



September 29, 2017

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Futures Trading Commission Request for Public Input on Simplifying Rules (Project KISS); Swap Dealer Registration (RIN 3038-AE55)

Dear Mr. Kirkpatrick:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ greatly appreciates the continuing efforts of the Commodity Futures Trading Commission (“CFTC” or “Commission”) and its staff to review rules, regulations and practices to identify those areas that can be simplified and made less burdensome and costly, including as part of the Commission’s Project KISS initiative.² As the Commission has implemented many important and significant requirements under Title VII of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), such a review is timely as both the Commission and market participants have a better understanding of the resulting impacts of such efforts, helping to inform where changes are necessary and appropriate.

One such area we believe would benefit from review and reconsideration are certain aspects of the CFTC’s approach to swap dealer (“SD”) registration. Given the significant costs, operational builds and regulatory duties associated with registering an entity with the Commission as an SD (including compliance with the panoply of Title VII requirements), it is imperative that the scope of transactions which count towards the *de minimis* threshold as

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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>.

² See *Project KISS*, 82 FR 21494 (May 9, 2017), available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-05-09/pdf/2017-09318.pdf>; and Press Release, available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

required by Regulation 1.3(ggg)(4)(ii)(B)³ is appropriately tailored. We support Commission efforts to delay an automatic drop of the SD *de minimis* threshold from \$8 billion to \$3 billion, to provide additional time for analysis of available swap data and relevant policy considerations to assess whether revisions to the current scope and level are appropriate⁴.

We believe it is also imperative the Commission appropriately tailor the scope of transactions which lead to SD registration in the cross-border context.⁵ Title VII should not apply extraterritorially to U.S. firms' foreign branches or affiliates where existing regulation already protects against significant risk flowing back to the United States. As such, SD registration should not apply to a U.S. firm's non-U.S. affiliate on the basis of trading with non-U.S. counterparties if the U.S. firm's non-U.S. affiliate is regulated in a G20 jurisdiction or otherwise subject to Basel-compliant capital standards, regardless of whether the affiliate is guaranteed by its U.S. parent. Further, non-U.S. swap counterparties should not be required to register as SDs as a result of doing business with a U.S. firm's foreign branch or affiliate (guaranteed or not), and rather allow for existing prudential regulation to address any risks faced by U.S. firms trading abroad. By appropriately excluding such transactions from registration calculations, the Commission would promote U.S. competitiveness abroad and facilitate continued access of U.S. firms to foreign liquidity providers, trading platforms and centralized counterparties ("CCPs").

³ 17 CFTC Section 1.3(ggg)(4)(ii)(B).

⁴ See *Order Establishing De Minimis Threshold Phase-in Termination*, 81 FR 71605 (Oct. 18, 2016). Also see Commission staff's Aug. 2016 final report on the SD *de minimis* exception, available at: http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf.

⁵ There are several other significant issues relating to the Commission's cross-border application of Title VII that SIFMA believes must be reconsidered, though not addressed in this submission. These include issues regarding the scope of the definition of "U.S. Person," the process for/scope of substituted compliance determinations and the treatment of swap transactions arranged, negotiated or executed by personnel or agents of non-U.S. SDs located in the United States, among others. SIFMA looks forward to discussing these key issues with the Commission.

For previous cross-border related comments, please see Dec. 2016 comments submitted jointly with the Institute of International Bankers ("IIB") in response to proposed rule on the cross-border application of registration thresholds and external business conduct standards (available at: <https://www.sifma.org/resources/submissions/sifma-and-iib-submits-comments-to-the-cftc-on-cross-border-application/>); Dec. 2016 joint trade comments on the same proposal (available at: <https://www.sifma.org/resources/submissions/sifma-and-other-associations-submit-comments-to-the-cftc-on-cross-border-application/>); Sep. 2015 comments with IIB in response to cross-border margin requirements proposal (available at: <https://www.sifma.org/resources/submissions/sifma-and-iib-submits-comments-to-the-cftc-on-cross-border-margin-proposal/>); Mar. 2014 comments with the Futures Industry Association and Financial Services Roundtable regarding a request for comment on the application of CFTC regulations to swaps between Non-U.S. SDs and Non-U.S. counterparties involving personnel or agents of non-U.S. SDs in the United States (available at: <https://www.sifma.org/resources/submissions/sifma-fia-and-fsr-submit-comments-to-the-cftc-on-regulation-of-swaps-between-non-us-swap-dealers-and-non-us-counterparties/>); and Aug. 2012 comments in response to proposed interpretive guidance on the cross-border application of Title VII (available at: <https://www.sifma.org/resources/submissions/sifma-submits-comments-to-the-cftc-on-guidance-related-to-cross-border-application-of-certain-swaps-provisions/>).

