



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); Treatment of Inter-Affiliate Swap Transactions (RIN 3038–AE55)**

Dear Mr. Kirkpatrick:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> 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.<sup>2</sup> 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 such a review and reconsideration is the Commission’s application of certain of its requirements to inter-affiliate swap transactions. Inter-affiliate swaps play a central role in effective, group-wide management of interest rate, foreign exchange and other market price risks, as well as liquidity, capital and other risks inherent in the general business of majority-owned affiliated groups, across many different types

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<sup>1</sup> 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>.

<sup>2</sup> 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 (May 3, 2017) available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

of industries. For consolidated financial institutions, inter-affiliate swap transactions are also used to facilitate transactions for customers, maximize hedging efficiencies and allow counterparties to transact with a single entity in the counterparty's jurisdiction. As such, we believe inter-affiliate swap transactions should be exempt from initial margin, mandatory clearing and mandatory trading requirements, without the imposition of outward facing swap conditions.

As recognized by the Commission<sup>3</sup>, inter-affiliate swap transactions do not raise the systemic risk concerns that Title VII of Dodd-Frank is intended to address, as they do not create additional counterparty exposure outside of the corporate group and do not increase interconnectedness between third parties. Instead, inter-affiliate swap transactions help to promote safety and soundness by permitting centralized risk management and limiting the extent of credit exposure to third parties. In the case of trading requirements, the Commission acknowledged the adverse impact the trade execution requirements could have on the ability of firms to manage risk.<sup>4</sup> Additionally, to the extent the CFTC has concerns regarding evasion, the Commission has other regulatory oversight tools better suited to address such concerns at their disposal.

While the CFTC has exempted inter-affiliate transactions from initial margin<sup>5</sup> and mandatory clearing requirements<sup>6</sup>, the conditions attached have proven problematic in certain instances for firms that transact with their U.S. affiliates. For example, the Commission requires that affiliates relying on these exemptions collect initial margin or centrally clear their swaps with third parties, even in non-U.S. jurisdictions where Title VII's cross-border framework would not otherwise require them to do so. Inter-affiliate swaps should be exempt from initial margin, mandatory clearing and mandatory trading requirements, so long as these transactions are: reported to a swap data repository; centrally risk managed; and subject to the exchange of variation margin. Further, records of these trades are maintained and can be requested in accordance with CFTC regulations and such an exemption does nothing to impinge on the CFTC's broad statutory authority to address transactions that are structured to evade Dodd-Frank.

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<sup>3</sup> See statement of support from CFTC Chairman Gary Gensler regarding final rules to exempt certain inter-affiliate swaps from mandatory clearing requirements (Apr. 1, 2013) available at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/genslerstatement040113>. Also see statements regarding the treatment of inter-affiliate transactions in the CFTC's final rules on margin requirements for uncleared swaps (Dec. 16, 2015) from CFTC Chairman Timothy Massad available at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement121615d> and then Commissioner, now Chairman J. Christopher Giancarlo available at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement121615b>.

<sup>4</sup> See CFTC Letter 16-80 (Nov. 28, 2016) available at: <http://www.cftc.gov/idx/groups/public/@lrllettergeneral/documents/letter/16-80.pdf>.

<sup>5</sup> See *CFTC Final Rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 Fed. Reg. 636 (Jan. 6, 2016), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2015-32320a.pdf>.

<sup>6</sup> See CFTC Letter 16-81 (Nov. 28, 2016) available at: <http://www.cftc.gov/idx/groups/public/@lrllettergeneral/documents/letter/16-81.pdf>.

Such permanent exemptions should be provided without any outward-facing swap conditions, and without filing requirements under 50.52(c) and (d), as these filings do not provide meaningful information about affiliates. To the extent the Commission is unable to provide such permanent exemptions at this time, however, at minimum the CFTC should make permanent the relief provided by Letters 16-80 and 16-81. We note, however, the CFTC should not limit the relief provided under Letter 16-81 to five (5) percent of the aggregate notional amount of swaps with eligible affiliates located in certain jurisdictions, given the existence of “zero threshold” variation margin agreements between eligible affiliates, as well as the substantial progress made globally in implementing clearing regimes since 2014, which makes such conditions burdensome and unnecessary.

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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 that reads "Kyle Brandon". The signature is written in a cursive, flowing style.

Kyle Brandon  
Managing Director, Head of Derivatives  
SIFMA