

December 7, 2020

Submitted Electronically

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

Ms. Vanessa Countryman
Secretary of the Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for Comment for Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps (RINs 3038-AF07, 3235-AM64)¹

Dear Mr. Kirkpatrick and Ms. Countryman:

The International Swaps and Derivatives Association, Inc. (“ISDA”)² and the Securities Industry and Financial Markets Association (“SIFMA”)³ (together, the “Associations”) appreciate the opportunity to provide comments to the U.S. Commodity Futures Trading Commission (the “CFTC”) and the U.S. Securities and Exchange Commission (the “SEC” and together with the CFTC, the “Commissions”) on potential

¹ 85 Fed. Reg. 70536 (Nov. 5, 2020) (the “Request for Comment”).

² Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 73 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. Follow us on Twitter @ISDA.

³ 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>.

ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps (“SBS”).

As the registration compliance date for security-based swap dealers (“SBSDs”) approaches, non-bank⁴ swap dealers (“SDs”) that anticipate dually registering as SBSDs (“SD-SBSDs”) face the prospect of conflicting margin and segregation requirements for their customers’ swaps, SBS, and securities positions. In the absence of relief, these conflicts will substantially limit the ability of a non-bank SD-SBSD to recognize the risk-reducing effect of cross-product hedges, which will have a negative impact on customers, non-bank SD-SBSDs, and systemic risk generally. Specifically, customers will face increased hedging and trading costs and reduced incentives to execute effective hedging strategies. Non-bank SD-SBSDs, in turn, will be at a competitive disadvantage to bank and foreign SD-SBSDs, which are able to offer customers the ability to margin a wider range of related products under a consistent regulatory framework. And the market as a whole will experience increased liquidity, settlement, and operational risks as a result of the need for non-bank SD-SBSDs to exchange and custody margin separately for swaps, SBS, and securities positions.

As the Commissions note, portfolio margining would, by ameliorating these issues, offer substantial benefits to both customers and the securities and derivatives markets as a whole. These benefits would include greater alignment of margin requirements and associated costs with the overall risk of a customer’s portfolio, more efficient collateral management, increased liquidity, and reduced volatility. We also agree with the Commissions that any portfolio margining arrangement should take due account of the customer protection, financial stability, and other regulatory objectives that undergird the Commissions’ respective margin and segregation requirements.

With those objectives in mind, in this letter we have sought to identify the most limited relief necessary to effectively address the range of trading relationships that will become subject to margin and segregation requirements of both Commissions upon the initial implementation of the SEC’s rules in 2021. This relief is designed to permit:

- (1) A full-purpose broker-dealer (“BD”) that is also an SD-SBSD (a “BD-SD-SBSD”) to margin all customer equities positions (including cash equities positions, non-cleared equity SBS, over-the-counter (“OTC”) equity options, and uncleared equity swaps) eligible to be margined in a Financial Industry Regulatory Authority (“FINRA”) Rule 4210(g) portfolio margin account in accordance with FINRA Rule 4210(g).
- (2) A BD-SD-SBSD operationally to make consolidated margin calls for a customer’s uncleared swaps together with its non-cleared SBS and securities positions and

⁴ By “non-bank,” we refer to registrants that are not subject to the margin requirements of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Farm Credit Administration, or the Office of the Comptroller of the Currency (the “prudential regulators”).

hold regulatory margin collected for those positions together, so that the BD-SD-SBSD can apply that margin toward its house margin requirements.

- (3) A non-bank SD-SBSD that is either not registered as a BD or that is registered as an OTC derivatives dealer (“OTCDD”) to portfolio margin all eligible OTC derivatives positions, including OTC securities options, non-cleared SBS, and uncleared swaps, in accordance with CFTC margin and segregation rules.
- (4) A non-bank SBSD (whether a BD, OTCDD, or standalone SBSD) not to post variation margin (“VM”) to a counterparty that is not a “financial end user” under the CFTC’s margin rules (although the SBSD would still collect VM if the counterparty is not a “commercial end user” under the SEC’s margin rule).

This relief is intended to achieve key benefits of portfolio margining while minimizing the extent of departure from the Commissions’ respective margin and segregation regimes. In our comments below, we provide greater detail about the relief we ask the Commissions to provide and the rationale for it. For ease of reference, Appendix A of this letter contains a table that summarizes the specific requested relief for each type of registrant.

We note, however, that additional relief may be necessary before initial margin (“IM”) requirements fully phase-in on September 1, 2022. In particular, once fully phased in, the CFTC’s IM posting and segregation requirements will have a detrimental impact on liquidity and the safety and soundness of non-bank SD-SBSDs, with knock-on effects on systemic risk and the pricing of derivatives. Although these concerns are less pressing from a timing perspective, in our view they merit further consideration in due course.

I. Full-Purpose BD-SD-SBSDs

1. The CFTC Should Provide Relief to Allow a BD-SD-SBSD to Portfolio Margin Uncleared Equity Swaps with Other Equity Positions in an Account Subject to FINRA Rule 4210(g) and SEC Rule 15c3-3

As discussed above, in the absence of relief that facilitates portfolio margining, customers will not be able to recognize risk offsets of products in the same risk category and accordingly may choose less effective hedging or investing strategies. To take a simplified example, a customer that seeks to invest in the equity securities of individual issuers may look to hedge the risk of those issuers’ business sectors or broader equity macro risk through equity swaps. Another example involves customers who pursue index arbitrage strategies. In the absence of portfolio margining, each such customer would be required to post more collateral than the risk of its positions should require. This would needlessly drain liquidity, which could be deployed more productively elsewhere, and create multiple settlement obligations, which increases settlement and operational risk. Additionally, the customer may be incentivized to trade a

non-cleared equity SBS in lieu of purchasing equity securities, even if the pricing is less favorable, and to do so with a bank, rather than a non-bank SD-SBSD, in order to have margin requirements that more appropriately reflect the risk of its portfolio.

