October 22, 2020

Via Electronic Submission

Christopher Kirkpatrick, Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038–AF06 and RIN 3038–AF05)

Dear Mr. Kirkpatrick:

The members of the Futures Industry Association ("***FIA***")[1] who are active in physical commodities markets welcome the opportunity to comment on two notices of proposed rulemaking regarding the "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" issued by the Commodity Futures Trading Commission ("***CFTC***" or "***Commission***") on September 22, 2020 (the "***MTA and SMA Proposal***")[2] and September 23, 2020 (the "***IM Calculation Methods Proposal***"; collectively, the "***Proposals***").[3] The Proposals seek to amend the current margin requirements for uncleared swaps for Swap Dealers ("***SDs***") and Major Swap Participants ("***MSPs***") for which there is no prudential regulator (the "***Margin Rule***").[4]

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[1] The Futures Industry Association is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

[2] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 Fed. Reg. 59,470 (proposed Sept. 22, 2020).

[3] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 59,702 (proposed Sept. 23, 2020).

[4] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016) (to be codified at 17 C.F.R. pt. 23). The U.S. Prudential Regulators have adopted their own margin rule for SDs: Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840 (Nov. 30, 2015) (the "***Prudential Regulators Margin Rule***").

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The MTA and SMA Proposal "would permit the application of separate minimum transfer amounts ("***MTA***") for initial margin ("***IM***") and variation margin ("***VM***"), and the application of a MTA of up to $50,000 for separately managed accounts ("***SMA***")."[5]

The IM Calculation Methods Proposal would revise the calculation method for determining whether certain entities come within the scope of the IM requirements under the Margin Rule, and the timing for compliance with the IM requirements. In addition, it would align certain aspects of the Margin Rule with the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions' ("***BSBS/IOSCO***") framework for margin requirements for non-centrally cleared derivatives ("***BCBS/IOSCO Framework***"). Further, it would allow SDs and MSPs subject to the Margin Rule to use the risk-based model calculation of IM of a counterparty that is a CFTC-registered SD or MSP to determine the amount of IM to be collected from the counterparty and to determine whether the IM threshold amount for the exchange of IM has been exceeded."[6]

FIA's members and their affiliates include financial institutions, brokerage firms, and trading firms that are active in physical commodities markets, as well as commercial end users that rely on physical commodities, futures and over-the-counter derivatives to support their business activities (collectively, "***FIA's commodities members***"). FIA's commodities members generally support the Proposals, especially the Commission's efforts to update its rules where necessary to correct errors and relieve burdens on market participants.

In particular, FIA's commodities members support the introduction of the alternative IM calculation methodology, as discussed below and as discussed in the Commission's GMAC report entitled "Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps" (the "***GMAC IM Report")***.[7]

We also would like to take this opportunity to briefly address other important issues identified by FIA's commodities members related to the Margin Rule for further consideration and action by the Commission. Specifically, this letter will discuss: (1) the potentially adverse impact of existing IM calculation methodologies on smaller SDs; (2) the absence of justification to include the hedging limitation in the IM Calculation Methods Proposal; (3) the rationale for excluding commodity swaps from the IM requirements; (4) the need to harmonize the definitions of "financial entity" under § 2(h)(7)(C) of the Commodity Exchange Act ("***CEA***"), as amended by the Dodd-Frank Act,[8] and "financial end user" under the Margin Rule; and (5) why the Commission should consider excluding SD treasury affiliates from the Commission's Margin Rule limitations. We respectfully request the Commission to address these additional important issues to FIA's commodities members and other similarly situated firms.

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[5] The MTA and SMA Proposal, 84 Fed. Reg. at 59,470.

[6] The IM Calculation Methods Proposal, 85 Fed. Reg. at 59,702.

[7] *See* Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the GMAC Global Markets Advisory Committee by the Subcommittee on Margin requirements for Non-Cleared Swaps (May 19, 2020).

[8] 7 U.S.C. §§ 1 et seq. (2012).

