January 24, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW.
Washington, D.C. 20581

Re: Duties of Swap Dealers and Major Swap Participants; RIN Number 3038-AC96

Dear Mr. Stawick:

The Securities Industry and Financial Markets Association ("SIFMA")[1] welcomes the opportunity to provide the Commodity Futures Trading Commission (the "Commission") with comments on the Commission's Proposed Rulemaking regarding Duties of Swap Dealers and Major Swap Participants (the "Proposed Rules").[2] We appreciate the Commission's efforts to establish an appropriate framework for the internal management and oversight of swap dealers and major swap participants (together, "registrants") pursuant to the provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

SIFMA agrees with the implicit premise of the Commission's proposed framework that effective oversight begins with proper internal management of the activities of registrants. Our members regard strong risk management processes as a particularly critical element in the effective management of derivatives businesses and continually seek opportunities to enhance and strengthen the efficacy of these processes.

The comments and clarifications contained in this letter are informed by our members' own experiences with risk management practices. We believe that these comments are consistent with the Commission's overall framework and will align the proposed framework with current risk management capabilities and supervisory practices.

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. 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 www.sifma.org.

[2] 75 Fed. Reg. 71397 (Nov. 23, 2010) (the "Proposing Release").

A. Risk Management

1. Consolidated Risk Management Framework

Under the Proposed Rules, each registrant would be required to establish an appropriate framework for monitoring and managing the risks associated with its business. Each registrant would also be required to show that it is taking an integrated approach to risk management at the consolidated entity level.

An effective risk management framework must form an integral part of a coordinated approach to evaluating and monitoring capital adequacy. As the Commission is aware, risk and pricing models, and related systems, processes and controls, are used extensively by financial institutions both for capital adequacy and risk management purposes. To be effective, capital and risk management systems, processes and controls must be designed and implemented on an integrated basis and, equally, must be subject to a consistent and integrated set of supervisory standards. Inconsistencies in supervisory standards will only create inefficiency, confusion, and opportunities for control failures. As a result, the standards applicable to a registrant's risk management framework should be established by the regulator responsible for the registrant's prudential supervision.

Many registrants will be banks[3] or other subsidiaries of financial holding companies. Many registrants may also be non-U.S. institutions.[4] Many of these U.S. and non-U.S. registrants, including both banks and non-banks, will be subject to minimum capital and risk management requirements, either directly or as part of a holding company group that is subject to consolidated supervision.

We therefore recommend that a bank registrant having a prudential regulator be permitted to comply with the Commission's risk management requirements, on a substitute compliance basis, through compliance with the risk management requirements of its prudential regulator (including, in appropriate cases determined by the Federal Reserve to involve comparable supervision and regulation, requirements of a non-U.S. regulator).[5]

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[3] U.S. banks and non-U.S. banks operating in the United States are subject to comprehensive oversight by the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the state banking regulators, the Office of the Comptroller of the Currency (the "OCC"), and the Federal Deposit Insurance Corporation, and financial holding companies are subject to consolidated supervision by the Federal Reserve.

[4] For registrants that are non-U.S. banks or U.S. branches or agencies of non-U.S. banks, the Federal Reserve is vested with, and will retain, authority to set and enforce capital standards. For these registrants, it would be consistent with the Federal Reserve's long-standing approach to cross-border banking supervision for it to give appropriate deference to home country supervisors with respect to capital oversight in those cases where the Federal Reserve has determined, or in the future determines, that the relevant supervisory regime is consistent with the safety and soundness standard required under Dodd-Frank.

[5] Conversely, under this approach, failure by a bank registrant to comply with the risk management requirements of its prudential regulator (as determined by that regulator and notified to the Commission) would constitute a violation of Commission rules.