FINRA Rule 4210(g) has for over a decade provided an effective methodology to margin a portfolio of equity positions, including both cash equities and equity derivatives. In concert with SEC Rule 15c3-3, Rule 4210(g) has facilitated both prudent risk management and customer protection. Considering that uncleared equity swaps and non-cleared equity SBS (other than certain variance and other complex swaps and SBS, which we discuss in Section I.2 below) present substantially identical risk profiles to the underlying cash equity positions, the Commissions should allow a BD-SD-SBSD to portfolio margin all cash equity positions, equity options, uncleared equity swaps, and non-cleared equity SBS in accordance with the rules and requirements of FINRA Rule 4210(g) and SEC Rule 15c3-3. In order to facilitate such an approach, we ask that the CFTC issue relief from its margin rules for uncleared swaps for any equity swaps and related collateral held by a BD-SD-SBSD in a portfolio margin account subject to FINRA Rule 4210(g) and SEC Rule 15c3-3.⁵ Specifically, such relief would address the following key topics.

- a. *Permit a BD-SD-SBSD to Calculate IM Requirements for Uncleared Equity Swaps Using the Methodology Set Forth in FINRA Rule 4210(g) and SEC Rule 18a-3, With Offsets for Non-Cleared Equity SBS, Equity Options, and Cash Equity Positions, in Lieu of CFTC Rule 23.154*

As noted above, BDs have calculated margin requirements for portfolio margined equity positions pursuant to FINRA Rule 4210(g) for well over a decade. That rule, as well as the SEC's SBSBD margin rule, Rule 18a-3, requires margin for eligible equities positions to be calculated using an SEC-approved theoretical pricing model, which is used to calculate the largest theoretical loss of the portfolio by taking the gain and loss in value of individual eligible products and related instruments at ten equidistant intervals ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. For purposes of the rule, the SEC has approved BDs to use the Theoretical Intermarket Margining System ("TIMS") model, which is a univariate risk management methodology that evaluates historical data of approximately 3,000 underlying assets to make the required calculations. TIMS requires that positions that have the same underlier be categorized into classes and that classes be categorized into unique product groups consisting of one more related classes. TIMS calculates the total risk of a customer's account as the sum of the worst scenario outcomes of each

⁵ As additional conditions designed to promote customer protection and reduce leverage, such BD-SD-SBSD also could not (a) rely on the exception from SEC Rule 15c3-3's "excess securities collateral" definition for securities and money market instruments held in a qualified registered SBSBD account or third-party custodial account or (b) include amounts for margin held at a qualified registered SBSBD account or third-party custodial account as debit items in its reserve formula computation pursuant to SEC Rule 15c3-3.

product group in the account, only recognizing offsetting positions in the same product group.

The TIMS methodology is different from the methodology used for purposes of the CFTC's margin rules, but both methodologies are designed to calculate a potential future loss amount in an extreme but plausible scenario, without recognizing offsets across asset classes. Further, in our members' experience, in most instances the TIMS methodology tends to produce more conservative (*i.e.*, higher) IM requirements than the ISDA Standard Initial Margin Model (ISDA SIMMTM) methodology that is commonly used to satisfy the CFTC's margin rules.

For these reasons, precluding a BD-SD-SBSD from using the TIMS methodology to calculate IM requirements for uncleared equity swaps would not serve to promote risk management. Instead, it could lead to regulatory arbitrage. A customer faced with the choice of either entering into an uncleared equity swap on a broad-based basket or index or purchasing or selling the component underlying securities would likely make the choice that resulted in the lower margin requirement. Indeed, for this reason, the SEC prohibits BDs from applying the SIMM to non-cleared equity SBS.

By contrast, permitting a BD-SD-SBSD to calculate IM requirements for all equity positions, including equity swaps, equity SBS, equity options, and cash equity securities, using a single, TIMS-based methodology will ensure that positions that present substantially identical risks are subject to the same margin methodology. In addition, it would serve to promote the general benefits of portfolio margining discussed above.

- b. *Permit a BD-SD-SBSD to Comply with SEC Rule 15c3-3's Segregation Requirements in Lieu of CFTC Rule 23.157(b)'s Third-Party IM Segregation Requirements in Respect of Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Account*

Securities customer property has been subject to the segregation requirements of SEC Rule 15c3-3 for nearly half a century. That rule is designed to work in concert with the provisions of the Securities Investor Protection Act of 1970 ("SIPA"), the insolvency regime applicable to BDs. In adopting SIPA, Congress opted to protect a customer's claims to property it holds with a BD by giving customers' claims priority over other creditors with respect to the distribution of designated "customer property" within an insolvent BD's estate. SEC Rule 15c3-3 accordingly seeks to ensure that a BD has sufficient cash and securities set aside to satisfy all customer claims by requiring a BD to maintain physical possession or control of customer fully paid or excess margin securities and to maintain a deposit in a separate account at a bank representing the net amount of funds that the BD owes customers (and certain other items). Notably, SIPA is premised not on an individual segregation model, but instead on one that facilitates the re-use of customer property to fund customers' activities in a manner that reduces costs to customer without exposing them to material risk.

As revised to address SBS, SEC Rule 15c3-3 will require a BD to maintain physical possession or control of “excess securities collateral,”⁶ generally defined to mean securities and money market instruments carried for the account of an SBS customer that have a market value in excess of the current exposure of the BD (after reducing the current exposure by the amount of cash in the account) to the SBS customer, subject to certain exclusions not relevant here.⁷ The rule will also subject a BD to a customer reserve account requirement for cash received from SBS customers,⁸ and SIFMA is further requesting no-action relief from the SEC staff to permit a BD-SBSD to apply reserve account requirements on an integrated basis for both SBS and non-SBS customers so long as the BD-SBSD does not re-use customer cash posted as SBS-related margin (among other conditions).⁹ Accordingly, if a BD-SD-SBSD applies these requirements to IM it holds in a FINRA Rule 4210(g) portfolio margin account for an uncleared swap counterparty, which is also a “customer” and a “security-based swap customer” under SEC Rule 15c3-3, then the BD-SD-SBSD will generally be required to segregate that IM from its own proprietary assets and be restricted from re-hypothecating, re-pledging, or re-using the IM except, in the case of cash IM, to fund extensions of credit made to securities customers.

Under this framework, the uncleared swap counterparty would, with respect to margin for uncleared equity swaps held in a FINRA Rule 4210(g) portfolio margin account, be considered a securities “customer” under SIPA, with a priority right to “customer property” based on its “net equity” claim, because SIPA’s “customer” definition includes “any person who has a claim against the debtor for cash [or] securities

⁶ 17 C.F.R. § 240.15c3-3(p)(2).