1. The Phase 5 and Phase 6 Proposals.

First, FIA welcomes the Commission's practical approach to implementing the Margin Rule, balancing its regulatory objectives with the challenges and costs associated with implementation of new regulations by splitting the compliance schedules into Phase 5 (or the "***IFR Extension Group***") and Phase 6 (or the "***Smaller Portfolio Group***"),[9] and further extending the compliance dates for Phase 5[10] and Phase 6[11] swap entities to align with international standards[12] due to the extraordinary impacts of the COVID-19 pandemic.

FIA appreciates the targeted approach of the implementation of IM requirements for the Phase 6 entities referred to by the Commission as the "Smaller Portfolio Group." For the purposes of this letter, we refer to covered swap entities ("***CSEs***") in the Smaller Portfolio Group as "***Small SDs***" to differentiate these entities from the larger SDs (*i.e.*, the Phase 1 through 4 entities, and the entities included in the IFR Extension Group, collectively, "***Large SDs***").

We appreciate the Commission's efforts at harmonizing the SD and MSP IM regulations with those of the 2019 BCBS/IOSCO Framework and completing its proposed implementation schedule with the final rule for the Smaller Portfolio Group on October 15, 2020.[13]

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[9] In April 2020, to align the Commission's IM implementation schedule with that proposed in July 2019 by BCBS/IOSCO, the Commission split the last compliance phase into two: Phase 5 with compliance beginning on September 1, 2020 and Phase 6 (*i.e.*, the Smaller Portfolio Group) with compliance beginning on Sept 1, 2021. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 19,878 (April 9, 2020) (to be codified at 17 C.F.R. pt. 23) (the "***April 2020 Final Rule***").

[10] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, Interim Final Rule With Request for Comment, 85 Fed. Reg. 41,346 (July 10, 2020) (the "***Phase 5 IFR***"). The Phase 5 IFR was approved in the Commission's open meeting on May 28, 2020 and extended the September 1, 2020 compliance date for the IM requirements to September 1, 2021 for "CSEs and covered counterparties with an AANA between $50 billion and $750 billion" (*i.e.*, the IFR Extension Group). *Id*. at 41,348.

[11] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, Notice of Proposed Rulemaking, 85 Fed. Reg. 41,463 (proposed July 10, 2020) (the "***Phase 6 NOPR***"). The Phase 6 NOPR was approved in the Commission's open meeting on Aug. 14, 2020 and extended the September 1, 2021 compliance date for the IM requirements to September 1, 2022 for "entities with smaller average daily aggregate notional amounts of swaps and certain other financial products" (*i.e.*, the Smaller Portfolio Group). *Id*. at 41,463. The Smaller Portfolio Group "comprise CSEs and their covered counterparties that are not yet subject to the IM requirements, including financial end user counterparties with an MSE exceeding $8 billion in AANA…" *Id*. at 41,465.

[12] *See generally* Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, Margin Requirements for Non-Centrally Cleared Derivatives, (July 2019), *available at* https://www.bis.org/bcbs/publ/d475.pdf. ("***2019 BCBS/IOSCO Framework***").

[13] On October 15, 2020, the CFTC issued its final rule extending the compliance date for Phase 6 to September 1, 2022, *see* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN 3038-AE89) (Oct. 15, 2020) (to be codified at 17 C.F.R. pt. 23). ("***Phase 6 Final Rule***").

2. The MTA and SMA Proposal.

Second, FIA welcomes the MTA and SMA Proposal and believes that the approach articulated in the MTA and SMA Proposal will be beneficial for market participants. FIA also hopes that the U.S. prudential regulators will implement consistent regulations, although the Commission should proceed to adopt the proposed amendment to Commission rule § 23.158(a) even if the U.S. prudential regulators do not adopt similar regulatory changes.[14]

3. The IM Calculation Methodology Proposal.

FIA welcomes the Commission's common-sense approach in the IM Calculation Methods Proposal and offers the following suggestions to further improve the rulemaking.

a. The Calculation Method for Determining When Phase 6 Entities Must Comply with the Commission's IM Requirements Should be Consistent with the 2019 BCBS/IOSCO Framework.

