September 29, 2017

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Project KISS Input - Miscellaneous (RIN 3038-AE55)

Dear Mr. Kirkpatrick:

This letter is submitted on behalf of the Derivatives and Futures Law Committee (the "Committee") of the Business Law Section of the American Bar Association (the "ABA") in response to the Commodity Futures Trading Commission's (the "Commission") request for public input on how the Commission's existing rules, regulations or practices can be applied in a simpler, less burdensome, and less costly manner ("Project KISS").[1] The Committee thanks the Commission for providing this opportunity and appreciates the ongoing work of the Commission to improve its regulatory practices. The views expressed herein are presented on behalf of the Committee. They have not been approved by the House of Delegates or Board of Governors of the ABA and, accordingly, should not be construed as representing the policy of the ABA. In addition, this letter does not represent the position of the ABA Business Law Section, nor does it necessarily reflect the views of all members of the Committee.

The Committee is comprised of lawyers who work extensively in the area of derivatives law, including private practitioners, members of the law departments of businesses, government agencies and self-regulatory organizations ("SROs"), and law professors. Its membership draws from all constituencies of the derivatives industry, including, among others, commercial end users, clearing houses and exchanges, banks and other financial organizations, commodity trading advisors, commodity pool operators, investment advisers, futures commission merchants, broker-dealers, hedge fund managers, and companies involved with the purchase, sale, and processing of energy products and other physical commodities.

[1] *See* CFTC Requests Public Input on Simplifying Rules, PR 7555-17 (May 3, 2017); 82 Fed. Reg. 23765 (May 24, 2017) ("Request for Information"). The Committee gratefully acknowledges the efforts of the drafting committee, co-chaired by Ian Cuillerier and Peter Malyshev, in composing this letter.

The Committee's work concerns the legal and policy issues relating to derivatives, including exchange-traded futures and options contracts on, among others, physical commodities, interest rates and financial indices, and over-the-counter transactions, including swaps, repurchase and reverse repurchase transactions, and focuses on the regulation of derivatives and commodity markets and their participants.

Overview

We understand that Project KISS is a part of the Commission's agency-wide effort to modernize and make its regulatory process more efficient in response to Executive Order 13777.[2] Commission Chairman J. Christopher Giancarlo has stated that Project KISS is "about taking CFTC's existing rules as they are and applying them in ways that are simpler, less burdensome and less of a drag on the American economy."[3] The Committee supports the Commission's review of existing regulations and regulatory practices to promote efficiency of U.S. commodity markets as well as to preserve the integrity of the futures and derivatives markets.[4]

The Committee recognizes that Project KISS applies to all of the Commission's rules and practices, not just those, for example, implemented pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Partly in response to the mandates of the Dodd-Frank Act, however, in recent years the Commission has promulgated a significant number of new regulations and, in implementing those regulations, has issued many no-action and interpretive letters, staff letters, and various forms of guidance, including responses to frequently asked questions. The Committee believes that Project KISS presents a timely framework to examine whether this substantial body of new rules and regulatory practices can be further refined.[5]

The Committee's recommendations focus on five general areas:

1. achieving the proper balance between principles-based and prescriptive regulation;

2. coordinating with the Securities and Exchange Commission ("SEC"), the Prudential Regulators,[6] the Federal Energy Regulatory Commission ("FERC") and other federal

---

2 On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda.

3 *See* Request for Information, *supra* note 1.

4 The Committee notes that the ABA Part 190 Subcommittee (whose members are drawn from this Committee and the ABA Business Law Section Bankruptcy Law Committee) is submitting proposed model Part 190 rules to the Commission. The Committee appreciates and supports the Commission's willingness to review its Part 190 rules and encourages the Commission to move forward with its consideration of the Part 190 Subcommittee's recommendations.

5 The Committee recognizes Chairman Giancarlo's statement that Project KISS is not about identifying existing rules for repeal or revision and acknowledges that some of the comments in this letter may recommend or discuss potential modifications or amendments to current Commission rules and guidance. The Committee nonetheless believes that consideration of such modifications and amendments may be consistent with, and in furtherance of, the goals of Project KISS.