⁷ See 17 C.F.R. § 240.15c3-3(p)(1)(ii). These exceptions are for securities and money market instruments held in either (a) a qualified clearing agency account, but only to the extent they are being used to meet a margin requirement of the clearing agency resulting from an SBS transaction of the SBS customer or (b) a qualified registered SBS account or third-party custodial account, but only to the extent they are being held to meet a regulatory margin requirement of the SBS resulting from the BD entering into a non-cleared SBS transaction with the SBS to offset the risk of a non-cleared SBS transaction between the BD and the SBS customer. The first exception is not relevant here because it pertains solely to SBS that a BD clears for its customer. We propose not to permit a BD-SD-SBSD relying on this relief to use the second exception.

⁸ 17 C.F.R. § 240.15c3-3(p)(3).

⁹ Specifically, SIFMA’s requested relief would be subject to the conditions that (1) the BD-SBSD’s reserve formula computation not include amounts that would otherwise have been included as debit items in an SBS customer reserve formula computation under Exhibit B to SEC Rule 15c3-3 (*e.g.*, for margin held in a qualified registered SBS account or third-party custodial account), (2) the BD-SBSD makes a record that identifies amounts included in the computation that are attributable to the BD-SBSD’s SBS activities and which would otherwise have been included as credit items in the BD-SBSD’s SBS customer reserve formula computation under Exhibit B to SEC Rule 15c3-3, and (3) qualified securities held in the customer reserve account meet the definition of the term “qualified security” under SEC Rule 15c3-3(a)(6) instead of SEC Rule 15c3-3(p)(1)(v) (*i.e.*, be limited to U.S. government securities and not include municipal securities).

. . . received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the [SEC].”¹⁰ “Customer property,” in turn, includes “cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer,”¹¹ which would include the IM held by the BD-SD-SBSD for the swap counterparty in the portfolio margin account. “Net equity” is defined in relevant part as the “dollar amount of the account or accounts of a customer,”¹² which would include the dollar amount credited to the portfolio margin account for IM posted by the swap counterparty.

In light of these provisions, an uncleared swap counterparty whose IM is held by a BD-SD-SBSD in a portfolio margin account would, with respect to that IM, be shielded from losses borne by unsecured creditors of the BD-SD-SBSD. And, although such a counterparty would bear so-called “fellow customer risk” to the extent the overall amount of securities customer property is not sufficient to meet securities customer net equity claims, the counterparty would be doing so willingly because it chose to take part in a portfolio margining program. In this regard, we note that we are not requesting relief from the elective IM segregation requirements of Subpart L of Part 23 of the CFTC’s Regulations, which would by their terms apply in this situation, meaning that an uncleared swap counterparty could still elect third-party IM segregation (and thereby effectively opt out of portfolio margining). Uncleared swap counterparties are all eligible contract participants who should be sophisticated enough to balance the relative risks and benefits of portfolio margining versus third-party segregation.

c. *Provide Relief From CFTC Rule 23.152(b)’s IM Posting Requirements for Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Account*

Other than its obligation to return customer property, which is addressed by SEC Rule 15c3-3 and SIPA as described above, a BD carrying a customer’s cash equity positions generally does not have any future obligations to the customer; instead, any extensions of credit are one-way, by the BD to the customer, such as a margin loan or securities loan/short sale.¹³ Accordingly, a BD is not required to post IM in relation to such positions. Although non-cleared equity SBS do involve credit exposure of the customer to the SBSB, the SEC opted solely to impose VM posting requirements in relation to such positions, in view of the liquidity and credit risk to which IM posting requirements would expose the SBSB. Although we understand that the CFTC made a different policy decision in relation to uncleared equity swaps, the CFTC should provide

¹⁰ 15 U.S.C. § 78III(2)(B)(ii).

¹¹ 15 U.S.C. § 78III(4).

¹² 15 U.S.C. § 78III(11).

¹³ Certain exceptions exist when a BD borrows a customer’s fully paid or excess margin securities or enters into hold-in-custody repurchase transactions with the customer, but SEC Rule 15c3-3 has special provisions designed to address these transactions.

an exception from a BD-SD-SBSD's IM posting requirements in the context of uncleared equity swaps that are portfolio margined in a FINRA Rule 4210(g) account.

Were a BD-SD-SBSD required to post IM in connection with such uncleared equity swaps, either (i) the BD-SD-SBSD would be required to post margin in respect of only the uncleared equity swaps or (ii) the BD-SD-SBSD would be required to post margin in relation to the entire portfolio. In the case of the former, the BD-SD-SBSD may end up receiving less IM from the customer than the IM it would be required to post. This is because calculating the BD-SD-SBSD's required IM based solely on the parties' uncleared equity swaps would fail to take into account the customer's offsetting obligations to the BD-SD-SBSD in connection with its other equity positions. By contrast, the calculation of the IM that the customer is required to post to the BD-SD-SBSD would take account of such risk-reducing effects. In the event of a SIPA proceeding in respect of a BD-SD-SBSD, all of these amounts would generally be netted, thus making the customer responsible for returning the excess IM it's received.¹⁴ Accordingly, such an exclusion would essentially result in a needlessly inflated measure of the customer's potential future exposure to the BD-SD-SBSD. Moreover, it would defeat the very premise of portfolio margining, which is that the BD-SD-SBSD's potential future obligations to the customer should be used to offset the customer's one-way obligations to pay back its margin loans and close out its short cash positions. Stated another way, by extending credit to finance its customer's cash equity positions, a BD-SD-SBSD already has economically put at risk its own funds to support the customer's trading, but excluding the customer's cash equity positions from the BD-SD-SBSD's IM posting calculation would ignore this economic reality. If those positions were included, however, the BD-SD-SBSD would needlessly be posting IM in respect of positions for which there is either no extension of credit (*i.e.*, fully paid positions) or only a one-way extension of credit by the BD-SD-SBSD to the customer (*i.e.*, where there is only a one-way credit risk).¹⁵ In either case, requiring the BD-SD-SBSD to post IM would increase the BD-SD-SBSD's liquidity and other risks, as compared to a portfolio that is limited to uncleared swaps and non-cleared SBS.