We welcome the Commission's effort to align the method of calculation for "material swaps exposure" ("***MSE***") to that of the BCBS/IOSCO Framework. There is no principled reason why the CFTC's rules should depart from the BCBS/IOSCO Framework, and allowing the inconsistency to persist will impose unnecessary burdens on market participants.[15] The Commission should adopt the proposed regulatory changes even if the U.S. prudential regulators do not make parallel changes.

b. Small SDs Should be Able to Use the Combined Grid and Risk-Based IM Models.

As discussed further below, Small SDs should be able to rely on their Large SD counterparties' regulator-approved risk-based IM models instead of their own grid-based models (the "***Alternative IM Calculation Methodology***")[16] in instances where the results produced by these two IM models are inconsistent. The Commission recognized that these outcomes are likely to occur and in December 2019 allowed one Small SD via no-action relief to rely on its Large SD counterparties' regulator-approved risk-based IM model ("***Letter 19-29***").[17]

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[14] *See* request for comment in MTA and SMA Proposal, 84 Fed. Reg.at 59,474.

[15] *See* Statement of Commissioner Dawn D. Stump in Support of Proposed Margin Rulemaking Based on Recommendations of GMAC (Aug. 14, 2020), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement081420.

[16] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 59,702, 59708 (proposed Sept. 23, 2020). Also, the GMAC IM Report explains that "many Small CSEs intend to choose GRID based on the type of activity they primarily engage in (*e.g.*, physical commodities) and customer classification (*e.g.*, end users) . . .. Under the Margin Rules, CSEs have the option to calculate the amount of mandatory IM using either a risk-based model or the standardized IM table set forth in the Margin Rules (such method based on the standardized IM table, GRID)." The GMAC IM Report at 17.

[17] Peter Y. Malyshev, CFTC No Action Letter, CFTCLTR No. 19-29, https://www.cftc.gov/csl/19-29/download

Following the publication of Letter 19-29, the Commission's GMAC discussed several proposals and published several recommendations in its GMAC IM Report recognizing that the nature of Small SDs' counterparties and the credit risk modelling employed by Small SDs is fundamentally and inherently different from that of Large SDs. The IM Calculation Method Proposal codifies most of the suggestions articulated in the GMAC IM Report.

Currently, the Commission's Margin Rules provide only two frameworks for determining whether the IM Threshold Amount has been exceeded and for subsequently calculating the amount of IM due. The first method is a grid-based method described in § 23.154(a)(1)(ii) of the Commission's rules, which specifies the minimum IM that must be posted and collected as a percentage of a swap's notional amount (the "***GRID***"). Because it is a grid-based approach, it is much easier to administer. It does not require building complicated credit-based financial systems and maintaining these systems on a continuous basis. Although this method is consistent with international standards, when applied it typically produces a much more conservative margin value and for that reason is virtually not used by Large SDs.

The second method is a risk-based model as described in § 23.154(b) of the Commission's rules that must be approved by the Commission or the National Futures Association (the "***NFA***"). A risk-based model calculates IM as the amount that is equal to the potential future exposure of a swap or a netting of swaps and allows for a much more finely calibrated approach that typically results in fewer instances when IM will be due – the Alternative IM Calculation Methodology.

For these reasons, all, or virtually all, Large SDs use a risk-based model (the "***Risk-Based Model***") developed by the International Swaps and Derivatives Association ("***ISDA***") called the Standard Initial Margin Model ("***ISDA SIMM™***"). This in turn effectively forces Small SDs that are not financial institutions to implement their own ISDA SIMM model for IM calculations when they trade with Large SDs.

If Small SDs were to implement an easier to administer GRID-based model, then their counterparties would have to manage the Risk-Based Model calculations for some entities (Large SDs) and the GRID-based model for others (Small SDs) and meet the documentation requirements for separate models. Further, given that the GRID-based model produces more conservative results, Large SDs would be dis-incentivized from trading uncleared swaps with Small SDs, thus potentially placing Small SDs at a competitive disadvantage in comparison to other swap market participants.

