



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); Segregation of Independent Amount Requirements (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 review and reconsideration are segregation of initial margin (“Seg IA”)<sup>3</sup> requirements included in the Commission’s final rules regarding the

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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, available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

<sup>3</sup> While the CFTC regulation refers to “initial margin,” market participants commonly refer to this as “independent amount.” Thus, reference to Seg IA is used in this comment.

segregation of assets held as collateral in uncleared swap transactions.<sup>4</sup> These requirements create unnecessarily burdensome obligations, which in many instances are duplicative or create confusion due to parallel mandatory collateral segregation requirements found within the final CFTC<sup>5</sup> and U.S. Prudential Regulator (“PR”)<sup>6</sup> rules on margin requirements for non-centrally cleared swaps, and similar requirements in foreign jurisdictions. Further, certain Seg IA requirements are overly prescriptive, removing the opportunity for bilateral negotiations between sophisticated market participants who should be allowed to determine what collateral arrangements are most appropriate for their circumstances.

Specifically, the CFTC should streamline the requirements around the segregation requirements for uncleared swaps in CEA Section 4s(l) in light of the parallel requirements in its final margin rules for uncleared swaps, as well the industry’s experience regarding the limited number of segregation arrangements that have been requested by counterparties under CFTC Rules 23.702 and 23.703. The Commission should also explicitly recognize the mandatory margin segregation requirements under other regimes (including U.S. PR rules) as the basis for not requiring Seg IA notices under Rule 23.701. Currently, the Seg IA rule allows a swap dealer (“SD”) to not provide the Seg IA notice to those counterparties that post mandatory initial margin under the CFTC’s uncleared margin rule, but does not explicitly provide the same for counterparties subject to mandatory margin segregation under U.S. PR uncleared margin rules.

The attached appendix identifies specific aspects of the Commission’s Seg IA requirements that SIFMA believes would benefit from reevaluation and clarification or revision, as appropriate, to reduce unnecessary burdens for market participants.

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

Sincerely,



Kyle Brandon  
Managing Director, Head of Derivatives  
SIFMA

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<sup>4</sup> See *Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy*, 78 FR 66621 (Nov. 6, 2013) available at:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-26479a.pdf>.

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

<sup>6</sup> See *Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015) available at: <https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf>.

## APPENDIX

Regulatory Requirement	CFTC Rule Reference	Rationale/Comments	Previous SIFMA Comments
Seg IA Notices	23.701; NAL 14-132	<p>Remove burdensome requirements related to Seg IA notices.</p> <p>If the CFTC determines that a Seg IA notice is warranted under circumstances where no mandatory collateral segregation requirements apply, the notice requirement should strike a balance between the burden presented and the need to protect the interests of counterparties who are, by definition, deemed to be able to protect their own interests. We believe that the below approach strikes the appropriate balance:</p> <ul style="list-style-type: none"> <li>• Remove the need to identify, and disclose costs of, an independent custodian given that the material costs associated with segregation are within the control of a third party (the custodian) (23.701(a)(2) and (3)).</li> <li>• Provide Seg IA notices in the manner agreed upon by the counterparties rather than to a specified individual dictated by the rule (23.701(c)).</li> <li>• Codify the ability to rely on negative consent as per the Commission staff interpretation under CFTC Letter 14-132<sup>7</sup>, provided that the notice includes a prominent and unambiguous statement that failure to respond will be deemed by the SD as an election by the counterparty not to require segregation of initial margin (23.701(d)).</li> <li>• Revise 23.701(d) to state that an SD cannot trade a swap subject to Seg IA requirements until such notice has been furnished (rather than prior to confirming the terms).</li> <li>• Remove requirement to provide Seg IA notice annually and instead require the notice only once (23.701(e)).</li> </ul>	<p>See page 3 of <a href="#">2011 comments</a></p>

<sup>7</sup> Available at: <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/14-132.pdf>.

Regulatory Requirement	CFTC Rule Reference	Rationale/Comments	Previous SIFMA Comments
Exclusive Control	23.702(c)	Remove requirement that the statement by a party that it is entitled to exclusive control (or the return) of the independent amount segregated with a custodian should be made under oath or penalty of perjury.	See page 6 of <a href="#">2011 comments</a>
Investment of Segregated Collateral	23.703	Remove the application of the parameters of Commission Rule 1.25, as they are unnecessary where counterparties are able to protect themselves by contract. The parameters applicable to the investment of collateral that is segregated pursuant to a tri-party custodial agreement should be left to the agreement of the parties and should not be subject to Commission Rule 1.25.	See page 6 of <a href="#">2011 comments</a>
Disclosure of Non-Segregated Collateral	23.704	<p>Removing the quarterly reporting requirement or, at a minimum, adopt appropriate exceptions to lessen the burden and tailor the disclosure to impacted counterparties. If the CFTC decides to retain the quarterly reporting requirements:</p> <ul style="list-style-type: none"> <li>• Remove the requirement that the Chief Compliance Officer (“CCO”) must sign the quarterly notice and allow for an appropriate delegate of the CCO to perform the quarterly reporting requirements.</li> <li>• Allow SDs to send this notice to counterparties whose initial margin was not held in compliance with the agreement of the parties.</li> </ul>	See page 7 of <a href="#">2011 comments</a>
Swaps subject to Regulatory Initial Margin	23.701	The CFTC should clarify that the requirements of 23.701 only apply to swaps where initial margin is exchanged on a voluntary or negotiated basis.	