



September 27, 2018

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

**Re: Segregation of Assets Held as Collateral in Uncleared Swap Transactions (RIN 3038–AE78)**

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association (“ISDA”)<sup>1</sup> and Securities Industry and Financial Markets Association (“SIFMA”)<sup>2</sup> (together, “the Associations”) greatly appreciate the opportunity to provide the Commodity Futures Trading Commission (“CFTC” or “the Commission”) with comments on its proposed rule regarding the segregation of assets held as collateral in uncleared swap transactions (the “Proposal”).<sup>3</sup> We further appreciate the continued efforts of the Commission and its staff to review rules, regulations and practices, including those covered by the Proposal, to identify areas that can be simplified and made less burdensome and costly, as part of the Commission’s Project KISS, and other similar initiatives.<sup>4</sup> As the CFTC has implemented many important and significant

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<sup>1</sup> Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 68 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: [www.isda.org](http://www.isda.org). Follow us on Twitter @ISDA.

<sup>2</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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>3</sup> 83 Fed. Reg. 36484 (July 28, 2018).

<sup>4</sup> See Press Release, available at: <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

requirements under Title VII of the Dodd-Frank Act, such a review is timely as both the Commission and market participants have a better understanding of the inter-relationship and resulting impacts of such efforts, helping to inform where changes are necessary and appropriate. We welcome the Commission’s decision to seek further input regarding the important issues covered in this Proposal.

The Commission previously finalized rules regarding the segregation of initial margin (“Seg IA”)<sup>5</sup> held as collateral in connection with uncleared swap transactions.<sup>6</sup> We believe the Proposal takes much-needed steps to address many of the concerns raised in SIFMA’s previous Project KISS comments regarding Seg IA requirements.<sup>7</sup> In large part, the Proposal meaningfully streamlines rules regarding these segregation requirements for uncleared swaps in a manner that is consistent with CEA Section 4s(1) and appropriately informed by parallel requirements contained in its final margin rules for uncleared swaps.<sup>8</sup> The Proposal also considers the industry’s practical experience regarding the limited number of segregation arrangements that have been requested by counterparties under CFTC Rules 23.702 and 23.703. We commend the Commission for taking into consideration this feedback from market participants regarding their implementation experience with the Seg IA requirements to date, as well as observations from the National Futures Association (NFA) regarding its experience with the requirements as ascertained during member examinations. We encourage the Commission to continue to work with market participants and the NFA to identify other opportunities to review and streamline requirements where market experience indicates appropriate.

The Proposal will amend the current Seg IA requirements to eliminate unnecessarily burdensome obligations, which in many instances are duplicative or create confusion due to parallel mandatory collateral segregation requirements found within the final uncleared margin rules of the CFTC, the U.S. Prudential Regulators<sup>9</sup> and similar requirements imposed by foreign regulatory authorities. Requirements that annual notifications be sent to counterparties informing them of their right to elect segregation, and the corresponding requirements for confirmation of receipt of such notices and affirmative elections, are more burdensome than necessary. This is especially true considering these markets are limited to sophisticated entities that qualify as eligible contract participants. Further, as noted in the Proposal, per the NFA’s examinations of swap dealers (“SDs”) the NFA found that for nearly every SD examined, fewer than 5 swap counterparties elected segregation

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<sup>5</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.

<sup>6</sup> See *Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy* (Nov. 6, 2013) available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-26479a.pdf>.

<sup>7</sup> Available at: <https://www.sifma.org/resources/submissions/response-to-cftc-project-kiss-initiative-in-regards-to-segregation-of-independent-amount-requirements/>.

<sup>8</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016).