Financial holding companies, in turn, are often separately required by the consolidated prudential supervisor of the holding company group to implement group-wide risk monitoring and management systems, processes and controls, including with respect to their bank and non-bank registrant subsidiaries. For example, the Federal Reserve and many non-U.S. consolidated prudential supervisors of financial holding companies require such group-wide risk monitoring and management systems. Accordingly, in cases where the Commission determines that the supervision of the group-wide risk management framework of a registrant by the consolidated prudential supervisor of its holding company is comparable to the supervisory framework of the Commission, we recommend that such registrant be permitted to comply with the Commission's consolidated risk management requirements, on a substitute compliance basis, through compliance with the consolidated risk management requirements of its consolidated prudential supervisor.[6]

We believe the foregoing approach will avoid unnecessary duplication or inconsistency and facilitate a consistent and coordinated approach by the Commission and prudential regulators to the oversight and examination of the risk management systems, processes and controls of registrants and their affiliates.[7] To effectuate this approach, we recommend that the Commission require that an application for registration include: (1) the identity of relevant prudential regulator or consolidated supervisor, and (2) a statement that the applicant is subject to the relevant regulator's/supervisor's risk management framework standards and has implemented a risk management framework in accordance with those standards.

2. Risk Categories

Among the risk categories identified by the Commission for risk monitoring and management are: market risk, credit risk, liquidity risk, foreign currency risk, settlement risk, legal risk and operational risk. We note that the standard industry practice is to manage foreign currency risk as part of market risk rather than as a distinct risk category or process. Similarly, settlement risk is typically managed, as a component of credit risk, through the various product line operational groups. We request the Commission's confirmation that, so long as the enumerated risks are systematically monitored and managed, the Commission does not intend,

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[6] Conversely, under this approach, failure by a financial holding company or its registrant subsidiary to comply with the consolidated prudential supervisor's risk management requirements in respect to systems, processes or controls that present risk to the registrant (as determined by that supervisor and notified to the Commission) would constitute a violation of Commission rules.

[7] While we agree with the Commission regarding the importance of an integrated approach to risk management, we also believe that it is important that responsibility for oversight and examination be allocated appropriately among supervisors so as to facilitate appropriate utilization of supervisory resources and expertise. Accordingly, and consistent with the scope of the Commission's jurisdiction under Dodd-Frank, we believe that the Commission's oversight of consolidated risk management programs should be limited to the elements applicable to the registrant itself and to the risks to the registrant that may arise from the activities of its affiliates.

by its enumeration of specific risk categories, to require that these categories be subject to somehow distinct risk management processes or categorization.

3. Risk Management Unit; Written Policies and Procedures

Proposed Rule 23.600(b)(5) appears to contemplate that a registrant will establish and maintain a single risk management unit responsible for carrying out the registrant's entire risk management program. As noted above, however, the Proposed Rules go on to require the risk management program to address a wide range of market, credit, liquidity, foreign currency, legal, operational, and other risks. Because of the specialized expertise necessary to manage these different risks effectively, different risk management processes are frequently managed by independent control functions, organized by relevant discipline or specialization. We request that the Commission confirm that such arrangements are permissible, so long as each function responsible for carrying out an aspect of the risk management program complies with the independence and other requirements applicable to the "risk management unit" under the Proposed Rules and coordinates effectively with other control functions.

Proposed Rule 23.600(b)(2) similarly appears to contemplate that a registrant will maintain a single set of written policies and procedures that are specific to its risk management program. Consistent with the point noted above, however, it is customary for independent control groups responsible for particular aspects of a firm's risk management processes to document their risk management-related policies and procedures as part of the relevant group's broader policies and procedures. For instance, policies and procedures for analyzing daily liquidity needs may be included as part of a registrant's broader treasury policies and procedures. We therefore request that the Commission confirm that registrants may rely on existing policies and procedures to satisfy Proposed Rule 23.600(b)(2)'s requirement, so long as those policies and procedures are documented and, taken together, address all of the elements of the risk management program required by the Proposed Rules. We note that any other approach would impose unnecessary costs and burdens on registrants with existing policies and procedures and would, at a minimum, necessitate a lengthy transition period before compliance could reasonably be expected.