Additionally, this relief would not result in an overall change to the CFTC's margin framework because it would be limited solely to those uncleared equity swaps that are portfolio margined with other equity positions in a FINRA Rule 4210(g) portfolio margin account, not uncleared swaps more generally. An uncleared swap counterparty would not willingly forego the benefits of third-party segregation and collecting IM from a dealer unless it judged the benefits of portfolio margining to be

¹⁴ See generally 15 U.S.C. § 7811(11) (providing for a customer's net equity claim to be reduced by any obligations of the customer to the BD); 11 U.S.C. § 553 (preserving mutual rights of setoff); 15 U.S.C. § 78eee(b)(2)(B)(iii) (providing that the stay imposed by Securities Investor Protection Corporation shall not abrogate any right of setoff other than as contemplated by 11 U.S.C. § 553).

¹⁵ Although theoretically one could address these issues by eliminating fully paid positions from the IM posting calculation and reducing the BD-SD-SBSD's IM posting obligation to the extent of financing it has extended to the customer, neither the IM framework nor firms' operational processes for making IM calculations contemplate these adjustments.

more significant; as such, this relief is unlikely to apply except where the counterparty has significant cash equities, options, and SBS positions with the BD-SD-SBSD, in addition to its equity swaps.

- d. *Permit a BD-SD-SBSD to Follow FINRA and SEC Requirements for Eligibility of Collateral, Haircuts, Margin Collection Deadlines, and Documentation in Respect of Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Portfolio Margin Account, in Lieu of Their CFTC Equivalents*

Although substantively similar, there are some technical differences between the Commissions' respective collateral eligibility,¹⁶ haircut,¹⁷ timing,¹⁸ and documentation¹⁹ requirements. These differences would require significant changes to a BD-SD-SBSD's systems, procedures, and customer documentation in order to apply the stricter of the Commissions' requirements. Customers likewise would need to make major changes. We are concerned that the operational and compliance burden associated

¹⁶ The SEC permits margin to consist of U.S. dollars, a major foreign currency, the settlement currency of the non-cleared SBS, gold, securities, or money market instruments. *See* 17 C.F.R. § 240.18a-3(c)(4)(i)(A)-(D). Similarly, where the counterparty is a financial end user, the CFTC permits margin to consist of U.S. dollars, another "major currency," the settlement currency of the uncleared swap, gold, or securities. *See* 17 C.F.R. §23.156(a)(1) and (b)(1). However, the SEC and CFTC impose different eligibility criteria for securities. While the CFTC specifically enumerates the types of securities that are eligible as margin, the SEC requires that any margin be readily transferable and have a "ready market."

¹⁷ Both the SEC and CFTC require that a non-bank SBS or SD, respectively, apply certain standardized haircuts to the value of margin. However, although the SEC allows a non-bank SBS to choose to use either the standardized market risk deductions set forth in the SEC's capital rules or the haircuts prescribed under the CFTC's margin rules so long as the non-bank SBS applies the haircuts consistently with respect to a particular counterparty, *see* 17 C.F.R. § 240.18a-3(c)(3), the CFTC requires a non-bank SD to apply the CFTC's prescribed haircuts. *See* 17 C.F.R. § 23.156(a)(3) and (b)(2).

¹⁸ The SEC requires that a non-bank SBS calculate margin amounts for each counterparty each business day. It further requires that any IM or VM be transferred by the business day following such calculation. However, if a counterparty is located in a different country and is more than four time zones away, the margin need not be transferred until the second business day after calculation. *See* 17 C.F.R. § 240.18a-3(c)(1)(ii). Under the CFTC's margin rules, a non-bank SD must post or collect IM and VM on or before the business day after the day of execution of an uncleared swap. The day of execution is the day the parties enter into an uncleared swap. However, if: (1) each party is in a different calendar day at the time the parties enter into the uncleared swap, the day of execution is the latter of the two dates; and (2) if the uncleared swap is entered into (a) between 4:00 p.m. and midnight in the location of a party, or (b) on a day that is not a business day in the location of a party, then the day of execution is deemed to be the immediately succeeding business day that is a business day for both parties. *See* 17 C.F.R. §§ 23.151, 152.

¹⁹ The SEC requires that any collateral posted to meet a margin requirement be subject to an agreement between the non-bank SBS and the counterparty that is legally enforceable. *See* 17 C.F.R. § 18a-3(c)(4)(i)(E). The CFTC requires that a non-bank SD execute trading documentation with each counterparty that provides the non-bank SD with the right and obligation to exchange VM and IM as required by the CFTC's margin rules and imposes certain requirements on what the documentation must specify. *See* 17 C.F.R. § 23.158.

with making these changes would act as a major deterrent to portfolio margining. These burdens would also outweigh any benefits for customers or financial stability, considering the high level of similarity between the two sets of rules. Accordingly, in order to facilitate portfolio margining, the CFTC should provide relief from its collateral eligibility, haircut, margin collection deadline, and documentation requirements for uncleared equity swaps that a BD-SD-SBSD portfolio margins in a FINRA Rule 4210(g) account so long as the BD-SD-SBSD complies with the analogous SEC requirements.

2. The SEC Should Permit a BD-SD-SBSD to Calculate IM Requirements for Variance and Other TIMS-Ineligible Equity SBS Using the ISDA SIMM and to Portfolio Margin such SBS with Similar “Non-Delta-One” Equity Swaps

As noted above, TIMS calculates margin requirements by stressing equity positions in the relevant portfolio under a range of scenarios and determining how much margin would be necessary under all such scenarios. As a result, TIMS is generally only able to capture the potential future exposure of an equity SBS if the return on that equity SBS is based on the price movement of the relevant underliers. Although that is the case for most equity SBS, the return on certain equity SBS is based on volatility or other factors. For these positions, a nonbank SBSB cannot use TIMS to calculate IM.

The SEC should accordingly provide relief that permits a BD-SBSD to calculate the IM for a TIMS-ineligible equity SBS, including variance and volatility SBS, using an approved industry-standard model, such as the ISDA SIMM. Allowing a BD-SBSD to use the ISDA SIMM to calculate IM requirements for these positions would promote accurate calculations of IM. Further, such relief would not lead to discrepancies between the margin requirements applicable to cash positions and those applicable to non-cleared equity SBS, as there is no cash position analogue to variance, volatility, or other TIMS-ineligible SBS.

