margin
ISDA

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

Kyle Brandon
Managing Director, Head of Derivatives Policy, **SIFMA**

Appendix A

About the Associations

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 925 member institutions from 75 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 repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

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 24 global foreign exchange market participants, collectively representing a significant portion of the FX inter-dealer market. Both 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 regulators. Learn more about the GFXD at: www.gfma.org/foreign-exchange/

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.

Appendix B

		US (USPR)		US (CFTC)		EU/UK		Switzerland		Japan		Canada		Australia		Hong Kong		Singapore		Korea		Brazil		South Africa	
AANA Calculation Method		Daily averaging		Daily averaging (Phase 5); then month-end average		Month-end average		Month-end average		Month-end average		Month-end average		Month-end average		Month-end average		Month-end average		Month-end average		Daily averaging		Month-end average	
	Compliance Date	AANA/ MSE	AANA Calc Period	AANA/ MSE	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period	AANA	AANA Calc Period
South Africa initial IM Phase	TBD	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	ZAR 30 trillion	March, April, May 2020
Phase 5	1-Sep-21	USD 50 billion	March, April, May 2021	USD 50 billion	March, April, May 2021	EUR 50 billion	March, April, May 2021	CHF 50 billion	March, April, May 2021	JPY 7 trillion	March, April, May 2021	CAD 73 billion	March, April, May 2021	AUD 75 billion	March, April, May 2021	HKD 375 billion	March, April, May 2021	SGD 80 billion	March, April, May 2021	KRW 70 trillion	March, April, May 2021	BRL 160 billion	March, April, May 2021	ZAR 23 trillion	March, April, May 2021
Phase 6	1-Sep-22	USD 8 billion	June, July, Aug 2021	USD 8 billion	March, April, May 2022	EUR 8 billion	March, April, May 2022	CHF 8 billion	March, April, May 2022	JPY 1.1 trillion	March, April, May 2022	CAD 12 billion	March, April, May 2022	AUD 12 billion	March, April, May 2022	HKD 60 billion	March, April, May 2022	SGD 13 billion	March, April, May 2022	KRW 10 trillion	March, April, May 2022	BRL 25 billion	March, April, May 2022	ZAR 15 trillion	March, April, May 2022
Initial post phase-in period (USPR)	1-Jan-23	USD 8 billion	June, July, Aug 2022	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Initial post phase-in period (Global)	1-Sep-23	n/a	n/a	USD 8 billion	March, April, May 2023	n/a	n/a	n/a	n/a	JPY 1.1 trillion	March, April, May 2023	CAD 12 billion	March, April, May 2023	AUD 12 billion	March, April, May 2023	HKD 60 billion	March, April, May 2023	SGD 13 billion	March, April, May 2023	KRW 10 trillion	March, April, May 2023	BRL 25 billion	March, April, May 2023	ZAR 8 trillion	March, April, May 2023
Intial post phase-in period (EU/CH)	1-Jan-24	USD 8 billion	June, July, Aug 2023	n/a	n/a	EUR 8 billion	March, April, May 2023	CHF 8 billion	March, April, May 2023	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Post phase-in period/ZA Final Phase-In	1-Sep-24	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	JPY 1.1 trillion	March, April, May 2024	CAD 12 billion	March, April, May 2024	AUD 12 billion	March, April, May 2024	HKD 60 billion	March, April, May 2024	SGD 13 billion	March, April, May 2024	KRW 10 trillion	March, April, May 2024	BRL 25 billion	March, April, May 2024	ZAR 100 billion	March, April, May 2024

Source, ISDA.org: http://assets.isda.org/media/5e7ce0f1/4f4fc9ed-pdf/
Key: The information in yellow is subject to rule finalization. The text and boxes in red denote globally inconsistent dates or methods.