By Electronic Mail

September 14, 2015

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
RIN 3038 AC97

RE: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements

Ladies and Gentlemen:

The Financial Services Roundtable[1] ("FSR") respectfully submits these comments in response to the proposal (the "Proposal")[2] by the U.S. Commodity Futures Trading Commission (the "Commission") for the cross-border application of the Commission's margin requirements for uncleared swaps for swap dealers and major swap participants ("covered swap entities") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[3]. We appreciate the opportunity to comment.

---

1 As advocates for a strong financial future™, FSR represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $ 78.3 trillion in managed assets, $ 980 billion in revenue, and 2.1 million jobs.

2 *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements, 80 Fed. Reg. 41376 (July 14, 2015) ("Proposal").

3 Pub. Law No. 111-203, § 939A, 124 Stat. 1887 (July 21, 2010).

I. INTRODUCTION

We recognize that the Commission has made significant changes to prior proposals regarding the Commission's margin requirements for uncleared swaps[4] that reflect comments we have previously made. We also support many of the Commission's changes to its approach to what constitutes a U.S. person and various related terms. For instance, we appreciate that the Proposal more narrowly defines "U.S. person" to eliminate the majority ownership concept used in the "U.S. person" definition contained in the Commission's final interpretive statement regarding how the Dodd-Frank Act swap provisions would generally apply on a cross-border basis (the "Cross-Border Guidance").[5] Likewise, we support the Commission's efforts in proposing to capture (through the "Foreign Consolidated Subsidiaries" concept) foreign affiliates based on a consolidation test,[6] rather than the control test proposed by the Prudential Regulators.[7] We also applaud the Commission for limiting the "guarantee" definition to those financial support arrangements in which a counterparty has rights of recourse against a guarantor with regards to relevant swap transactions.[8] We believe that these proposed definitions highlight the Commission's efforts to more appropriately capture the risk that transfers back to the United States with respect to uncleared swap transactions.[9]

However, we continue to have serious concerns that the Commission's approaches are not sufficiently aligned with the international standards contained in the final margin policy framework issued by the Basel Committee on Banking Supervision ("BCBS") and the Board of the International Organization of Securities Commissions ("IOSCO") (the "International Standards").[10] We believe that regulatory arbitrage is a likely outcome of the proposed approach and will create competitive disadvantages for the U.S. swaps market. We are also concerned that the substituted compliance regime under the current Proposal is too restrictive and would create duplication, inefficiencies and legal uncertainty across jurisdictions. Because the Commission and other U.S. regulators will unavoidably have margin rules that diverge from those promulgated by foreign regulators, we urge the Commission to adopt a substituted compliance regime that uses the International Standards as the uniform benchmark to determine whether such foreign margin rules are comparable to those of the Commission. Without a cohesive global approach to equivalence, the cross-border application of the Commission's margin rules under the Proposal would

---

4 *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 59897 (proposed Oct. 3, 2014) (the "CFTC Proposed Margin Requirements"); *see also* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (proposed April 28, 2011).

5 Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013) ("Cross-Border Guidance").

6 *See* Proposed Regulation 23.160(a)(1); *see also* Proposal, 80 Fed. Reg. at 41385-41386.

7 *See* Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 53748, 57363-57364 (proposed Sept. 24, 2014) ("Prudential Regulators Proposed Margin Rules").

8 *See* Proposed Regulation 23.160(a)(2); *see also* Proposal, 80 Fed. Reg. at 41384, n. 58.

9 *See* Proposal, 80 Fed. Reg. at 41381.

10 *See* Margin Requirements for Non-Centrally Cleared Derivatives (Sept. 2013) ("BCBS-IOSCO Framework").

inevitably give rise to legal uncertainty and complexity that may well drive significant portions of the U.S. swaps market abroad.

II. INTERNATIONAL STANDARDS AND THE PROPOSED SUBSTITUTED COMPLIANCE FRAMEWORK

The Proposal is part of a larger global discussion on the application of the margin requirements and the coordinated approach of the regulators at a global level to margin requirements for uncleared swaps. We thank the Commission for attempting a thoughtful approach that anticipates varying scenarios and iterations. However, we remain concerned that the substituted compliance framework is flawed in several ways. The Proposal, as drafted, risks further weakening U.S. competitiveness by driving the business abroad because of regulatory arbitrage, legal uncertainty and increased costs of doing business in the United States.