<sup>9</sup> Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. (Nov. 30, 2015).

under the Seg IA rule, and for some SDs, not a *single* counterparty elected to segregate pursuant to the rule.<sup>10</sup>

The Proposal will meaningfully reduce unnecessary costs and burdens associated with the rule, without diminishing the Commission's ability to meet its regulatory duties. For example, the current requirement in respect of annual notifications and disclosures require market participants to utilize significant bandwidth and dedicate personnel to the tracking of such distributions and elections, despite the very few instances in which such segregation elections are made. By removing the annual notification requirement, market participants will be able to better utilize these resources for other important regulatory and compliance functions. Based on our members' experience, the current Seg IA requirements are overly prescriptive and remove the opportunity for bilateral negotiations between sophisticated market participants who should be allowed to determine what collateral arrangements are most appropriate for their circumstances. By taking steps to remove unnecessary requirements regarding annual notices, disclosures and Rule 1.25 limitations which prevent counterparties from negotiating preferred terms regarding the investment of segregated collateral, among other proposed amendments, the Commission is furthering its goal to streamline overly burdensome rules in a manner more consistent with market practice, while still achieving its regulatory oversight objectives.

We are supportive of efforts of the Commission to provide for similar treatment of counterparty relationships subject to U.S. Prudential Regulator uncleared margin requirements. While the CFTC previously clarified that Seg IA requirements do not apply to initial margin covered under the CFTC's uncleared margin rules, in the original Seg IA rule the Commission did not address the treatment of parallel requirements regarding mandatory initial margin under U.S. Prudential Regulator uncleared margin rules. The Proposal now helpfully and explicitly clarifies that such notices need not be provided where counterparties exchange mandatory initial margin under either the CFTC or U.S. Prudential Regulator uncleared margin rules, eliminating unnecessary differences in treatment which served no clear policy objective. The Associations additionally support the proposed amendments to the notice provisions of the Seg IA rules which eliminate extra-statutory requirements to provide notification to a specified officer of the counterparty. Instead, under the Proposal the Commission would allow SDs and major swap participants ("MSP") to use reasonable judgement to identify an appropriate person at the counterparty that can receive notification and evaluate the right to elect segregation. The flexibility to identify the appropriate individual at each counterparty helps to eliminate overly prescriptive requirements that create unnecessary regulatory risk.

There are several aspects of the Proposal, however, that we believe warrant further Commission clarification. In the Proposal, under 23.701(a), the Commission requires that Seg IA notices be delivered at the beginning of the first swap transaction that provides for the exchange of initial margin. The Associations are supportive of the proposed streamlined approach. Market participants may provide such notifications along with any other necessary documentation as part of establishing a new trading relationship. This may occur well before – at times, years before - the first transaction occurs. In order to continue to provide for this flexibility and avoid imposing requirements which necessitate

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<sup>10</sup> 83 Fed. Reg. 36486 (July 28, 2018).

the development of a tracking system, we ask the Commission to confirm that market participants can provide such notification at those initial stages or any time prior to the first transaction.

The Proposal also retains the requirement that SDs or MSPs provide a quarterly report to counterparties not electing segregation of initial margin pursuant to §23.701(a). We support the Proposal's flexibility in allowing an SD or MSP to make the reports without specifying any particular person to perform that requirement. We believe, however, that tailoring the quarterly notice requirement to only instances where the SD's or MSP's back-office procedures relating to margin and collateral requirements result in a breach of the agreement of the counterparties advances the Commission's policy objective of providing meaningful information in a less burdensome manner.

Lastly, in the rare instances where a counterparty elects to segregate under the Seg IA requirements, there may be a period thereafter during which related documentation must be negotiated and executed. Depending on the complexity of negotiations and experience of the counterparty with such processes, this may take some time. In order to avoid unnecessary disruptions to trading relationships in these instances, we request that the CFTC confirm that trading can continue during the interim period between an election to segregate under the Seg IA rules and the timeframe during which related documentation is negotiated and executed.

For the reasons described above, we are supportive of the Proposal, subject to the recommended clarifications. We also stress that the Commission should seek to finalize this rulemaking in a timely manner. Until the Commission implements its proposed changes, the current Seg IA rules continue impose burdensome, duplicative and confusing obligations on market participants. In order to avoid the continuation of these unnecessary obligations, we request that the Commission move expediently to review public comments and finalize the Proposal.

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

Sincerely,



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