(Dec. 19, 2019). ("CFTC Letter 19-29")

For these reasons, we welcome the proposal that Small SDs be allowed to use the Alternative IM Calculation Methodology that integrates elements of both the GRID-based method and another Large SDs' regulator-approved risk-based model for calculating the IM that the Small SD collects from its Large SD counterparty and for determining the timing of IM documentation requirements. Under this hybrid method, a Small SD would be able to maintain a GRID-based model, but in transactions with Large SDs would be able to rely on the Large SD's regular-approved Risk-Based Model for calculation purposes to the extent it differs from the IM values calculated under their GRID-based models. Therefore, Small SD and Large SD counterparties would be allowed to agree on an IM calculation and collection methodology that is practicable and commercially reasonable.

Accordingly, we welcome Commission's IM Calculation Methods Proposal. However, FIA is concerned with the hedging limitation (the "***Hedging Limitation***") to the swaps subject to the IM Calculation Methods Proposal. Below we discuss why FIA believes that the Hedging Limitation is not warranted and address each of the questions raised by the Commission in the IM Calculation Methods Proposal.

c. The Hedging Limitation in the IM Calculation Methods Proposal Should be Removed.

The IM Calculation Methodology Proposal allows the use of Alternative IM Calculation Methodology, but caveats that "the CSE would be able to use the risk-based model calculation of IM of a swap entity counterparty ***only if*** the uncleared swaps for which IM is calculated are entered into for the purpose of hedging the CSE's own risk."[18]

The Commission explains that the Hedging Limitation is necessary to "ensure its narrow application"[19] and assumes that Small SDs that are not obtaining the regulatory approval to use a Risk-Based Model for the calculation of IM will enter into uncleared swaps mostly with end-user counterparties and then will hedge the risk of those swaps with a few larger swap entity counterparties (*i.e.*, Large SDs). The Commission, however, does not explain why it is making this assumption or present any empirical data to support this assumption, and the only justification for inclusion of the Hedging Limitation in the IM Calculation Methods Proposal is that it is a carryover from Letter 19-29.[20]

Instead, the Commission in the IM Calculation Methods Proposal explained that the Hedging Limitation is necessitated by the Commission's concerns that: (a) being able to rely on the Large SD IM calculation model, the Small SD may "forgo altogether the adoption of a risk-based model and may be less incentivized to monitor IM exposures on a regular basis" and "[a]s a result, the CSE may collect insufficient amounts of IM to offset counterparty risk"; and (b)

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[18] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. at 59708 (emphasis added).

[19] *Id.*

[20] We note, however, that CFTC Letter 19-29 also does not provide any explanation why the Hedging Limitation was included there as well.

"the swap entity [counterparty] calculating the IM for the CSE may be conflicted, as it may have a bias in favor of calculating and posting lower amounts of IM to its CSE counterparty."[21] Below we address each of these concerns. FIA's commodities members believe that the Hedging Limitation should be removed.

i. Difficulty differentiating "hedging" from "speculation".

On October 15, 2020, the CFTC finalized its rulemaking on position limits (the "***Final Position Limits Rule***")[22] after almost 10 years of diligent work, participation in numerous industry discussions and after several attempts to promulgate the new position limits regime as mandated by the Dodd Frank Act. At the core of the position limits rulemaking lies the concept of "hedging." As this experience demonstrates, the concept of "hedging" is difficult to quantify and there are many instances when "hedging" is virtually indistinguishable from speculation. Given that the IM Calculation Methods Proposal does not define what constitutes "hedging", both the Small SDs and Large SDs who would want to trade with them will be left guessing whether these swaps are related to "hedging" activities of Small SDs.

For example, would Small SDs be required to match the swaps with Large SDs one by one with the swaps with their end-user counterparties? Would Small SDs be required to obtain representations from their end-user counterparties regarding whether they are hedging? Will Small SDs have to terminate swaps with Large SDs if the swaps with their end user counterparties were terminated? Would the general standards of CEA § 2(h)(7)(A)(ii) apply, or the various hedging standards articulated in the Final Position Limits Rulemaking or the hedging guidance from the various exchanges?

Given the multitude of the definitions and uses of the term "hedging," Small SDs and Large SDs may be reluctant to rely on the Alternative IM Calculation Methodology for fear of violating the condition.

ii. Operational difficulty in separating hedging from other activity given portfolio hedging at SDs and matching swap for swap.