A. The Commission should base its substituted compliance determinations only on whether the foreign jurisdiction's margin rules are comparable to the International Standards.[11]

Under the Proposal, comparability determinations to be made by the Commission with respect to a foreign jurisdiction's margin requirements would require not only that the relevant jurisdiction's margin requirements be comparable to the International Standards, but also that such requirements "achieve comparable outcomes to the Commission's corresponding margin requirements"[12] (such requirements, the "CFTC Proposed Margin Rules").[13] We do not agree with this approach. On a global regulatory platform, foreign and domestic regulators have recognized that there will be divergences between the margin rules promulgated in the home jurisdiction and those promulgated abroad. Indeed, this was the purpose and driving force for the publication of the International Standards: to create a uniform global standard. The Commission, together with other U.S. regulators, actively participated in developing the International Standards[14] and should therefore be prepared to stand behind its work in this regard. Thus, where a country's framework would result in margin requirements comparable to the International Standards, the Commission should permit substituted compliance, despite any divergence from the Commission's rules.

We note that the CFTC Proposed Margin Rules differ in material respects from the proposed margin rules under the European Market Infrastructure Regulation ("EMIR") (such

---

11 The Commission has requested comment on the appropriate standard of review for comparability determinations and the degree of comparability and comprehensiveness that should be applied to comparability determinations. Proposal, 80 Fed. Reg. at 41390.

12 *See* Proposed Regulation 23.160(c)(3).

13 *See* Proposed Regulation 23.160(c)(3); *see also* Proposal, 80 Fed. Reg. at 41389-41390.

14 *See* Proposal, 80 Fed. Reg. at 41378.

proposal, the "EMIR Proposed Margin Rules")[15] and those proposed by Japanese regulators.[16] We expect that Australia's forthcoming proposal will also differ in certain material ways from the CFTC Proposed Margin Rules. If the Commission adopts the Proposal as drafted, the Commission may find that it rejects requests for comparability determinations even when the applicable standards conform to the International Standards that ***the Commission itself helped draft.***[17] In addition to making it more difficult for covered swap entities to satisfy their obligations under U.S. law by substituting compliance with a foreign jurisdiction's margin rules for compliance with U.S. rules, such an outcome would significantly undermine the international consensus process that led to the International Standards.

In particular, we note that various important divergences continue to exist as between the EMIR Proposed Margin Rules and the Commission's margin proposals. For example, the eligible collateral that would be permitted under the Commission's proposed rules differ from that permitted under the EMIR Proposed Margin Rules. The CFTC Proposed Margin Rules would limit eligible collateral for variation margin to cash,[18] while the International Standards (and the EMIR Proposed Margin Rules) would allow for additional types of eligible collateral for purposes of variation margin.[19] The CFTC Proposed Margin Rules may lead to the effective retroactive application of the rules due to portfolio margining,[20] while the EMIR Proposed Margin Rules would not.[21] The CFTC Proposed Margin Rules would not allow for rehypothecation of initial margin,[22] while the International Standards (and the EMIR Proposed Margin Rules) would allow

---

15 European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority, Consultation Paper on Draft Regulatory Technical Standards on Risk-Mitigation Techniques for OTC-Derivative Contracts Not Cleared by a CCP Under Article 11(15) of Regulation (EU) No 648/2012 (April 14, 2014) ("EMIR Consultation Paper"); Second Consultation Paper on Draft Regulatory Technical Standards on Risk-Mitigation Techniques for OTC-Derivative Contracts Not Cleared by a CCP Under Article 11(15) of Regulation (EU) No 648/2012 (June 10, 2015) ("EMIR Second Consultation Paper") (collectively, the "EMIR Proposed Margin Rules").

16 Financial Services Agency of Japan, Draft Amendments to the "Cabinet Office Ordinance on Financial Instruments Business" and "Comprehensive Guidelines for Supervision" with Regard to Margin Requirements for Non-Centrally Cleared Derivatives (July 3, 2014).

17 *See* Proposed Regulation 23.160(c)(3).

18 *See* Proposed Regulation 23.156(b); CFTC Proposed Margin Requirements, 79 Fed. Reg. at 59932.