6 The Federal Deposit Insurance Corporation, the Department of the Treasury (the Office of the Comptroller of the Currency), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Farm Credit Administration and the Federal Housing Finance Agency (collectively, the "Prudential Regulators").

agencies and regulators, in furtherance of the Commission's regulatory objectives and to minimize duplication and inconsistencies;

3. working with international regulators to harmonize cross-border regulatory regimes;

4. delegating responsibility to SROs for implementing rules and regulations, where appropriate; and

5. enhancing regulatory transparency, promoting consistency, and improving other "housekeeping" practices at the Commission.

I. Balancing Principles-Based and Prescriptive Regulation

The issue of whether the Commission's regulations should be more principles-based and less prescriptive, or more prescriptive and less principles-based, has been periodically debated over the years. The prevailing regulatory approach has shifted along the spectrum between these two points of view several times during the past few decades. Most recently, some have contended that many of the Commission's rules implementing the Dodd-Frank Act reflect a more prescriptive approach than the arguably more principles-based rules that were in place in the ten years prior to the Dodd-Frank Act (*i.e.*, during the period between the enactment of the Commodity Futures Modernization Act of 2000 and the Dodd-Frank Act).

This debate is often framed as an "either/or" choice between prescriptive and principles-based regulations, but the Committee believes that such a binary approach is flawed. There are circumstances where more prescriptive rules are suitable for achieving certain regulatory objectives, and there are others where rules establishing more generalized standards may actually improve the likelihood of achieving a safer and sounder system. However, regulators should not be confined to choosing between solely prescriptive and solely principles-based in all cases. Rather, the appropriate choice in any given circumstance may be a balance between the two approaches that will achieve a particular regulatory objective while also avoiding unnecessary complexity and undue burden on those subject to the rules.

The Committee believes that prescriptive regulation may be more appropriate where the Commission has a significant regulatory interest in mandating or proscribing specific conduct, identifying acceptable (or unacceptable) market practices, or requiring the submission of particular information to enable the Commission to make a licensing or other regulatory determination. In circumstances where the regulatory mandate is to proscribe certain conduct, prescriptive regulations can afford market participants with the necessary notice and clarity regarding the boundaries of permissible and prohibited conduct. In this manner, prescriptive regulations can reduce uncertainty and regulatory risk for market participants. Similarly, in circumstances where the Commission needs particular information to make a licensing or other type of regulatory determination, the Commission may prefer to identify with specificity the type of information that market participants should provide to enable those determinations to be made.

Principles-based regulation, on the other hand, may be a better choice where the Commission has a strong regulatory interest in achieving a particular outcome (*e.g.*, markets that are appropriately safeguarded against certain types of risks), but not as significant an interest in the specific manner in which market participants arrive at that outcome. Principles-based regulation may also be more

appropriate where the regulatory objective is to establish general standards for the diligence and supervision employed by regulated entities with respect to their day-to-day activities and transactions. In that context, the desired outcome could be achieved, or, depending on the nature and size of the regulated entity and the scope of its activities, the relevant standard could be satisfied, in multiple effective ways.

Requiring compliance to be effected by one prescribed means may impose a high cost of compliance while, at the same time, potentially not leading to the optimal achievement of the Commission's regulatory objectives. On the other hand, reliance upon industry standards and best practices to achieve a particular objective within the framework of an articulated principle could potentially foster innovation and preserve the flexibility of the Commission to adjust the implementation of such principle through guidance and interpretation. Granting market participants the flexibility to achieve compliance within well-defined parameters should help to maximize the efficient use of resources without also sacrificing customer protection and market integrity. The Committee supports the Commission's recently adopted revisions to its record retention rules as an example of a principle-based approach adopted to achieve a regulatory objective.[7]

In the context of principles-based regulation, timely Commission and staff guidance with respect to the acceptable means to comply with principles-based rules is a necessary and critical adjunct to the rules themselves. The means to achieve desired compliance outcomes can evolve with changes in the market, including, for example, changes in transactional documentation, means and speed of execution, means of communication, access to market information, and technological surveillance tools. Timely guidance can assist market participants by clarifying, in particular, the Commission's expectations regarding the adoption of industry practices that have become increasingly ubiquitous and cost-effective and, as such, have established a baseline point of reference for the Commission and its staff.