SDs typically do not match swaps entered with their end users one-by-one as hedging is operationally done on a portfolio basis and includes many of the proprietary trades of the SD. Furthermore, as the GMAC IM Report notes in connection with municipal prepayment transactions, there could be a very significant disparity between the term and tenor of the end user trade and the swaps that it enters to hedge the underlying transaction.

iii. Documentation challenges.

Swaps are normally documented between counterparties under the ISDA Master Agreement

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[21] *Id*.

[22] Position Limits for Derivatives, CFTC Final Rule, RIN 3038-AD99, (Oct. 15, 2020) (to be codified at 17 C.F.R. pt. 23).

with a credit support annex ("***CSA***") and individual confirmations generated for specific transactions. Many of these swap relationships were put in place years ago and represent trading relationships with numerous individual transactions between the counterparties. The primary benefits of the ISDA Master Agreement are that it provides certainty and allows for the termination of the underlying transactions with a single settlement amount supported by the collateral provided under the CSA. The ISDA Master Agreement a set of representations that are repeated in each individual transaction thereunder.

If SDs will be required to add additional representations confirming that a given transaction is a "hedging" transaction, these confirmations will need to be updated and there will be two sets of transactions: one that is either hedging or not hedging (if there is no specific representation to this effect), and another set where the counterparties specifically state that the transactions are hedges. Furthermore, the IM will also need to be administered on the basis of hedging and non-hedging transactions which will make the netting of all transactions under a single ISDA impossible.

This will add a lot of market and bankruptcy risks and unnecessary complexity that will likely make the relief under the IM Calculation Methods Proposal impractical as the counterparties will shy away from Small SDs that wish to rely on the Alternative IM Calculation Methodology. This is not the intended result of the Commission's proposed rulemaking.

iv. Introduction of uncertainty by requiring representations from Small SDs for Large SDs.

Even if Small and Large SDs (as well as end users) were able to overcome operational and documentation challenges to implement the Hedging Limitation, Large SDs may be reluctant to trade with Small SDs fearing that the representation may be a misrepresentation when made by the Small SD counterparty or by the end user to the Small SD. This in turn could cause Large SDs to violate their statutory duties under the Margin Rules. This uncertainty will stand to deter reliance on the proposed relief.

v. Undue burden on end users given that some longer-term swaps cannot be passed to Large SDs.

As discussed above, the burden of compliance with the Hedging Limitation will be borne not only by the Small and Large SDs, but also by the end users of Small SDs, because they too will need to make an assessment of whether their swaps are for "hedging" purposes and update their documentation. Given that Small SDs often service very illiquid markets and provide risk mitigation services to unsophisticated small entities, such operational and documentation burdens will be difficult to bear.

Furthermore, if Small SDs were not able to provide these risk mitigation services to their end user counterparties due to the cost, operational and documentation burdens discussed in this letter, end users will be left with the unhedged risks - as the GMAC IM Report discussed in detail in connection with municipal prepay transactions. Again, in the absence of the Alternative

IM Calculation Methodology, Small SDs will be required to either use the GRID and risk that no Large SD will be able to trade with them, or scale back their trades, which in turn will leave a very important segment of the market unprotected.

vi. Internal Risk Management of SDs.

Both the Small and Large SDs equally have to abide by the risk management requirements articulated in Part 23.600. Thus, even in the absence of the IM Calculation Methods Proposal, Small SDs will have to manage and administer their risk management program. Given that the introduction of the Alternative IM Calculation Methodology does not relieve SDs from the requirements of Part 23.600, Small SDs will continue administering this program regardless of their choice to rely on the Risk-Based Method of their Large SD counterparties. Therefore, the Hedging Limitation will offer no new protections in addition to the already existing obligations of SDs.

Further, FIA believes that there are already in place sufficient anti-avoidance and anti-evasion provisions in the CEA and Commission regulations and including the Hedging Limitation in addition to these existing restrictions will not afford any additional protections above the already existing risk management tools. Adding the Hedging Limitation will likely introduce an unclear and ambiguous standard into already established swap operational and documentation standards in the market.

vii. Risk Based Models are Approved by the Regulator.