19 *See* BCBS-IOSCO Framework at 16-18; EMIR Second Consultation Paper at § 5, Art. 1 LEC.

20 *See* Proposed Regulations 23.154(b)(2), 23.153(c); *see also* CFTC Proposed Margin Requirements, 79 Fed. Reg. at 59902 ("The rules . . . would permit SDs and MSPs voluntarily to include swaps executed before the applicable compliance date in portfolios margined pursuant to the proposed rules. Many market participants might do so to take advantage of netting effects across transactions.").

21 *See* EMIR Second Consultation Paper at § 1 (Art. 1 GEN, ¶ 3), Recital (39).

22 *See* Proposed Regulation 23.157; *see also* CFTC Proposed Margin Requirements, 79 Fed. Reg. at 59914, 59920, 59923.

for limited re-use rights of cash initial margin.[23] Other significant differences include differences in scope that may leave some entities or transactions outside the margin rules in one jurisdiction, but within them in another. For example, the definitions of "financial counterparty" and "non-financial counterparty" under EMIR and the definition of "financial entity" under the Dodd-Frank Act do not align. As a result, certain U.S. funds could be treated as a "non-financial counterparty" under EMIR, but a "financial entity" for purposes of the Dodd-Frank Act. This would subject such U.S. funds to initial and variation margin requirements for uncleared swaps under the Dodd-Frank Act, but not under the EMIR Proposed Margin Rules. Conversely, swap counterparties are not required to post initial or variation margin for physically-settled foreign exchange ("FX") swaps and physically-settled FX forwards under the Dodd-Frank Act. The EMIR Proposed Margin Rules, however, would not exempt physically-settled FX swaps and physically-settled FX forwards from the posting of variation margin under EMIR.

Some of the differences between foreign jurisdictions' margin rules and the U.S. margin rules may be unresolved (and unresolvable) in the final margin rules. A robust substituted compliance regime that is tied to the International Standards may help mitigate the effects of regulatory arbitrage and ensure, at a minimum, that any such arbitrage nonetheless encourages market participants to comply with an internationally recognized regime that is generally in line with U.S. regulators' expectations. We have already witnessed a bifurcation of the global swaps market where non-U.S. entities choose to enter into swaps with other non-U.S. counterparties because the existing swap regulations make compliance more difficult for such entities if they choose to transact with U.S. counterparties. Permitting substituted compliance may ameliorate some of these competitive disadvantages. However, the conceptual availability of substituted compliance will have little effect if, in practice, U.S. regulators apply an unworkable approach to comparability determinations. Failing to find comparability in regimes that conform to the International Standards would be such an unworkable approach.

Moreover, to the extent that the Commission applies a standard for determining substituted compliance that diverges from the International Standards, international regulators may be unlikely to recognize the U.S. regime as comparable. The more that international authorities feel the need for gamesmanship in these determinations, the more we will see fragmentation and loss of liquidity in the swap markets. Without equivalence from foreign jurisdictions, the Proposal will create legal uncertainty and economic loss in the global swaps market. Covered swap entities will have the challenge of complying with duplicative (and potentially conflicting) rules and will bear duplicative compliance costs. Such an outcome would not support the economy or the financial strength of covered swap entities, and would undermine the goals behind the development of the International Standards

As a result, we urge the Commission to revise the substituted compliance framework as set forth in the Proposal so that the Commission's comparability determination with regard to foreign uncleared swaps margin requirements would be based solely on the comparability of such

---

[23] *See* BCBS-IOSCO Framework at 20; EMIR Second Consultation Paper at § 7, Art. 1 REU.

requirements to the International Standards.[24] We strongly believe this is a critical step to establishing a global uncleared margin framework that is transparent, cohesive and effective.