The Committee emphasizes, however, that while there may be circumstances in which a more prescriptive approach (or, in the alternative, a more principles-based approach) may be more desirable, in light of the framework described above, there may also be circumstances in which a proper balance must be struck between the two points of view, such that neither will predominate over the other. Likewise, the Committee appreciates the challenges of determining, in the course of any rulemaking, the right level of detail for market participants in light of the complex and ever-evolving nature of the markets. In reviewing its current regulations, and when considering new regulations, it may be useful for the Commission to consider the following related factors:

---

[7] The new rules focus on the outcome – "regulatory records" must be maintained in a manner that "ensures the authenticity and reliability of such regulatory records" in accordance with the Commodity Exchange Act ("CEA") and the Commission's regulations. Recordkeeping, 82 Fed. Reg. 24479 (May 30, 2017). In modernizing its recordkeeping requirements, the Commission kept the general recordkeeping retention requirement but removed several obligations regarding the specific form and manner for record retention. For example, the Commission has eliminated the specific requirement to maintain electronic records in non-rewritable non-erasable format (*i.e.*, the "write one, read many" format). In adopting these revisions, the Commission stated that it was guided by a level of prescriptiveness that is sufficient to support its "statutory inspection and investigative functions." *Id.* at 24481.

(a) What is the Commission's primary objective: ensuring that a regulatory goal is achieved or requiring or proscribing specific conduct?

We suggest the Commission consider employing a predominantly principles-based approach in circumstances where a particular outcome, and not the manner to achieve it, is more important.[8] On the other hand, the Commission may find that more prescriptive rules should be adopted where curtailing or promoting specific market conduct is sought or where achieving a regulatory objective requires greater specificity in the means employed by market participants.

(b) Do the rules primarily concern the internal behavioral conduct of business enterprises?

Given the myriad ways in which firms may structure their management, business divisions, compliance functions, and relationships among affiliates, and the fact that such relationships will evolve with time, it may be more appropriate for rules that primarily concern internal behavioral conduct to be more principles-based. In place of more prescriptive rules, the Commission might consider whether its regulatory objectives could be satisfied by a more principles-based framework in which registrants are able to appropriately demonstrate that they are engaging in sound business practices in accordance with best practices within the industry that support accomplishment of the Commission's regulatory objectives. Where the Commission's interest is focused on establishing rules of conduct between counterparties or protections for customers, however, a more prescriptive approach may be appropriate. The conflict of interest provisions in the internal business conduct standards applicable to swap dealers provide an example of where the Commission may want to consider a less prescriptive approach.[9]

(c) Do the objectives of those subject to the rules naturally align with the achievement of the regulatory objectives?

Financial market participants face many risks in the conduct of their businesses. In addition to market risks, market participants face operational, counterparty, settlement, legal, and reputational risks, among others. Addressing and, where possible, minimizing these risks is fundamental to the success of those businesses, and, in many instances, the interests of market participants align with the regulatory objectives of the Commission, such as minimizing systemic risks, promoting customer protection, and preserving market integrity. We are not suggesting that reliance on the business motives of market

---

[8] In his speech at the EuroFi Financial Forum in Estonia on September 14, 2017, Chairman Giancarlo discussed this principles-based approach to central counterparty oversight in the context of equivalency agreements between the Commission and the European Union ("EU") regulators. *See* Remarks of CFTC Chairman J. Christopher Giancarlo before the EuroFi Financial Forum (Sept. 14, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-28.