Further, the SEC should permit a BD-SD-SBSD to take into account risk offsets associated with similar “non-delta-one” equity swaps (*e.g.*, equity index variance or volatility swaps) when calculating the margin requirements applicable to TIMS-ineligible equity SBS. Such relief would promote the benefits of portfolio margining, without implicating any of the concerns that the Commissions raise.

3. The SEC Should Confirm That it Will Permit a Non-Bank SBSB to Take Into Account Offsets With Uncleared Credit Swaps When Calculating IM for Non-Cleared Credit SBS, so Long as the Non-Bank SBSB has Model Approval to Cover Both Products

SEC Rule 18a-3(d)(2)(i) states that “[e]mpirical correlations may be recognized by [an approved IM] model within each broad risk category, but not across broad risk categories.”²⁰ We understand this language to permit a non-bank SBSB that

²⁰ 17 C.F.R. § 240.18a-3(d)(2)(i).

uses a model to calculate IM for non-cleared credit SBS to recognize risk offsets of uncleared credit swaps, so long as the SEC has approved the model (either provisionally or permanently) for both types of positions. Indeed, in the preamble to the SEC's final margin rule, the SEC stated that its approach in this respect was consistent with both the CFTC's and prudential regulators' margin rules, which permit SDs and SBSDs to recognize risk offsets across swaps and SBS so long as they are part of the same risk category.²¹

However, unlike the CFTC, the SEC has not issued specific guidance on this point. As a result, there may be some uncertainty as to whether such offsets are permitted. In order to ensure there is not an undue and unintended limitation on portfolio margining, we ask that the SEC expressly confirm that a non-bank SBS is permitted to take into account offsets with uncleared credit swaps when calculating IM for non-cleared credit SBS, if the firm has an approved model that covers both kinds of positions.

4. The CFTC Should Provide Relief Necessary for a BD-SD-SBSD to Make Consolidated Margin Calls and Hold Regulatory Margin on a Consistent Basis in Satisfaction of House Margin Requirements

The technical inconsistencies and differing segregation, collateral eligibility, haircut, deadline, and documentation requirements of the Commissions' respective rules make it impossible for a BD-SD-SBSD to make an integrated margin call for all of the swap, SBS, and securities positions the firm maintains for a customer, which increases settlement risk and reduces liquidity by preventing a firm from netting offsetting margin posting and delivery obligations. In addition, if a firm must hold IM for different positions in different locations, it might not be able to apply that IM holistically toward its non-regulatory ("house") IM requirements for a customer.²² Further, different segregation, collateral eligibility, haircut, deadline, and documentation requirements increase the compliance burden associated with margin requirements by

²¹ See *Capital, Margin, and Segregation Requirements for [SBSs] and Major [SBS] Participants and Capital and Segregation Requirements for [BDs]*, 84 Fed. Reg. 43872, 43914 (Aug. 22, 2019) ("SEC Margin Rule").

²² For example, take a customer that has a concentrated position in a foreign equity security with a BD-SD-SBSD as well as a non-deliverable foreign exchange ("FX") forward that offsets the FX risk of that security position. The BD-SD-SBSD would be required to calculate and collect regulatory IM separately for the two positions. The BD-SD-SBSD might also require more house IM for the security position than its regulatory IM calculation would dictate, but for house margin purposes it would look to recognize the FX risk offsets between the two positions (resulting in a house IM requirement that is overall less than the overall regulatory IM requirement) and apply regulatory IM collected for both positions towards that house margin requirement. However, if some of the regulatory IM must be held away from the firm at a third-party custodian (e.g., for the FX position), then the firm may not be able to recognize that IM for FINRA purposes. FINRA Rule 4210(g)(1)(H) effectively incorporates house margin requirements into a firm's regulatory obligations for portfolio margin accounts. But a firm likely could not rely on margin for these purposes if it is not within the firm's possession or control (e.g., if it is held away at a third-party custodian).

preventing a customer from relying on a single set of documentation, and foster uncertainty by applying disparate segregation or insolvency regimes to different parts of the customer's overall portfolio.

We therefore request that the CFTC grant the following relief in relation to credit, rate, FX and commodity swaps, as well as uncleared equity swaps not held in a FINRA Rule 4210(g) portfolio margin account.²³ We emphasize that, even with this relief, a BD-SD-SBSD would still calculate regulatory IM amounts separately for positions in different asset classes, and it would still post IM for its uncleared swaps.²⁴

- a. *Provide Relief From CFTC Rule 23.157(b)'s IM Segregation Requirements for a BD-SD-SBSD That Holds IM in Accordance with SEC Rule 15c3-3 and Applies That IM to House Margin Requirements for Securities*

Allowing a BD-SD-SBSD to hold IM in accordance with SEC Rule 15c3-3 and apply that IM to house margin requirements would limit the need for such a firm to both post and collect offsetting amounts, without increasing leverage or reducing customer protection. With respect to leverage, as discussed in Part I.1.b. above, subjecting IM to SEC Rule 15c3-3 would generally limit the firm's ability to re-hypothecate, re-pledge, or re-use such IM. With regards to customer protection, a customer's claim for the return of margin would be a "customer claim" for purposes of SIPA, though the analysis is somewhat different from the analysis in the context of a FINRA Rule 4210(g) account.

Under SIPA, the definition of "customer" includes "any person . . . who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person . . . as collateral . . ." ²⁵ As a result, if a customer posts securities to a BD and those securities are held in and serve as collateral for the customer's securities account (e.g., by satisfying house margin obligations), then the customer's claim for such securities would be a "customer" claim under SIPA. Although the foregoing definition does not address cash margin, the SIPA customer definition also includes "any person who has deposited cash with the debtor for the purpose of purchasing securities."²⁶ If cash margin is applied to house margin requirements associated with a securities account, such margin would constitute cash deposited with the BD for purposes of purchasing

²³ We note that this relief should also apply to a BD-SD that is not an SBSBD.

²⁴ Where permitted under CFTC No-Action Letter 16-71, the IM posted or collected by the firm could be computed on a portfolio-wide basis across uncleared swaps and non-cleared SBS in the same asset class.

²⁵ 15 U.S.C. § 7811(2)(A).

