



September 28, 2018

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038—AE78: Segregation of Assets Held as Collateral in Uncleared Swap Transactions

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the proposed amendments to the Commodity Futures Trading Commission (Commission) Regulations concerning the segregation of assets held as collateral in uncleared swap transactions (the Segregation Requirements) that were published in the Federal Register on July 30, 2018. NFA supports the Commission's effort to streamline, simplify and reduce the cost of the Segregation Requirements. NFA also agrees with the Commission's goals of reducing unnecessary burdens on market participants, facilitating more efficient swap execution and potentially encouraging more segregation of collateral.

NFA has examined a number of swap dealers (subject to prudential regulation and those that are not) for compliance with the Commission's segregation requirements. Based on these examinations' findings, NFA respectfully offers the following comments regarding certain of the Commission's proposed changes.

Notification of Right to Segregation—Commission Regulation 23.701

Commission Regulation 23.701 imposes a number of obligations on swap dealers (SDs) with respect to notifying counterparties of their right to require segregation. NFA agrees with the Commission's assessment that these requirements are unnecessarily prescriptive, and we support the Commission's efforts to clarify and simplify these requirements.

In particular, the Commission proposes to amend Regulation 23.701 to specify that, in addition to circumstances where segregation is mandatory under CFTC Regulation 23.157, an SD would not have a segregation notification requirement if

segregation is mandatory under the rules of a prudential regulator. Based on our experience, we believe that eliminating a segregation notice requirement under these circumstances would help reduce unnecessary correspondence and avoid confusion.

NFA also agrees with the Commission's assessment that requiring an SD to provide a segregation notice to a person at the counterparty with a specific job title is unnecessarily prescriptive and "potentially hinders the ability of the parties to direct the information to the person(s) best suited to evaluate it."¹ NFA has observed instances in which SDs have experienced difficulty in identifying an appropriate individual to receive the segregation notice (e.g., when a counterparty does not frequently transact with a swap dealer and does not use the ISDA Amend platform). NFA believes that eliminating the prescriptive list of designated officers contained in Regulation 23.701(c) would appropriately ease the burden on SDs, provided, as the Commission notes, the SD uses reasonable judgment in identifying a person that can evaluate and act on a segregation notice.

NFA further commends the Commission for requesting comment on the requirement for SDs to provide an annual notice of the right to segregate. NFA's experience has found that very few counterparties have over time actually changed their initial segregation election. NFA encourages the Commission to carefully consider the comments of SDs and counterparties in approving final amendments in this area. If the Commission ultimately determines to retain an annual notice requirement, NFA recommends that the Commission consider eliminating the notice requirement for those counterparties that have previously elected to segregate initial margin posted with an SD.

Requirements for Non-Segregated Margin—Commission Regulation 23.704

Current CFTC Regulation 23.704(a) requires an SD's or MSP's chief compliance officer (CCO) to report quarterly to each counterparty that does not choose to require segregation of initial margin on whether or not the back office procedures of the SD or MSP relating to margin and collateral requirements were not in compliance with the agreement of the counterparties. NFA supports modifying this regulation to provide greater flexibility by eliminating the requirement that an SD's or MSP's CCO be the individual to issue this quarterly report. NFA's experience supports the Commission's assessment that middle or back office personnel are typically responsible for implementing collateral management arrangements and are therefore better situated to assess compliance with these agreements. NFA has also found that under the regulation's current construct those personnel are generally responsible for preparing the content of the quarterly reports, with the CCO playing a limited oversight role and

¹ Segregation of Assets Held as Collateral in Uncleared Swap Transactions, 83 Fed. Reg. 26484, 36847 (July 30, 2018).

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issuing the reports. NFA, therefore, supports the Commission's proposed amendment to Regulation 23.704(a).

Finally, NFA requests that the Commission consider clarifying the language of proposed Regulation 23.704(a) to indicate whether a quarterly report is required in those instances when an SD or MSP is and is not in compliance with an agreement with a counterparty.

If you have any questions concerning this letter, please do not hesitate to contact the undersigned at (312) 781-1409 or cwooding@nfa.futures.org or Jamila Piracci at (212) 513-6014 or jpiracci@nfa.futures.org.

Very truly yours,



Carol A. Wooding
Vice President and General Counsel

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