[9] In an effort to achieve a particular objective (*i.e.*, ensuring that clients had access to clearing), the Commission arguably took a prescriptive approach to restrict the ability of swap dealers to influence certain decisions made by their affiliated futures commission merchants ("FCMs"). However, the rules arguably did not distinguish between positive and negative influence, which may have impacted the ability of some FCMs to provide clearing services to customers for which those services were otherwise appropriate. The Committee believes that a less prescriptive rule that would facilitate the provision of such clearing services would be beneficial.

participants is or should be a complete substitute for regulation by the Commission. Nonetheless, the Committee believes it is appropriate to consider the circumstances in which the objectives of market participants in reducing risks naturally align with the Commission's regulatory objectives and would harmonize well with more principles-based oversight. The issue of pre-trade risk controls for algorithmic trading illustrates where the Commission and market participants both support a particular regulatory outcome, but where it may be desirable to have some flexibility in how that outcome is achieved.[10]

(d) Where prescriptive rules are more appropriate, are they implemented more effectively at the Commission or the SRO level?

The Commission should consider whether, under certain circumstances, it is more efficient to delegate to or rely upon the SROs to implement prescriptive rules. In some cases, the exchanges or the National Futures Association ("NFA") may be better positioned than the Commission to establish requirements for trading practices, in particular to adjust prescriptive requirements quickly through rule changes and regulatory notices in response to changes to market structure and trading practices. Reliance on the exchanges and the NFA in appropriate circumstances may also be an effective way for the Commission to supplement and leverage its resources.

II. Coordination with Other Regulators

The regulation of financial markets and instruments in the U.S. is divided among the Commission, the SEC and the Prudential Regulators.[11] Generally, however, the businesses of financial market participants are not structured along these same jurisdictional lines; financial market participants often are subject to regulation by more than one regulator in the conduct of particular aspects of their businesses. The Committee recognizes and appreciates that these agencies have sought to harmonize their respective rules promulgated under the Dodd-Frank Act. In the Committee's view, continued coordination among these regulators is critical to minimizing potential duplication and inconsistencies in the regulatory requirements that apply to these market participants.

Project KISS presents an opportunity for the Commission to identify areas for further coordination with these other agencies. For example, working together with the Prudential Regulators on the application and enforcement of the Volcker Rule would be beneficial to address current issues regarding the interpretation of the Volcker Rule and minimize unnecessary compliance burdens

---

[10] The Committee appreciates the Commission's continued work on its proposed Regulation AT and its recognition that "trading firms are in the best position to understand their own systems, technology, and trading strategies" and that such firms are "best positioned to prevent and reduce the potential risk of certain types of risk." Regulation Automated Trading, 81 Fed. Reg. 85334, 85356 (Nov. 25, 2016). An approach that establishes a general objective for pre-trade risk controls but also recognizes the varied nature of the algorithmic trading systems and pre-trade risk controls currently employed, as well as the evolving industry best practices in this area, may be more efficient and effective than "one-size-fits-all" prescriptive specifications regarding such controls. This may also be an area in which the Commission could increasingly rely on SROs to help tailor any additional requirements to fit the specifics (and evolving nature) of the particular market and market structure.

[11] The Committee notes that, because the Commission's jurisdiction covers "commodities" such as physical commodities, energy products, agricultural products and metals, the Commission's jurisdiction may overlap with other non-financial regulators, such as FERC or the Environmental Protection Agency.

that result from the enforcement of the Volcker Rule by multiple agencies. The Commission also could seek to coordinate with the Federal Reserve to provide guidance on how to interpret the term "financial in nature" in the definition of financial entity in Section 2(h)(7)(c) of the CEA.[12]

Given that the SEC has not yet finalized all of its Dodd-Frank Act rulemakings, the Committee believes that the Commission may have an excellent opportunity to continue to work with the SEC in further harmonizing each agency's respective Dodd-Frank Act rules applicable to swaps activities. As many market participants transact in both swaps and security-based swaps, we believe that harmonization of regulatory requirements of each agency where possible would advance the overall goal of strong and efficient markets, without sacrificing market integrity.