B. The Commission must further align its margin rules with other domestic and foreign regulators to increase transparency, legal certainty, and efficiency and to protect U.S. competitiveness.[25]

While, as discussed above, a substituted compliance framework that applies the International Standards as the standard for determining substituted compliance would help to ensure a cohesive and effective global framework for margin rules that is supported by legal certainty, we would urge the Commission to further align its margin rules with those proposed by the Prudential Regulators (the "Prudential Regulators Proposed Margin Rules") and foreign regulators, and with the International Standards. As discussed above, divergence among uncleared swaps margin rules domestically and abroad will further risk U.S. competitiveness in the swaps market. Indeed, it is the Commission's mandate under Title VII of the Dodd-Frank Act to, along with the Prudential Regulators and the Securities and Exchange Commission (the "SEC"), consult and coordinate with foreign regulatory authorities on the "establishment of consistent international standards" with respect to the regulation of swaps, including the requirement to post initial and variation margin for uncleared swaps.[26] Alignment of the margin rules (to the extent resolvable) is the only way to effectively mitigate the effects of regulatory arbitrage on the U.S. economy. Such divergences among the uncleared swaps margin rules domestically and abroad create opportunities for regulatory arbitrage, further affecting the swaps market and creating competitive disadvantages for swaps markets in certain jurisdictions, including the United States.

We stress that further cohesion and alignment with the SEC and the Prudential Regulators is also a necessary part of the cohesive global framework. We believe that such an effort on the part of the Commission is necessary to support the U.S. uncleared swaps market. An aligned approach (both domestically and abroad) to the margin rules would ensure that any cross-border application of such rules is effective, transparent and carries with it the legal certainty the market will require. Anything less than such an alignment means, increasingly, the loss of investors in the U.S. swaps market, to more competitive markets, or worse, yet hurting the global swaps market as a whole because of a lack of legal certainty and transparency with respect to the rules and application thereof on a global level.

---

[24] The Commission has requested comment on (a) the appropriate standard of review for comparability determinations and the degree of comparability and comprehensiveness that should be applied to comparability determinations and (b) whether the scope of substituted compliance under the Proposal is appropriate. Proposal, 80 Fed. Reg. at 41390-41391.

[25] The Commission has requested comment on (a) whether an alternative approach to the Proposal would better achieve the Commission's statutory requirements or otherwise be preferable or more appropriate and (b) whether the Proposal strikes the right balance between the Commission's supervisory interest in offsetting the risk to covered swap entities and the financial system arising from the use of uncleared swaps and international comity principles. Proposal, 80 Fed. Reg. at 41391.

[26] 15 U.S.C. § 8325(a).

C. The bifurcated cross-border approach of the Proposal would create the potential for additional cross-border legal and economic uncertainty with respect to initial margin requirements.

The Proposal creates a bifurcated approach to substituted compliance in which, *inter alia*, a covered swap entity could be posting margin under the EMIR Proposed Margin Rules, but collecting margin under the CFTC Proposed Margin Rules. That is, the Proposal in many cases would allow for the Commission to grant substituted compliance with respect to posting margin, but not for collecting margin (*e.g.*, where a U.S. covered swap entity is facing a Foreign Consolidated Subsidiary (discussed further below) whose obligations under the relevant swap are not guaranteed by a U.S. person, substituted compliance would only be available under the Proposal with respect to the initial margin collected by such Foreign Consolidated Subsidiary from its U.S. covered swap entity counterparty).We believe that this bifurcated approach is not in the spirit of the International Standards. Importantly, no other nation has proposed such an approach of dividing the applicable rule between the posting of and the collection of margin. The approach in the Proposal would create the illogical result of applying two sets of rules in certain instances where substituted compliance has been granted, but where the relevant foreign jurisdiction has not granted equivalence on the transaction. Despite any substituted compliance determination, covered swap entities could be faced with duplicative rules and compliance requirements that are unresolvable. The result is a cross-border swaps market that lacks legal and regulatory certainty and carries economic risk. Hidden and duplicative costs could disincentivize the cross-border swaps market. Accordingly, we urge the Commission to adopt an approach to substituted compliance that would allow a U.S. covered swap entity entering into a swap transaction with a foreign counterparty to be eligible for substituted compliance with regards to both the posting and the collection of margin.