4. Governing Body/Senior Management

Proposed Rule 23.600(b) would require that a registrant's risk management program be approved by the registrant's board of directors (and equivalents for non-corporate registrants) and would ascribe significant implementation and supervisory responsibilities to senior management. We agree with these allocations of responsibilities.

We note, however, that in many firms the board of directors may assign to expert or specialized board committees responsibilities for matters subject to board approval. Additionally, in large, integrated financial services groups, the approval of a consolidated risk management program may occur at the holding company level. Finally, in connection with board approval of the risk management program, the board will necessarily delegate certain matters, such as the establishment of asset- or product-specific risk limits by risk managers or

other senior managers, within the overall parameters and risk management framework established and approved by the board. We request that the Commission confirm that these practices would be permitted under the Proposed Rules.

Proposed Rule 23.600(a)(6) would further define "senior management", for purposes of the Proposed Rules, as the chief executive officer of the registrant and officers reporting directly to the chief executive officer. Particularly in large organizations, senior officers with responsibilities for managing business units, divisions or other organizational units do not report directly to the registrant's chief executive officer. These individuals may nonetheless be the most senior officer within the organization responsible for supervising activities comprising the registrant's risk management program. Additionally, some business units, divisions or other organizational units are vested with responsibilities that span across multiple legal entities within a holding company group. As a result, the relevant senior officer may have responsibility at the consolidated group level. Accordingly, we request that the Commission supplement the proposed definition so as to include within senior management: the chief executive officer, any officer having supervisory or management responsibilities who reports directly to the chief executive officer, and any other officer having supervisory or management responsibility (including at the consolidated group level) for any business, operational, control or other organizational unit, department or division.

5. Risk Tolerance Limits

Proposed Rule 23.600(c)(1) would require that risk tolerance limits be reviewed and approved by senior management (quarterly) and the governing body (annually), that exceptions to risk tolerance limits require the prior approval of, at a minimum, a supervisor in the risk management unit, and that the risk management program include policies and procedures for detecting breaches of risk tolerance limits and alerting supervisors within the risk management unit and senior management, as appropriate.

We note that the allocation to the governing body and senior management of responsibility for approving risk tolerance limits implicitly (and, in our view, appropriately) reflects the judgment that a registrant's risk appetite is fundamentally a function of commercial considerations, subject to capital and related prudential parameters. Consistent with this, it is customary for trading supervisors, rather than risk management personnel, to approve or disapprove a limit excession by an individual trader, subject to the parameters (including aggregate risk limits at the desk, business or other level) established for the relevant supervisor's own authority. Trading supervisors have the necessary commercial and market judgment to evaluate when an exception would be consistent with the registrant's risk framework, as established by senior management and the governing body. Risk management personnel, on the other hand, are typically responsible for measuring risk and monitoring risk levels, including limit excessions, as well as alerting relevant management or supervisors upon the occurrence of any such excession.

We note that Proposed Rule 23.600(c)(2) would also require that risk management personnel provide risk exposure reports to a registrant's senior management and

governing body, and to the Commission, on a quarterly basis and upon the detection of any material changes to the registrant's risk exposure. We believe these processes serve as adequate additional checks on decision-making by traders and trading supervisors. Accordingly, we request that the Commission modify Proposed Rule 23.600(c)(1)(i) to permit trading supervisors to approve limit exceptions, subject to notification of risk management supervisors and subject to the scope of their own authority.

6. New Product Policy

Proposed Rule 23.600(c)(3) would require that the risk analysis of a new product include an assessment of any product, market, credit, liquidity, foreign currency, legal, operational, settlement, and any other risks associated with the new product. The Proposed Rule further notes that product risk characteristics may include volatility, non-linear price characteristics, jump-to-default risk, and any correlation between the value of the product and the counterparty's creditworthiness. As noted above, many of the risks identified by the Commission are typically managed by independent control functions. Those independent control functions often do, in appropriate cases, maintain their own lists cataloguing potentially relevant risks across different products (based upon their own experience, best practices, and discussions with supervisors). We are concerned, however, that required utilization of any such pre-determined list for every product may very well lead to a process in which control functions, as a routine matter, focus on what is on the list (and not on what the list may be missing), and as a result, fail to identify a non-enumerated risk that is uniquely presented by the relevant product.