III. Working with International Regulators

The Committee notes that, in recent years, separate U.S. and non-U.S. pools of liquidity have developed in certain markets. The existence of multiple liquidity pools generally increases trading costs and complicates the ability of market participants to effectively manage risk, particularly during periods of market stress. To the extent liquidity fragmentation has resulted from the absence of full harmonization of U.S. and non-U.S. regulatory regimes, we encourage the Commission to work with its international counterparts, as it has for many years, to address such fragmentation. In particular, we note that the Committee is hopeful that any unintended impact on liquidity pools will continue to be evaluated by the Commission as it further implements its cross-border regulations. For example, we recognize the Commission's attention to systemic risk considerations with its proposal to broaden the application of the "Foreign Consolidated Subsidiary" concept beyond its current use in the Commission's cross-border margin rules by including it in its most recently proposed cross-border regulation. We encourage the Commission, however, to carefully consider and weigh the potential implications for liquidity pools in proceeding with including this concept in the Commission's overall cross-border framework.[13]

Active engagement with international organizations to harmonize the global regulatory framework is critical to such framework and should continue to be pursued. The Commission and EU regulators have taken concrete steps at mutual recognition of clearing facilities, and should consider taking further action in other areas, such as trading facilities. The Commission should continue to encourage other global regulators to recognize Commission-regulated clearing facilities and trading facilities. A global trading environment that builds upon mutual recognition

---

[12] Because a swap market participant's status as a financial entity determines how certain of the swaps rules impact it, the Committee believes it is important to have clarity on this issue. While the Committee recognizes that, for the purposes of this section, "financial in nature" has the meaning set out in Section 4(k) of the Bank Holding Company Act and the applicable rules promulgated by the Federal Reserve thereunder and, therefore, falls outside of the Commission's purview (*see* Definitions of "Predominantly Engaged In Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company, 78 Fed. Reg. 20755 (Apr. 5, 2013)), market participants nonetheless encounter difficulties in applying this definition in the context of their CFTC-regulated swaps activities. The Committee believes that coordination between the Commission and the Federal Reserve would greatly assist market participants in their compliance efforts.

[13] Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 Fed. Reg. 71946 (Oct. 18, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 Fed. Reg. 34817 (May 31, 2016).

of trading venues and home country regulations of these venues may help to eliminate the bifurcation of liquidity pools.

We also urge the Commission to further engage with its international counterparts to enable the Commission to reciprocally issue substituted compliance determinations. Substituted compliance determinations enable global market participants that are in compliance with their host country legal requirements also to be considered in compliance with the Commission's regulations. Substituted compliance determinations can thereby help avoid the application of multiple overlapping or inconsistent requirements to the same cross-border activities.

The Committee supports the Commission's efforts to codify the definition of "U.S. person" as it pertains to the cross-border application of the Commission's rules. To the extent practicable, the definition of "U.S. person" should be consistent across the Commission's cross-border rules, and in accordance with the definition set out in the Commission's cross-border margin rules.[14]

IV. Delegation to SROs

As the Commission knows, a fundamental purpose of the CEA is "to serve the public interests . . . through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission."[15] This public policy recognizes the important role that effective self-regulation can have in achieving the CEA's regulatory objectives while facilitating the efficient use by the Commission of its resources. The Commission should continue to identify ways in which it can look to the SROs to perform certain "front line" regulatory functions in those areas within their purview and, where appropriate, delegate additional regulatory responsibilities to the relevant SROs, in each case without abrogating its regulatory oversight function.[16] For example, in many cases it may be appropriate and cost-effective for the Commission to rely on the exchanges to investigate, and take disciplinary action with respect to, trade practice violations that occur in their markets. The Committee believes that in certain instances the Commission would benefit from relying initially on the resources available to the SROs, where appropriate, before determining whether to commit its own enforcement resources to a matter. In addition, appropriate delegation to SROs arguably would allow the Commission to oversee a greater number of cases than it might otherwise, thus further leveraging Commission resources. The NFA and the exchanges have contributed to the strength and integrity of the U.S. derivatives markets in the course of discharging their respective duties. The Committee expects that such organizations would continue to do so were they to be delegated additional responsibilities, subject of course to Commission oversight.

---

[14] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 Fed. Reg. 34817 (May 31, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 635 (Jan. 6, 2016).

[15] Commodity Exchange Act, § 3(b); 7 U.S.C. § 5(b).

[16] *See* Testimony of then Acting Chairman Giancarlo before the U.S. Senate Committee on Appropriations Subcommittee on Financial Services and General Government (June 27, 2017), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-26 (stating that, "where appropriate," the Commission should look to delegate responsibility to NFA and the other SROs for certain compliance matters).