²⁶ 15 U.S.C. § 7811(2)(B)(i).

securities. Thus, the customer's claim for the return of such margin would similarly be a "customer" claim.

As noted above, "customer property" under SIPA includes "cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer,"²⁷ and a customer's "net equity" claim is the dollar amount of its accounts. Accordingly, the securities or cash margin that a customer posts in relation to uncleared swaps would be customer property and a customer would have a net equity claim in relation to such margin, in each case so long as the margin is subject to SEC Rule 15c3-3 and used to meet house margin requirements for securities.

- b. *Permit a BD-SD-SBSD to Follow FINRA and SEC Requirements for Eligibility of Collateral, Haircuts, Margin Collection Deadlines, and Documentation in Lieu of Their CFTC Equivalents*

As discussed in Part I.1.d. above, the Commissions' respective eligible collateral, haircut schedules, timing provisions, and documentation requirements are broadly similar. However, certain technical differences make it difficult to comply with both requirements simultaneously, which would prevent integrated margin calls, and may require customers to execute multiple sets of documentation. To ensure those differences do not needlessly increase settlement risk and compliance costs, the CFTC should permit a BD-SD-SBSD to follow the SEC and FINRA's collateral eligibility, haircut, margin collection deadline, and documentation requirements for uncleared credit, rate, FX, and commodity swaps, as well as uncleared equity swaps not held in a FINRA Rule 4210(g) portfolio margin account.

5. Timing Considerations

Finally, we note that any relief provided by the CFTC based on compliance with FINRA and SEC rules as requested above should apply in advance of the official compliance date of the SEC's SBS margin and segregation rules, on the condition that the firm apply those rules at that time (as well as FINRA Rule 4210 and SEC Rule 15c3-3, which are already in effect). Certain counterparties will come within the scope of the CFTC's margin rules a little more than one month before the compliance date of the SEC's margin and segregation rules. During this interim period, dual registrants should not be required to comply with the CFTC's rules, only to re-document their entire relationship within a month to comply with the SEC's rules.

²⁷ 15 U.S.C. § 78III(4).

II. Standalone SD-SBSD (Including an OTCDD)

Most standalone SD-SBSDs, as well as SD-SBSDs that are dually registered as OTCDDs, will be eligible from the exemption from the SEC's segregation requirements under SEC Rule 18a-4(f) and will therefore only be subject to one set of segregation requirements and insolvency treatment.²⁸ In addition, CFTC No-Action Letter 16-71 already permits such a firm to portfolio margin uncleared swaps and non-cleared SBS together under CFTC rules. Accordingly, our comments below focus on the steps necessary to allow an SD-SBSD to comply with the CFTC's margin requirements and recognize risk offsets of all OTC derivatives positions in the same asset class.

1. The Commissions Should Permit an SD or SBSBD Registered as an OTCDD or Exempt From BD Registration Under SEC Rule 15a-6 to Portfolio Margin OTC Securities Options with Non-Cleared SBS and Uncleared Swaps in the Same Risk Category

As discussed in Part I.1.c. above, we understand SEC Rule 18a-3 to permit a non-bank SBSBD to recognize risk offsets from uncleared swaps when calculating IM requirements for non-cleared SBS in the same risk category. Similarly, CFTC No-Action Letter 16-71 permits a non-bank SD to recognize risk offsets of non-cleared SBS when calculating uncleared swap IM requirements in relation to the same risk category. However, neither Commission has provided similar relief in relation to OTC securities options positions.²⁹ At the same time, we expect that several standalone SD-SBSDs will also be registered as OTCDDs or be foreign BDs exempt from BD registration under SEC Rule 15a-6, thus permitting them to transact in OTC securities options with their swaps and SBS customers. Preventing such customers from portfolio margining their options, swaps, and SBS positions together unnecessarily increases margin requirements for customers. We therefore request that the Commissions provide relief permitting (but not requiring) a non-bank SD or SBSBD that is an OTCDD or foreign BD exempt from BD registration under SEC Rule 15a-6 to portfolio margin OTC securities options with SBS and swaps in the same asset class.

The same rationales discussed above and articulated by the Commissions support such relief. Specifically, incorporating OTC securities options into margin calculations will allow the relevant firms to calculate margin requirements that appropriately reflect a relevant customer's portfolio and thereby prevent an undue drain on liquidity and distortion of incentives. In the absence of such relief, customers will

²⁸ If an SD-SBSD is eligible for SEC Rule 18a-4(f), then it should not be treated as a stockbroker for purposes of the U.S. Bankruptcy Code. Instead, its swaps, SBS, and option counterparties will be general creditors of the SD-SBSD.

²⁹ In particular, SEC Rule 18a-3(d)(2)(ii), which permits a standalone SD-SBSD (including an OTCDD) to use a model to compute IM requirements for equity SBS does not appear to permit the firm to include equity options in the customer's account.

face needlessly high margin requirements, an inefficient allocation of resources, and disincentives to mitigate risk.

2. The SEC Should Confirm that a Standalone SD-SBSD, as Well as an OTCDD, May Take Into Account Uncleared Credit Swaps When Calculating IM Requirements Applicable to Non-Cleared Credit SBS, so Long as the Standalone SD-SBSD has Model Approval to Cover Both Products

As in the context of a BD-SD-SBSD, it would be helpful if the SEC could confirm that the current SEC margin rules permit a standalone SD-SBSD, as well as an SD-SBSD that is also an OTCDD, to take into account offsets between non-cleared credit SBS and uncleared credit swaps when calculating IM, so long as the firm has model approval to cover both products.