Accordingly, we request the Commission's confirmation that a registrant may structure its new product approval framework so as to focus on only those risk elements or characteristics that are deemed to be relevant to the product at issue, recognizing that, in the case of an individual product, the relevant risks may include all or a subset of those enumerated by the Commission, or other risks.

Proposed Rule 23.600(c)(3) also contemplates a process for product approval that would impose, as prerequisites to any transactions in the new product, separate steps for (i) a signed[8] risk assessment by a supervisor in the risk management unit, (ii) for some products, pre-approval by the registrant's governing body and (iii) modifications to the registrant's risk management program (or, presumably, a determination that no such modifications are necessary). We agree with the Commission that procedural safeguards and accountability are important components to any new product policy.

It is not uncommon, however, for firms, as part of the new product review process, to provide tentative or preliminary approval for a new product without completing all of the analyses or procedures that might ordinarily be undertaken. In these cases, risk management objectives are addressed by imposing significantly more stringent limits on the level of activity that may be undertaken in the product so that under any probable loss scenario, the risk to the

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[8] We note that, as a technical matter, not all assessments or approvals are technically "signed" by the relevant individual or unit. We recommend that the Commission clarify that any required assessments or approvals be evidenced in a manner that is clearly attributable to the responsible individual or unit and auditable.

firm would not be material. Such processes have the benefit of providing an opportunity for the firm to obtain relevant experience with the product and enhance the firm's ability to better understand and evaluate, and develop appropriate parameters for activity in, the product. We therefore ask that the Commission clarify that registrants may use such processes under the Proposed Rules.

Finally, we note that banks and registered broker-dealers (as well as other firms) have already established new product policies consistent with existing guidance issued by banking regulators, the Securities and Exchange Commission (the "SEC") and self-regulatory organizations ("SROs").[9] That guidance addresses many of the same objectives of Proposed Rule 23.600(c)(3), including assessment of different types of risk and the approval process. It also addresses the considerations noted above regarding the involvement of independent control functions and contingent or limited approvals, as well as factors for identifying those features that distinguish a variation in an existing product from a "new product". We therefore recommend that the Commission's final rules provide consistency between its new product policy requirements and the requirements of existing regulatory guidance in this area.

7. Business Trading Unit

Proposed Rule 23.600(a) would define a "business trading unit" to include any unit comprised of personnel "that performs *or is involved in* any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant" (emphasis added). The consequence of this definition is that risk management personnel would be required to be independent of any "business trading unit" personnel.

We are concerned that the "involved in" standard is too open-ended and would inadvertently capture a potentially broad range of risk management, control, operations and other independent personnel who have the expertise and responsibility for performing the risk management and other independent functions called for by the Proposed Rules. Operations, legal, credit, and treasury personnel regularly have some involvement in the trading functions specified in the "business trading unit" definition. Indeed, merely establishing and supervising compliance with risk limits could arguably cause a person to be deemed to be "involved in" trading activities—a result that the Commission clearly does not intend. Accordingly, we recommend that the Commission redefine "business trading unit" to mean personnel "directly engaged in" the relevant trading functions.

Additionally, we note that many firms have an independent financial control group whose responsibilities include price verification.[10] While such personnel should be independent of business trading units, they should not be required to be independent of risk

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[9] See, e.g., Federal Reserve Bank Holding Company Supervision Manual; OCC Trading and Capital Markets Activities Manual; NASD Notice to Members 05-26 (Apr. 2005); and Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities, 72 Fed. Reg. 1372 (Jan. 11, 2007).