The attached appendix identifies specific aspects of the Commission's SD registration regime that SIFMA believes would benefit from reevaluation and clarification or revision.

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Please feel free to reach out to the undersigned should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Brandon". The signature is fluid and cursive, with the first name "Kyle" and last name "Brandon" clearly distinguishable.

Kyle Brandon
Managing Director, Head of Derivatives
SIFMA

APPENDIX⁶

| Regulatory Requirement | CFTC Rule Reference | Rationale/Comments |
|--|---|---|
| SD Registration Threshold (General) | 1.3(ggg)(4) | Establish permanent \$8 billion <i>de minimis</i> threshold at minimum for SD registration. |
| SD Registration Threshold – Non-U.S. Persons | 1.3(ggg); Cross-Border Guidance; Cross-Border Margin Rule; Foreign Consolidated Subsidiary (“FCS”) Proposal | <p>Non-U.S. persons should only count trades facing a U.S. person. A trade between two non-U.S. entities (whether or not guaranteed) should not be in scope:</p> <ul style="list-style-type: none"> • Counting Transactions with Guaranteed Affiliates <ul style="list-style-type: none"> ◦ CFTC should not require SD registration based solely on trading with the benefit of a U.S. guarantee. • Counting Transactions with Foreign Branches of U.S. Banks <ul style="list-style-type: none"> ◦ CFTC should not require SD registration based on a non-U.S. person trading with foreign branches of U.S. banks. • Counting Transactions with FCS <ul style="list-style-type: none"> ◦ CFTC should not require SD registration or application of transaction-level rules (including margin) to transactions between non-U.S. persons based solely on the fact that one or both parties has a U.S. parent company. <p>The CFTC should not eliminate existing exceptions from registration threshold counting for guaranteed affiliates or foreign branches of U.S. banks.</p> |

⁶ See previous SIFMA comments discussing SD registration issues, including: Jan. 2016 response to the Commission staff’s preliminary report on the SD *de minimis* exception (Aug. 15, 2016) (submitted with the International Swaps and Derivatives Association), available at: <https://www.sifma.org/resources/submissions/sifma-and-isda-submit-comments-to-the-cftc-on-the-swap-dealer-de-minimis-exception-preliminary-report/>; and Dec. 2016 response to the Commission’s proposal on the cross-border application of registration thresholds and external business conducts standards (submitted with the Institute of International Bankers), available at: <https://www.sifma.org/resources/submissions/sifma-and-iib-submits-comments-to-the-cftc-on-cross-border-application/>.

| Regulatory Requirement | CFTC Rule Reference | Rationale/Comments |
|-----------------------------------|-------------------------|---|
| SD Registration Threshold (Other) | 1.3(ggg)(4) | Exclude from <i>de minimis</i> counting: <ul style="list-style-type: none"> • Cleared swaps; • Swaps that are prime brokered through a registered SD |
| Non-Dealing Activities | 1.3 (ggg) | Provide for a safe harbor (alternatively, as a fallback, staff guidance) for exclusion of non-dealing activities (similar to FN 135 of the Volcker Rule ⁷) from counting towards registration thresholds, not limited to insured depository institutions but more broadly available to all persons entering into swaps. |
| Associated Person | 3.12; CFTC Letter 13-29 | Make permanent CFTC guidance providing an alternative to fingerprinting to establish fitness of Associated Persons residing outside the U.S. |
| Associated Person | 1.3(aa)(6)(ii) | Clarify that an SD Associated Person designation only extends to direct supervision of any person engaged in the solicitation or acceptance of swaps. |

⁷ FN 135 of the Volcker Rule states: “An insured depository institution may be registered as an SD, but only the swap dealing activities that require it to be so registered are covered by the dealer trading account. If an insured depository institution purchases or sells a financial instrument in connection with activities of the insured depository institution that do not trigger registration as an SD, such as lending, deposit-taking, the hedging of business risks, or other end-user activity, the financial instrument is included in the trading account only if the instrument falls within the statutory trading account under §11.3(b)(1)(i) or the market risk rule trading account under §11.3(b)(1)(ii) of the final rule.”