3. The SEC Should Confirm That the Collection of Equity Securities Does not Cause the Account of the Counterparty to Hold Equity Securities Positions for Purposes of SEC Rule 18a-3(d)(2)(ii)

SEC Rule 18a-3(d)(2)(ii) permits a standalone SBSB or OTCDD to use a model (other than TIMS) to calculate IM requirements for equity SBS, provided that “the account of the counterparty subject to the requirements of this paragraph may not hold equity security positions other than equity security-based swaps and equity swaps.” In the preamble to this rule, the SEC explained that the reason for this limitation was “to ensure that a stand-alone SBSB cannot provide more favorable treatment for [cash market positions] than a stand-alone or [alternative net capital BD] that is subject to the margin requirements of the Federal Reserve’s Regulation T and the margin rules of the [self-regulatory organizations].”³⁰

Consistently with the requirements of both Commissions’ margin rules, a standalone SBSB, including an OTCDD, may agree to allow its customers to post qualifying equity securities as collateral. Such posting does not raise the concerns about regulatory arbitrage or disparate treatment that undergird the rationale for the proviso in SEC Rule 18a-3(d)(2)(ii) so long as the equity securities are not also margined by the relevant SD-SBSD together with the equity swaps and SBS using the non-TIMS model. However, the breadth of the language in SEC Rule 18a-3(d)(2)(ii) creates uncertainty as to whether a standalone SBSB or OTCDD would be permitted to use a model (other than TIMS) to calculate IM requirements for equity SBS if it collected equity securities as collateral for the SBS. We therefore request that the SEC confirm that a standalone SD-SBSD’s collection of equity securities as collateral does not frustrate the ability of the firm to use the SIMM or other non-TIMS model to calculate IM requirements.

³⁰ SEC Margin Rule at 43914.

4. The SEC Should Permit Compliance with CFTC Requirements for Eligibility of Collateral and Margin Collection Deadlines in Lieu of Analogous SEC Requirements for Non-Cleared SBS Portfolio Margined With Uncleared Swaps Under CFTC No-Action Letter 16-71

Even if a firm can apply risk offsets across products, technical conflicts between the Commissions' respective collateral eligibility and margin collection deadline requirements limit the ability of the firm to make consolidated margin calls. This limitation does not serve significant policy ends, considering the substance of the Commissions' requirements is quite similar. Indeed, the SEC itself has noted that the CFTC's margin requirements are "largely comparable."³¹ Therefore, in order to facilitate portfolio margining, we request that the SEC grant relief to standalone SD-SBSDs, including OTCDDs, from the SEC's collateral eligibility and margin collection deadline requirements in relation to non-cleared SBS that the SD-SBSD portfolio margins with uncleared swaps in accordance with CFTC No-Action Letter 16-71, so long as the firm complies with the CFTC's analogous requirements (either directly or through substituted compliance). This relief would facilitate the ability of a standalone SD-SBSD to portfolio margin uncleared swaps with non-cleared SBS without negatively affecting any of the SEC's policy goals.

III. Parity of Treatment of Non-"Financial End Users"

Under the CFTC's margin rules, a non-bank SD is exempted from exchanging margin with a counterparty that is not a "financial end user," regardless of whether that counterparty satisfies the requirements set out in the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA").³² The CFTC's approach aligns not only with the approach taken by the prudential regulators, but also that adopted by the Working Group on Margin Requirements.

The SEC opted not to follow this approach in its margin rules, but instead to require an SBSBD to exchange VM with a counterparty unless that counterparty is a "commercial end user" within the scope of TRIPRA. The decision, the SEC explained, was premised on a desire to ensure the safety and soundness of a non-bank SBSBD. Although we understand how this concern informs a decision to require non-bank SBSBDs to *collect* VM from non-financial end users that do not satisfy the "commercial end user" definition, the requirement that SBSBDs *post* VM to these entities actually exposes SBSBDs to greater credit risk. In the event the counterparty defaults and fails to return any excess VM, the SBSBD would be exposed to losses. In addition, the posting requirement locks up significant liquidity that SBSBDs could deploy to reduce costs to customers or address liquidity stress scenarios.

³¹ *Id.* at 43909.

³² See Public Law 114-1, 129 Stat. 3 (2015).

Mr. Kirkpatrick and Ms. Countryman

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In order to promote SBSB safety and soundness and prevent a needless diminution of SBSB liquidity, we request that the SEC grant relief allowing a non-bank SBSB (whether a full-purpose BD-SBSB, standalone SBSB, or OTCDD-SBSB) not to post VM to non-financial end users, regardless of whether they constitute “commercial end users.”

* * *

We appreciate the opportunity to provide comments in response to the Commissions’ Request for Comment and the Commissions’ consideration of our views. The Associations look forward to continuing dialogue with the Commissions on potential ways to implement portfolio margining of uncleared swaps and non-cleared SBS. If you have any questions or would like additional information, please contact the undersigned .

Very truly yours,



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Appendix A: Summary of Requested Relief

Portfolio Margining at a BD-SD-SBSD: Uncleared Equity Swaps, Non-Cleared Equity SBS, and Other Securities Positions in a FINRA Rule 4210(g) Portfolio Margin Account (See Section I.1)

A BD-SD-SBSD should be permitted to portfolio margin all cash equity positions, equity options, uncleared equity swaps, and non-cleared equity SBS in accordance with the margin requirements of FINRA Rule 4210(g) and SEC Rule 18a-3 and the segregation requirements of SEC Rule 15c3-3 for a counterparty that is also a “customer” and a “security-based swap customer” under SEC Rule 15c3-3 and if the firm does not rely on such rule’s segregation exceptions for margin held in a qualified registered SBSB account or third-party custodial account

<u>Required Entity Registrations</u>	<u>Products Eligible for Portfolio Margining</u>	<u>Applicable Segregation Rules</u>
BD OTCDD	Cash Securities Positions	CFTC Independent Third Party Segregation (Rule 23.157) SEC BD Customer Protection (Rule 15c3-3) SEC SBSB Segregation (Rule 18a-4)
SD SBSB	Listed Securities Positions OTC Securities Options Uncleared Swaps Non-Cleared SBS	<u>Applicable Margin Rules</u> Regulation T CFTC Uncleared Swaps Margin Rules (Rules 23.150 – 23.161) SEC Non-Cleared SBS Margin Rules (Rule 18a-3) (for uncleared swaps and non-cleared SBS) FINRA Rule 4210 (for other securities positions)

Portfolio Margining at a BD-SD-SBSD: Uncleared Equity Swaps, Non-Cleared Equity SBS, and Other Securities Positions in a FINRA Rule 4210(g) Portfolio Margin Account (See Section I.1)

