



October 22, 2020

Commodity Futures trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

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

Dear Mr. Kirkpatrick:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”, or “**AMG**”)¹ appreciates the opportunity to submit comments with respect to the notice of proposed rulemaking published by the Commodity Futures Trading Commission (the “**CFTC**” or the “**Commission**”) regarding the methodologies for calculating material swaps exposure (“**MSE**”) and timing of compliance as well as an alternative method of calculation of initial margin (“**IM**”) set forth in the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (the “**Proposal**”).² SIFMA AMG commends the Commission’s efforts to consider and implement the CFTC’s Global Markets Advisory Committee’s (“**GMAC**”) recommendations to improve scoping and implementation of the initial margin requirements for non-cleared swaps.³ With respect to the Proposal, SIFMA AMG is supportive of the proposed amendments revising the calculation method for determining whether certain entities come within scope of the CFTC Margin requirements and the associated compliance timing. These changes will help smaller market participants that may be subject to the CFTC margin requirements overcome unnecessary operational challenges.

¹ SIFMA AMG’s members represent U.S. asset management firms whose combined global assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

² Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 59702 (September 23, 2020), available at <https://www.cftc.gov/sites/default/files/2020/09/2020-18303a.pdf>.

³ See *Recommendations to Improve Scope and Implementation of Initial Margin Requirements for Non-Cleared Swaps*, CFTC GMAC Subcommittee on Margin Requirements for Non-Cleared Swaps (May 19, 2020), available at https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download (the “GMAC Report”).

I. Calculation Method for Determining Whether Certain Entities are Subject to the IM Requirements and the Timing for Compliance with the IM Requirements After the End of the phased Compliance Schedule

SIFMA AMG is supportive of the CFTC’s proposal to revise the method for calculating the average aggregate notional amount (“**AANA**”) for determining whether a financial end user (“**FEU**”) has MSE and the timing for compliance with the IM requirements after the end of the last phase of compliance to align the CFTC Margin requirements with the BCBS-IOSCO framework.

As the Commission is aware, and as discussed in the Proposal, the CFTC’s margin requirements differ from the BCBS-IOSCO framework with respect to certain material aspects. Consistent with earlier phases, for the sixth and final phase of the CFTC’s margin requirements, an FEU or covered swaps entity must calculate their MSE based on the daily AANA during the period of June, July, and August of the prior year.⁴ The entities are required to begin exchanging IM on September 1, 2022.⁵ After the final phase in date in 2022, the current rules would shift the compliance schedule to a calendar year and require the exchange of IM on January 1st if the covered swap entities exceed the \$8 billion AANA calculation during June, July, and August period of the prior year.⁶ Conversely, the post phase-in BCBS-IOSCO framework requires that entities with a minimum of \$8 billion in AANA calculated using an average of month-end dates for the period of March, April, and May of a year, would exchange IM beginning September 1st of that year.⁷ In the Proposal, the Commission notes its reasoning for a daily computation was to “gather a more comprehensive assessment of the [FEU]’s participation in the swaps market, and to address the possibility that a market participant might ‘window dress’ its exposure. . . .”⁸ For the reasons set forth in the GMAC Report, and the benefits discussed within the Proposal, AMG believes this concern does not justify a departure from international comity.

Failing to align the CFTC’s MSE methodology with the BCBS-IOSCO recommendations may significantly burden asset managers’ ability to enter into swaps in different jurisdictions on behalf of its clients. As discussed in the GMAC Report, the US’s deviation on the approach to the MSE calculation means that asset managers will need to “run completely separate calculations from those which they have run for all

⁴ 17 CFR 23.151 - *Material Swaps Exposure*.

⁵ See Margin Requirements for Uncleared Swaps for Major Swap Dealers and Major Swap Participants (Final Rule: RIN 3038-AF03) (October 15, 2020), available at <https://www.cftc.gov/media/5106/FederalRegister101520/download>.

⁶ *Id.*

⁷ See generally BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), available at <https://www.bis.org/bcbs/publ/d317.htm>.