[10] Although these personnel may provide prices to clients as part of valuation processes, they are not involved in soliciting or effecting transactions.

management personnel. In order to address this unintended result, we recommend that the Commission distinguish trading personnel who provide prices to clients for the purposes of soliciting or executing transactions from control or other independent personnel who are engaged in price verification for financial control or other non-transactional valuation purposes (including reviewing or creating models that are used for pricing purposes).

8. Liquidity Risk

Proposed Rule 23.600(c)(4)(iii)(B) would require that registrants conduct "testing of procedures to liquidate non-cash collateral . . . without significant effect on the market". We note that firms do not generally test liquidation procedures insofar as that involves the actual disposition of collateral. As in all dealing and trading activities, firms have incentives to minimize the impact of market friction and maximize the proceeds of sales. In addition, under applicable law, persons liquidating collateral upon the default of a debtor are generally subject to the requirement that they act in a commercially reasonable manner under the relevant circumstances.

Registrants also routinely engage in purchases and sales of assets of the types maintained as collateral. Requiring the simulated disposition of significant collateral under circumstances of extreme market stress would be difficult and, in itself, potentially risky and costly. Conversely, a simulation under any other scenario would not provide useful experience or information.

Similarly, it would be extremely challenging to pre-define a liquidation process that would be as effective as the context-sensitive subjective trading judgments that must be made by expert traders, in the context of a liquidation of collateral (or alternatively, a determination to hedge exposures, pending a delayed liquidation of collateral). Any such trading judgments must take into account market conditions for the specific collateral as well as related market conditions. With regard to the requirement that liquidation procedures result in liquidation "without significant effect on the market" we note that firms cannot ensure, through their procedures, that the liquidation of collateral can be accomplished without significant effect on price. The extent to which the disposition of collateral will move the markets will depend on the nature and amount of the collateral and market liquidity at the time of disposition. As noted above, however, firms have incentives to minimize price effects, and the absence of procedures specifying the steps to be taken in the context of a liquidation should not present significant increased risk to a registrant.

Firms do, however, determine the types of collateral that they are willing to accept based on the risk, volatility, liquidity and other characteristics of the relevant collateral. Based on these characteristics, firms additionally establish conservative haircuts for the valuation of collateral, which serve to protect the firm against most adverse price scenarios. Accordingly, we recommend that the Commission modify Proposed Rule 23.600(c)(4)(iii)(B) to instead require that registrants adopt policies and procedures for identifying acceptable types of collateral and establishing appropriate haircuts, taking into account reasonably anticipatable adverse price movements.

9. Legal Risk

Proposed Rule 23.600(c)(4)(v) would require registrants to implement policies and procedures to ensure that "transactions" and netting arrangements have a "sound legal basis". We would note that market participants employ various practices, such as utilizing standardized master documentation, as a means of ensuring that the legal underpinnings of the transactions and activities in which they engage are adequate. We recommend that the Commission adopt an alternative requirement that a registrant have policies and procedures in place to identify and evaluate the legal risks arising in connection with the registrant's business.

10. Operational Risk

Proposed Rule 23.600(c)(4)(vi) would require that registrants implement policies and procedures that take into account, among other matters, "reconciliation of *all* operating and information systems" (emphasis added). While we agree that reconciliation of operating and information systems is an important component of operational risk management, we are concerned that reference to "all" systems is necessarily overbroad. We request that the Commission instead require "reconciliation of *critical data within* operating and information systems".

11. Credit Limits

Proposed Rule 23.600(d)(2) would require that traders execute transactions only with counterparties for whom credit limits have been established. We strongly agree that credit risk management is among the most critical elements of an effective risk management framework. Pre-established credit limits are not, however, necessary in all cases. Not all transactions give rise to credit exposure (*e.g.,* a transaction in which the registrant's counterparty is long a prepaid forward contract). In other cases, a registrant may determine to hedge its counterparty credit exposure in connection with the relevant transaction. We recommend that the Commission modify Proposed Rule 23.600(d)(2) to provide that a registrant's policies and procedures should require that traders execute transactions only where credit risk evaluations have been made.