Requested Relief From the CFTC

- Permit a BD-SD-SBSD to calculate IM requirements for uncleared equity swaps using the methodology set forth in FINRA Rule 4210(g) and SEC Rule 18a-3, with offsets for non-cleared equity SBS, equity options, and cash equity positions, in lieu of CFTC Rule 23.154 (*see* Section I.1.a)
- Permit a BD-SD-SBSD to comply with SEC Rule 15c3-3's segregation requirements in lieu of CFTC Rule 23.157(b)'s third-party IM segregation requirements in respect of uncleared equity swaps portfolio margined in a FINRA Rule 4210(g) account (*see* Section I.1.b)
- Provide relief from CFTC Rule 23.152(b)'s IM posting requirements for uncleared equity swaps portfolio margined in a FINRA Rule 4210(g) account (*see* Section I.1.c)
- Permit a BD-SD-SBSD to follow FINRA and SEC requirements for eligibility of collateral, haircuts, margin collection deadlines, and documentation in respect of uncleared equity swaps portfolio margined in a FINRA Rule 4210(g) portfolio margin account, in lieu of their CFTC equivalents (*see* Section I.1.d)

Portfolio Margining at a BD-SD-SBSD: Other Securities Positions in a Regulation T Margin Account, Uncleared Swaps, and Non-Cleared SBS (See Section I.2-4)

A BD-SD-SBSD should be permitted to make consolidated margin calls for a customer’s uncleared swaps together with its non-cleared SBS and securities positions and hold regulatory margin collected for those positions together in accordance with SEC Rule 15c3-3, so that the BD-SD-SBSD can apply that margin toward its house margin requirements, for a counterparty that is also a “customer” and a “security-based swap customer” under SEC Rule 15c3-3 and if the firm does not rely on such rule’s segregation exceptions for margin held in a qualified registered SBS account or third-party custodial account

<u>Required Entity Registrations</u>	<u>Products Eligible for Portfolio Margining</u>	<u>Applicable Segregation Rules</u>
BD OTCDD	Cash Securities Positions	CFTC Independent Third Party Segregation (Rule 23.157) SEC BD Customer Protection (Rule 15c3-3) SEC SBS Segregation (Rule 18a-4)
SD	Listed Securities Positions	<u>Applicable Margin Rules</u>
SBSD	OTC Securities Options Uncleared Swaps Non-Cleared SBS	Regulation T (for other securities positions) CFTC Uncleared Swaps Margin Rules (Rules 23.150 – 23.161) (for IM calculation and posting requirements in relation to uncleared swaps) SEC Non-Cleared SBS Margin Rules (Rule 18a-3) (for uncleared swaps and non-cleared SBS) FINRA Rule 4210 (for other securities positions)

Portfolio Margining at a BD-SD-SBSD: Other Securities Positions in a Regulation T Margin Account, Uncleared Swaps, and Non-Cleared SBS (See Section I.2-4)

Requested Relief

CFTC

With respect to credit, rate, FX, and commodity swaps, as well as uncleared equity swaps not held in a FINRA Rule 4210(g) portfolio margin account:

- Provide relief from CFTC Rule 23.157(b)'s IM segregation requirements for a BD-SD-SBSD that holds IM in accordance with SEC Rule 15c3-3 and applies that IM to house margin requirements for securities (*see* Section I.4.a)
- Permit a BD-SD-SBSD to follow FINRA and SEC requirements for eligibility of collateral, haircuts, margin collection deadlines, and documentation in lieu of their CFTC equivalents (*see* Section I.4.b)

SEC

- Permit a BD-SD-SBSD to calculate IM requirements for variance and other TMS-ineligible equity SBS using the ISDA SIMM and to portfolio margin such SBS with similar “non-delta-one” equity swaps (*see* Section I.2)
- Confirm that the SEC will permit a non-bank SBSD to take into account offsets with uncleared credit swaps when calculating IM for non-cleared credit SBS, so long as the non-bank SBSD has model approval to cover both products (*see* Section I.3)

Portfolio Margining at a Standalone SD-SBSD (Including an OTCDD): Uncleared Swaps, Non-Cleared SBS, and OTC Securities Options in a Swaps Account (See Section II)

A non-bank SD-SBSD that is either not registered as a BD or that is registered as an OTCDD should be able to portfolio margin all eligible OTC derivatives positions, including OTC securities options, non-cleared SBS, and uncleared swaps, in accordance with CFTC rules, subject to SEC IM model approval and if the firm is exempt from SEC segregation requirements pursuant to SEC Rule 18a-4(f)

<u>Required Entity Registrations</u>	<u>Products Eligible for Portfolio Margining</u>	<u>Applicable Segregation Rules</u>
BD	Cash Securities Positions	CFTC Independent Third Party Segregation (Rule 23.157)
OTCDD	Listed Securities Positions	SEC BD Customer Protection (Rule 15c3-3)
SD	OTC Securities Options	SEC SBSB Segregation (Rule 18a-4)
SBSD	Uncleared Swaps	<u>Applicable Margin Rules</u>
	Non-Cleared SBS	Regulation T
		CFTC Uncleared Swaps Margin Rules (Rules 23.150 – 23.161)
		SEC Non-Cleared SBS Margin Rules (Rule 18a-3)
		FINRA Rule 4210

Portfolio Margining at a Standalone SD-SBSD (Including an OTCDD): Uncleared Swaps, Non-Cleared SBS, and OTC Securities Options in a Swaps Account (See Section II)

Requested Relief

CFTC

- Permit a standalone SD registered as an OTCDD to portfolio margin OTC securities options with non-cleared SBS and uncleared swaps in the same risk category (*see* Section II.1)

SEC

- Permit a standalone SBSB registered as an OTCDD or exempt from BD registration under SEC Rule 15a-6 to portfolio margin OTC securities options with non-cleared SBS and uncleared swaps in the same risk category (*see* Section II.1)
- Confirm that a standalone SD-SBSD, as well as an OTCDD, may take into account uncleared credit swaps when calculating IM requirements applicable to non-cleared credit SBS, so long as the standalone SD-SBSD has model approval to cover both products (*see* Section II.2)
- Confirm that the collection of equity securities as collateral does not cause the account of the counterparty to hold equity securities positions for purposes of SEC Rule 18a-3(d)(2)(ii) (*see* Section II.3)
- Permit compliance with CFTC requirements for eligibility of collateral and margin collection deadlines in lieu of analogous SEC requirements for non-cleared SBS portfolio margined with uncleared swaps under CFTC No-Action Letter 16-71 (*see* Section II.4)