V. Good Housekeeping and Regulatory Transparency

The following is a list of governance objectives that may assist market participants in better complying with the Commission's rules and guidance. The Committee recognizes that the Commission endeavors on an ongoing basis to improve its regulatory practices.

(a) The Commission's regulations should be reviewed periodically to identify and eliminate outdated requirements or terminology.

(b) Primary regulatory requirements should be set forth in the Commission's regulations. Explanatory text in the preambles to Commission rulemakings should provide supplemental information regarding those requirements.

(c) To the extent possible, the Commission should interpret and apply the same or similar terms consistently.[17]

(d) The Commission's rules that are in effect should be published accurately in the Code of Federal Regulations ("CFR") and be widely available to the public.[18]

(e) Staff letters, including no-action letters, and other forms of staff guidance are useful regulatory tools. The Committee recognizes that the Commission has, over time, codified much of its no-action relief. With respect to rules that are the subject of a significant number of no-action letters, we encourage the Commission to continue to consider whether such rules should be amended to resolve the issue(s) addressed by the no-action relief. Similarly, the Commission should periodically review whether other forms of staff guidance should be codified in regulation.

(f) For rule areas where the Commission staff receives frequent inquiries on how the rules apply, it would be useful for the Commission to make the staff's informal views public on

---

[17] For example, the Committee appreciates the Commission's approach to its interpretation of the term "aggregate gross capital contributions" as used in Rule 4.22, where, in response to requests from commenters on recent changes to the rule that introduced the term, the Commission confirmed that such term would be interpreted in the same manner as the similar term "aggregate gross capital subscriptions" found in Rule 4.25. *See* Commodity Pool Operator Financial Reports, 81 Fed. Reg. 85147, 85150 (Nov. 25, 2016). The Committee encourages the Commission to consider this approach of interpreting similar terms consistently with respect to other terms or concepts that appear in multiple places throughout the Commission's rules, such as the concept of "affiliate" (or related terms). *See, e.g.*, 17 C.F.R. §§ 23.151 ("margin affiliate"), 150.4 ("controlled accounts"), and 18.00 ("controlled reportable person").

[18] We note that some of the Commission's rules are incorrectly published in the current CFR. In particular, we note that current 17 C.F.R § 1.3(z) contains the definition of "bona fide hedging" that the Commission adopted when it adopted the Part 151 position limit rules. Those rules have since been vacated, with the effect of reinstating the prior definition. When it adopted Part 151, the Commission also deleted Rules 1.47 and 1.48, which set out the procedures for a market participant to apply to the Commission to request a hedge exemption for anticipatory hedging or non-enumerated hedging. Those rules were also reinstated, however, by the action vacating the Part 151 rulemaking. We appreciate the Commission's efforts to ensure that rules published in the CFR are up-to-date and accurate.

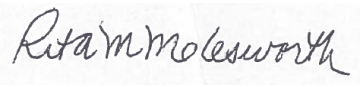
the Commission's website, perhaps through a log summarizing the advice given (*e.g.*, similar to the SEC's net capital interpretations or staff frequently asked questions).

(g) All written guidance, frequently asked questions and other Commission pronouncements should be published and dated when issued, and the date should be updated when the document changes.[19]

* * * * *

The Committee appreciates the Commission's consideration of the recommendations set forth above. Should the Commission or its staff wish to discuss these comments with members of the Committee, please call the undersigned at (212) 728-8727.

Respectfully submitted,



Rita M. Molesworth

cc: Hon. J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission
Hon. Sharon Y. Bowen, Commissioner, Commodity Futures Trading Commission
Hon. Brian D. Quintenz, Commissioner, Commodity Futures Trading Commission
Hon. Rostin Benham, Commissioner, Commodity Futures Trading Commission

[19] The Commission should consider posting former Appendix A to Part 4 on its website, near No-Action Letter No. 12-38. We appreciate that Commission staff have confirmed that market participants may rely upon Appendix A in the absence of any replacement rule or guidance from the Commission, but note that, because former Appendix A is no longer published in the current CFR or posted on the website, some market participants may be unaware of its content or applicability.