12. Monitoring Undue Risk

Under Proposed Rule 23.600(d)(4), registrants would be required to adopt policies and procedures to prevent traders from incurring "undue risk". We are concerned that the proposed reference to "undue risk" provides no guidance or content as to the parameters or standards to be applied in evaluating compliance with this requirement.

Under the Commission's proposed risk management framework, and that of other regulators, a registrant's risk appetite is to be established by its governing body. Capital and related prudential parameters limit a registrant's ability to assume entity-wide risks that are not commensurate with firm capital. The risk parameters established by the governing body are translated into more specific limits that are applied to business units, traders and products, and

traders are required to comply with the limits that are established for their activities. Any more stringent limitations would be self-imposed based on market conditions. Accordingly, we respectfully recommend that the Commission delete the reference to "undue risk" in this provision.

13. Trade Entry

In the preamble to the Proposed Rules, the Commission notes that certain firms have experienced significant losses as a result of their failure to separate trading personnel from personnel responsible for recording trades on the firms' books.[11] The Commission goes on to recognize, and we agree, that a registrant must have flexibility to implement appropriate policies and procedures reflecting its circumstances.[12] We note that, consistent with this observation, the corresponding provisions of Proposed Rules 23.600(d)(4)-(6) would not specifically require the separation referenced by the Commission in the preamble.

We share the Commission's view that a registrant's policies and procedures should address faithless-trader issues, and we concur that enforcing separation of duties between trading personnel and control-side personnel is critical to achieving this objective. We note, however, that trade entry must, as a practical matter, be effected by the trader. The trader knows the trade. Having other personnel enter the trade would not mitigate the risk of trader deception, but would introduce delay in timely trade capture, operational risk, inaccuracy and inefficiency, and would potentially impair the timeliness and accuracy of risk data used for oversight purposes. Since effective fraud detection, in particular, also demands that trading systems be as current as possible, the introduction of additional delay in trade capture would in and of itself be counterproductive. As such, introducing separation between the trader and the initial booking process has, in the experience of our members, contributed to a weakening of the control environment. Additionally, the delay that any such separation would introduce would, as a practical matter, render compliance with the Commission's proposed real-time reporting rules highly impractical, if not impossible.[13]

As the Commission has observed, there are other ways to address faithless-trader risks. As one example, an independent operational group can be given responsibility for reconciling entered trades with counterparty confirmations.[14] If there is no corresponding

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[11] Proposing Release at 71399. The Proposing Release goes on to state that, under the Proposed Rules, "personnel responsible for recording transactions in the books of the swap dealer or major swap participant cannot be the same as those responsible for executing transactions." Id. at 71400.

[12] Id. at 71399.

[13] See Real-Time Public Reporting of Swap Transaction Data, Notice of Proposed Rulemaking, 75 Fed. Reg. 76140 (Dec. 7, 2010) (requiring reporting in real-time "as soon as technologically practicable") and Swap Data Recordkeeping and Reporting Requirements, Notice of Proposed Rulemaking, 75 Fed. Reg. 76574 (Dec. 8, 2010) (requiring reporting as soon as 15 minutes after execution).

[14] Accordingly, this independent operational group should be permitted to confirm transactions, rather than the trader himself or herself (as suggested by Proposed Rule 23.600(d)(5)).

confirmation, it may be an indication that the trade entered is fictitious; if a confirmation is received with no corresponding trade entered, it may be an indication that the trade exists but has not been entered into the firm's systems. When discrepancies are identified, the operational unit can contact an independent operational unit at the confirming party (or the party identified by the trader as the counterparty) to verify the trade, or not, as the case may be.

Our members have found that the separation of duties along lines such as these has been a very effective control for ensuring the accuracy and integrity of trade data. Under this approach, after trade entry, the trader does not have the ability to alter the firm's books and records, or otherwise determine the accounting, confirmation, settlement, liquidity, valuation or reconciliation processes for a given trade.