⁸ Proposal at 59704.

other jurisdictions.”⁹ These differences would not only burden an asset manager in determining whether its clients are in scope for the later phases of the compliance schedule, but would create a complex and confusing ongoing monitoring process. Assuming an asset manager is engaged in uncleared swaps for its clients in a jurisdiction outside of the US, the mismatched methodologies could theoretically require the manager to run month-end calculations for March, April, and May, as well as daily calculations throughout June, July, and August. A scenario could arise where an asset manager is assessing the AANA for its clients over half a year. Such a burden is not justified especially when regulators consider the overall impact of smaller financial counterparties whose AANA is close to, but may never exceed, \$8 billion. This burden is more acute for market participants who are brought into scope of the CFTC’s margin requirements solely due to physically settled FX. These market participants would be required to run daily AANA calculations during the measurement period but may never exchange IM.¹⁰ In addition to these burdens, AMG agrees with the GMAC Report’s assessment that bifurcated timelines may interfere with a party’s ability to use substituted compliance.¹¹

AMG is supportive of the Commission’s proposed changes to the MSE methodology to include a month-end AANA calculation in lieu of a daily AANA calculation. As discussed in the Proposal and the GMAC Report, a daily AANA calculation is only used in the US. A change to the methodology to require a month-end AANA calculation would alleviate a substantial burden on smaller financial counterparties that do not pose the same systemic risks as larger financial counterparties already subject to the CFTC’s margin rules. Moreover, with respect to the “window dressing” concern previously raised by the Commission, we agree with the GMAC Report’s assessment that it would be neither practicable nor financially desirable for parties to tear-up positions on a recurring basis prior to each month end because it may interfere with hedging and cause portfolios to incur realized PnL changes.¹² In spite of these mitigants, should entities attempt to evade the Commission’s margin requirements, we agree with the Commission that it has sufficient tools at its disposal to address evasion.¹³

II. Encourage US Prudential Regulators to Align with Global standards

⁹ GMAC Report at 52.

¹⁰ As discussed in the CFTC Chief Economist’s Office Report on Margin, as of October 2018, 203 entities or 29% of entities included in the final phase of the implementation schedule are in scope only due to their physically-settled FX exposure, and therefore, may never have to exchange margin. See the CFTC’s Chief Economist Office’s study *Initial Margin Phase 5*, Richard Haynes, Madison Lau, and Bruce Tuckman (October 24, 2018), available at https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.

¹¹ GMAC Report at 53.

¹² GMAC Report at 52.

¹³ Proposal at 59707.



AMG further recommends the Commission continue to encourage the US Prudential Regulators to also align their MSE methodology and post phase-in compliance dates with the global standards. AMG believes that divergence within the US will continue to create operational cost challenges for smaller financial counterparties without proper justification.

III. The CFTC Should Consider other GMAC Recommendations

In addition to the above comments, we continue to encourage the Commission to consider adopting the short-term and long-term recommendations outlined in the GMAC Report with respect to scoping and implementation. As we approach the final phases on the implementation schedule of the margin requirements, it is increasingly important that the Commission remove unnecessary burdens asset managers face as they prepare to comply with the Commission's margin requirements.

As discussed in the GMAC Report, market participants that fall within the final phases of the implementation of the margin requirements will face unique changes that may burden or prevent them from proper compliance, and more importantly, potential unintended consequences of the CFTC's margin requirements. While SIFMA AMG is supportive of all GMAC recommendations, we believe the Commission should focus its attention in the short term on changes that will provide for the orderly implementation of phases 5 and 6. We believe that the GMAC Reports provides a thorough roadmap to implementing their recommendations, many of which would be consistent with the recommendations made by BCBS-IOSCO. Further, the additional time provided by the Commission's recent delay of the implementation schedule affords the Commission valuable time to consider and implement the GMAC Reports recommendations.

We appreciate the opportunity to share our views and we would be happy to arrange a conference call or video conference to discuss our comments in further detail. Please do not hesitate to contact Jason Silverstein at 212-313-1176 or jsilverstein@sifma.org, or Andrew Ruggiero at 212-313-1128 or aruggiero@sifma.org to discuss the above.

Respectfully submitted,

/s/ Jason Silverstein, Esq.
Jason Silverstein, Esq.
Managing Director and Associate General Counsel
SIFMA, Asset Management Group

/s/ Andrew Ruggiero
Andrew Ruggiero
Senior Associate and Assistant General Counsel
SIFMA, Asset Management Group