We also note that the Risk-Based Models used by Large SDs are not arbitrary and can only be utilized by Large SDs when approved by regulators (CFTC, NFA, or U.S. prudential regulators).[23] Accordingly, by definition, the Alternative IM Calculation Methodology used by Small SDs will involve use of a regulator-approved Risk-Based Method. Considering that these Risk-Based Methods must be approved by regulators without considering the Hedging Limitation, we do not believe that introduction of the Hedging Limitation will add any additional protections in addition to those considered by the regulators in approving the Risk-Based Methods. The GRID method also does not include the Hedging Limitation.

Further, we believe that the Commission should proceed with the IM relief given that the larger number of swap dealers to be affected by the Phase 6 (i.e., the Smaller Portfolio Group) compliance will be in the category of commodity swap dealers (although as mentioned above, smaller swap dealers will be equally benefited if Prudential Regulators were to allow these smaller entities to use the Alternative IM Calculation Methodology). Given that the Alternative IM Calculation Methodology relief is necessary only for the counterparties of Large SDs (i.e., Small SDs), the Commission should proceed with this rulemaking even if Prudential Regulators do not amend their margin rules.

For all these reasons, FIA's commodities members respectfully ask the Commission to remove

[23] Prudential Regulators Margin Rule, 80 Fed. Reg. 74,840 (Nov. 30, 2015).

the Hedging Limitation.

4. Additional Recommendations.

a. The "Financial Entity" and "Financial End User" Definitions Should be Better Aligned.

The definition of "financial entity" under CEA § 2(h)(7)(C) and the definition of the "financial end user" under the Commission's Margin Rule are similar, but not identical. The Commission should more closely align the two definitions to provide market participants more clarity and reduce the likelihood of differences in interpretation between the two terms.

The CFTC could, for example, issue CEA § 4(c) relief or an interpretive guidance to clarify that the last prong of the "financial entity" definition matches the definition of "financial end user." Given that the language in the "financial entity" definition is broader than the language in the "financial end user" definition, the CFTC should narrow the definition of "financial entity" rather than match "financial end user" to "financial entity".

b. SD Treasury Affiliates Should be Able to Rely on Treasury Affiliate Exception

The Commission should consider adopting rules permitting Small SD's affiliates that act as treasury affiliates for the entire company ("***Treasury Affiliates***") to rely on the non-financial end user exception to the Commission's Margin Rule. Currently, under CEA § 2(h)(7)(D)(ii) and § 2(h)(7)(D)(iii), SD Treasury Affiliates cannot rely on the non-financial end user exception, and therefore these affiliates are required to comply with margin requirements simply because they are affiliated with an SD. To the extent that such Treasury Affiliates' trading activity complies with CEA § 2(h)(7)(D)(i)(I), they should be excluded from the Commission's Margin Rule. This argument is even more compelling with respect to Treasury Affiliates trading swaps on physical commodities given commodity swaps' de minimis share in the global swaps market.

To mitigate any adverse effects on the swaps that are subject to the clearing requirement, the Commission may limit the availability of the Treasury Affiliate exception to only those Small SDs that are primarily engaged in physical commodity markets and only with respect to swaps that are not subject to the clearing requirement

Finally, the Commission should consider promulgating rules on Treasury Affiliates given that the Margin Rule specifically refers to the Commission promulgating these rules in the future, and to date none of these rules have been promulgated.[24]

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FIA's commodities members appreciate the opportunity to support and offer further refinements to the Proposals. We applaud the Commission's effort to review the Margin Rule with a practical approach to regulation. Please contact Michael Sorrell, Associate General Counsel of FIA, at msorrell@fia.org or 202-466-5460, if you have any questions about our comments or recommendations.

Sincerely,

Allison Lurton
General Counsel and Chief Legal Officer

cc: Honorable Heath Tarbert, Chairman
Honorable Brian D. Quintenz, Commissioner
Honorable Rostin Behnam, Commissioner
Honorable Dan Berkovitz, Commissioner
Honorable Dawn DeBerry Stump, Commissioner
Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight
Frank Fisanich, Chief Counsel
Andrew Chapin, Associate Chief Counsel

[24] *See* 81 Fed. Reg. 636 at 647.