We therefore request that the Commission confirm that compliance with the provisions of Proposed Rules 23.600(d)(4)-(6) would not preclude trading personnel from entering the trades they execute into a registrant's trade capture system, provided that the registrant has appropriate policies and procedures reasonably designed to identify the entry of fictitious trades or the failure accurately to enter actual trades.

14. Broker's Statements

Proposed Rule 23.600(d)(8) would require that a registrant's risk management unit review broker's statements, reconcile brokers' charges to estimates, review and monitor brokers' commissions and initiate payment to brokers. If this provision reflects Commission concerns about irregularities in a trader's dealings with interdealer brokers, for example, it is unclear why these concerns cannot be addressed through review and reconciliation of relevant documentation by independent operations or other control units, rather than the risk management unit *per se*. It is not clear how the referenced broker documents relate to risk management, what concerns they are intended to address or why, for example, a risk management unit would be tasked with processing payment obligations.

B. Position Limit Monitoring

Proposed Rule 23.601 would require registrants to implement policies and procedures reasonably designed to ensure compliance with exchange and Commission position limits. We note that Proposed Rule 23.402(a)(1) would separately require that each registrant implement policies and policies reasonably designed to ensure compliance with its obligations under Dodd-Frank.[15] It is therefore unclear why the duplicative, and more specific, requirements of Proposed Rule 23.601 are necessary, or how the two are to be read together.

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[15] See Business Conduct Standards for Swap Dealers and Major Swap Participants, Notice of Proposed Rulemaking, 75 Fed. Reg. 80638 (Dec. 22, 2010) at 80657.

1. Integration with Risk Management

Under existing policies and practices, position limits are not typically monitored by risk managers, but rather by independent compliance, supervisory, or operations personnel with the expertise necessary to calculate and administer position limits properly. Accordingly, consistent with Part A.3 above, we request that the Commission confirm that such arrangements are permissible, so long as each function responsible for carrying out position limit monitoring complies with the independence and other requirements applicable to the "risk management unit" under the Proposed Rules and coordinates effectively with other control functions.

2. Training

Proposed Rule 23.601(c) would require training by registrants promptly following any change in position limits. Although such training may be appropriate in the context of substantive changes to position limit rules, it should not be required in the case of changes in the level of one or more position limits. Such changes that can be readily communicated through internal notification processes.

C. Audits/Testing

Proposed Rule 23.600(3) would require a registrant to test its risk management program on a quarterly basis using independent audit personnel. We believe that a quarterly audit of a registrant's entire risk management framework is unrealistic and unnecessarily frequent. We respectfully recommend that this provision be modified to require that an audit of each element of a registrant's risk management framework be conducted at least annually but not necessarily all at the same time. Additionally, it is customary for both external and internal auditors of risk management framework to utilize an "agreed upon procedures" approach to their review.

Proposed Rule 23.601(f) would further require that a registrant test its position limit procedures on a monthly basis. It is not clear what the proposed "testing" requirement is intended to require firms to do. For instance, the use of the word "test" could be read to require that registrants put on trades in excess of limits on purpose solely to see whether the system catches the excession. The Commission presumably did not intend for registrants to conduct such "tests". It would be more consistent with current practices to require that registrants monitor whether their position reporting systems accurately capture every relevant desk and position. We request that the Commission confirm that this type of monitoring is consistent with the Commission's intent.

D. Business Continuity

Proposed Rule 23.603 would require registrants to establish and maintain a comprehensive business continuity and disaster recovery plan. Many integrated financial services groups utilize shared personnel, premises, resources, systems and other infrastructure. We request that the Commission confirm that, in such cases, a registrant's business continuity

and disaster recovery plan, or appropriate elements of that plan, may be part of a consolidated plan established for the benefit of the various companies within the relevant holding company group that share common personnel, premises, resources, systems and infrastructure.