III. THE PROPOSAL

A. Proposed "U.S. Person" Definition

1. *Foreign branches of a U.S. covered swap entity should be able to avail themselves of substituted compliance.*[27]

The Proposal would not distinguish a U.S. covered swap entity's foreign branch from its U.S. head office.[28] Because foreign branches will generally be subject to foreign margin requirements,[29] making substituted compliance available to them is necessary to avoid conflicts of law. As a comparison, the Proposal captures, in certain instances, U.S. branches of covered swap entities. Just as U.S. regulators have an interest in capturing such entities, so too will foreign jurisdictions have an interest in capturing foreign branches of U.S. covered swap entities. We urge

---

[27] The Commission has requested comment on whether the proposed definition of "U.S. person" is too narrow or broad, and whether such definition appropriately identifies all individuals or entities that should be designated as U.S. persons. Proposal, 80 Fed. Reg. at 41384.

[28] *See* Proposed Regulation 23.160(a)(10); *see also* Proposal, 80 Fed. Reg. at 41383, 41386, n. 64.

[29] *See* EMIR Second Consultation Paper at 27.

the Commission to consider aligning the approach and carving back the application of the Commission's margin rules to foreign branches of U.S. covered swap entities.

2. *The determination of whether an entity is a "U.S. person" should not be made on the basis of majority ownership by a U.S. person.*[30]

For purposes of applying the Commission's margin rules, the proposed definition of "U.S. person" would not include a majority ownership prong.[31] We believe that the proposed "U.S. person" definition is more appropriate than the definition of "U.S. person" contained in the Cross-Border Guidance, which would characterize an entity as a "U.S. person" if (a) it were directly or indirectly majority-owned by one or more persons falling within the definition of "U.S. person" contained in the Cross-Border Guidance and (b) such U.S. person(s) bear(s) unlimited responsibility for such entity's obligations and liabilities.[32] We believe that majority "U.S. person" ownership alone is not indicative of whether the activities of a non-U.S. fund with a non-U.S.-based manager would have a direct and significant effect on the U.S. financial system. Further, neither the SEC nor EU regulators have proposed exerting jurisdiction over an entity on the basis of control. Divergences between the proposed "U.S. person" definition and the "established" concept under the EMIR Proposed Margin Rules could yield duplicative and potentially conflicting application of margin rules if the U.S. were to adopt a U.S. person definition for funds on the basis of majority ownership, even where a substituted compliance determination is made. For instance, funds organized outside of the U.S. (*e.g.*, Cayman-organized funds) that have U.S. managers but are otherwise majority-owned by U.S. Persons would be considered non-U.S. persons under EMIR and would thus be subject to the EMIR Proposed Margin Rules and, at the same time, would be considered U.S. persons under the Dodd-Frank Act and subject to U.S. margin rules.

Were the Commission to include the majority ownership concept in the "U.S. person" definition for purposes of applying the Commission's margin rules to funds, funds with significant U.S. person ownership would be placed at a significant disadvantage to foreign-owned firms. This could lead to the market reacting by restricting U.S. ownership of foreign funds to ensure they would not be held to multiple margin regimes.

3. *Multilateral Organizations should be specifically excluded from the Commission's "U.S. person" definition.*[33]

The Proposal would not exclude from the definition of "U.S. person" the following entities: (a) the International Monetary Fund; (b) the International Bank for Reconstruction and

---

30 The Commission has requested comment on whether the definition of "U.S. person" should include the U.S. majority-ownership prong for funds and other collective investment vehicles, as set forth in the Cross-Border Guidance. Proposal, 80 Fed. Reg. at 41384.

31 *See* Proposed Regulation 23.160(a)(10); *see also* Proposal, 80 Fed. Reg. at 41383.

32 *See* Cross-Border Guidance, 78 Fed. Reg. at 45316-45317.

33 The Commission has requested comment on whether the definition of "U.S. person" should exclude certain designated (and any similar) international organizations, their agencies and pension plans, with headquarters in the United States. Proposal, 80 Fed. Reg. at 41384.

Development; (c) the Inter-American Development Bank; (d) the Asian Development Bank; (e) the African Development Bank; (f) the United Nations; (g) the agencies and pension plans of the foregoing; and (h) any other similar international organizations, their agencies and pension plans (together, the "Multilateral Organizations").[34] The SEC specifically excludes these Multilateral Organizations from its "U.S. person" definition[35]; likewise, EMIR explicitly exempts (subject to certain reporting requirements) multilateral development banks and certain other public sector entities.[36] In the interest of harmonizing margin requirements among U.S. regulators and across various jurisdictions, we believe that these Multilateral Organizations should be excluded from the Commission's "U.S. person" definition.