Additionally, many registrants' business continuity and disaster recovery plans will also be subject to testing and supervision by prudential regulators, the SEC, SROs, and/or non-U.S. regulators. Consistent with our recommendation in Part A.1 above, we recommend that a registrant subject to business conduct and disaster recovery requirements of a prudential regulator (or requirements of another regulator or SRO determined to be comparable by the Commission) be permitted to comply with the Commission's business continuity and disaster recovery requirements, on a substitute compliance basis, through compliance with the consolidated risk management requirements of that prudential or other regulator or SRO.

E. Antitrust Considerations

The Proposing Release explains that Proposed Rule 23.607 would implement the prohibitions contained in Section 4s(j)(6) by requiring that registrants adopt policies and procedures to prevent unreasonable restraints of trade, or any material anticompetitive burden on trading or clearing.[16] We agree with the proposed policies and procedures approach. We note that Proposed Rule 23.607(a) goes further, however, by imposing a blanket prohibition on a registrant adopting any process or taking any action that results in any unreasonable restraint of trade, or imposes any material anticompetitive burden on trading or clearing (unless necessary or appropriate to achieve the purposes of the CEA). We are concerned that, given the counterparty rescission and private right of action provisions of the CEA,[17] this prohibition could introduce additional private liability that is unnecessary in light of the enforcement authority of the Commission and antitrust authorities and existing private rights of action under the antitrust laws. We therefore recommend that the Commission delete Proposed Rule 23.607(a) and instead rely upon the policies and procedures requirement included in Proposed Rule 23.607(b).[18]

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[16] Proposing Release at 71401. As the Supreme Court has noted, "to safeguard the incentive to innovation, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct". Verizon Communications v. Law Offices of Curtis V. Trinko, 540 U.S. 398 (2004). Accordingly, consistent with long-standing principles of antitrust law, we assume that Section 4s(j)(6) only prohibits (i) collusive behavior and (ii) unilateral behavior that would create or strengthen a monopoly position.

[17] See CEA Sections 22(a) (amended by Dodd-Frank to carve back existing limitations on the ability for an eligible contract participant to rescind swap transactions) and 22(b) (giving participants a private right of action against a registered entity if the entity fails to enforce any bylaw, rule, regulation, or resolution it is required to enforce or if the entity violates any CFTC rule).

[18] In this regard, we request that the Commission clarify the policies and procedure requirement in Proposed Rule 23.607(b) by confirming policies and procedures must only be "reasonably designed" to prevent actions that would result in unreasonable restraint of trade, or impose any material anticompetitive burden on trading or clearing and, consistent with Section 4s(j)(6), including an exception for actions that are necessary or appropriate to achieve the purposes of the CEA.

SIFMA appreciates the opportunity to comment on the Proposed Rules. We would be pleased to meet with the Commission or its staff to discuss the contents of this letter and Dodd-Frank more generally. If you have any questions, please contact Kyle Brandon at 212-313-1280.

Respectfully submitted,

Kenneth E. Bentsen, Jr.
Executive Vice President
Public Policy and Advocacy
SIFMA

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
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Honorable Luis A. Aguilar, Commissioner
Honorable Troy A. Paredes, Commissioner

Robert W. Cook, Director
John Ramsay, Deputy Director
Michael A. Macchiaroli, Associate Director
Thomas K. McGowan, Deputy Associate Director
Division of Trading and Markets
Securities and Exchange Commission

Honorable Ben S. Bernanke, Chairman
Honorable Janet L. Yellen, Vice Chair
Honorable Kevin M. Warsh, Governor
Honorable Elizabeth A. Duke, Governor
Honorable Daniel K. Tarullo, Governor
Honorable Sarah Bloom Raskin, Governor

Patrick M. Parkinson, Director, Division of Banking Supervision and Regulation
Scott Alvarez, General Counsel
Board of Governors of the Federal Reserve System

John Walsh, Acting Comptroller
Office of the Comptroller of the Currency

Sheila Bair, Chairman
Federal Deposit Insurance Corporation