B. Proposed "Guarantee" Definition

1. *The "guarantee" definition should be limited to situations in which a swap counterparty has direct rights of recourse against a U.S. person.*[37]

The Proposal would limit the definition of "guarantee" to those financial support arrangements in which a swap counterparty has rights of recourse against a U.S. person guarantor with respect to a non-U.S. counterparty's obligations under the relevant swap transaction.[38] We believe that a "guarantee" definition limited to situations where a swap counterparty has direct recourse against a guarantor is sufficient insofar as the Commission is seeking to cover situations in which risk is transferring back to the United States because (a) transaction-level risk does not transfer back to the United States unless a non-U.S. person has rights of recourse against a U.S. person and (b) entity-level risk is captured by other regulations promulgated under the Dodd-Frank Act and EMIR (*e.g.*, capital requirements). Thus, we support this more limited approach to the "guarantee" concept and believe it is preferable to the broader approach taken by the Commission in the Cross-Border Guidance.[39]

---

34 *See* Proposed Regulation 23.160(a)(10);

35 17 C.F.R. § 240.3a71-3(a).

36 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, Central Counterparties and Trade Repositories, Title I, Art. 1(4), 2012 O.J. (L 201) 14.

37 The Commission has requested comment on (a) whether the broader use of the term "guarantee" in the Cross-Border Guidance be used instead of the proposed definition and (b) whether it is appropriate to distinguish, for purposes of the Proposal, between those arrangements under which a party to the swap has a legally enforceable right of recourse against the U.S. guarantor and those arrangements where there is not a direct recourse against a U.S. guarantor. Proposal, 80 Fed. Reg. at 41385.

38 *See* Proposed Regulation 23.160(a)(2); *see also* Proposal, 80 Fed. Reg. at 41384, n. 58.

39 The Commission stated in the Cross-Border Guidance that it would broadly approach the "guarantee" concept to include, *inter alia*, keepwells and liquidity puts, certain types of indemnity agreements, master trust agreements and liability or loss transfer or sharing agreements. Cross-Border Guidance, 78 Fed. Reg. at 45320, n. 267.

2. *We agree with the proposed "Foreign Consolidated Subsidiary" definition capturing a consolidation test, rather than a control test*[40]

The Proposal would capture non-U.S. affiliates of U.S. persons (whose relevant swap obligations are not guaranteed by a U.S. person) based on whether such non-U.S. affiliate is included in its U.S. ultimate parent's consolidated financial statements.[41] While we believe that these entities will already be subject to rules of a foreign jurisdiction and as a result capturing a Foreign Consolidated Entity within the scope of the Commission's margin rules is not necessary, we believe this approach is preferable to the "control" test proposed by the Prudential Regulators.[42] As noted by the Commission in the Proposal, the "control" test may not clearly identify the non-U.S. covered swap entities that are likely to raise greater supervisory concerns than other non-U.S. covered swap entities (in each case, whose relevant swap obligations are not guaranteed by a U.S. person).[43] The consideration of whether or not to apply the Commission's rules to a Foreign Consolidated Subsidiary under the Proposal will be dependent on a substituted compliance determination. If the Commission is to pursue this approach, we reiterate the importance of establishing a substituted compliance framework which applies the International Standards as the applicable determinative standard.

* * *

FSR appreciates the opportunity to comment on the Proposal. As the Commission progresses in its on-going effort to refine and finalize the Proposal and harmonize the approach with foreign and domestic regulators, we would welcome the opportunity to assist in the process. Please feel free to contact me at Richard.Foster@FSRoundtable.org or (202) 589-2424.

Sincerely yours,

Rich Foster

Senior Vice President & Senior Counsel for
Regulatory and Legal Affairs

---

40 The Commission has requested comment on whether the proposed consolidation test should be used in lieu of the control test proposed by the Prudential Regulators. Proposal, 80 Fed. Reg. at 41386.

41 *See* Proposed Regulation 23.160(a)(1); *see also* Proposal, 80 Fed. Reg. at 41385-41386.

42 *See* Prudential Regulators Proposed Margin Rules, 79 Fed. Reg. at 57363-57364.

43 *See* Proposal, 80 Fed. Reg. at 41386.