sifma
asset management group

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https://comments.cftc.gov

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
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Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-1090

Re: Joint Request for Comment on Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps (Release No. 34-90246; File No. S7-15-20) [RIN 3038-AF07]

Dear Mr. Kirkpatrick and Ms. Countryman:

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG")[1] appreciates this opportunity to provide the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and, together with the CFTC, the "Commissions") with comments in response to the joint request for comment ("Request") on portfolio margining of uncleared swaps and non-cleared security-based swaps ("SBS"). SIFMA AMG members strongly support a portfolio margining initiative for uncleared swaps and SBS and applaud the CFTC and the SEC for taking steps in this regard.

Executive Summary

Portfolio margining, which enables members to recognize risk offsets across related positions in a safe and efficient way, is important to the operation of the derivatives markets and the risk management and hedging opportunities they afford. Facilitating recognition of risk offsets has long been recognized as an effective means to reduce or eliminate the risks of trading and to promote margin and capital efficiency.[2] Moreover, it helps avoid the fragmentation that might result from regulatory segmentation of products that are otherwise very similar. For example, index credit default swaps ("CDS") and single-name CDS are not viewed as separate asset classes by market participants. It is typical for these instruments to be traded from a single trading desk and margined on a portfolio basis where permitted. Market participants have noted that the need to margin index and single-name CDS separately as a result of post-financial crisis reforms in the United States increases operational complexity and costs[3] and diminishes the effectiveness of CDS as a hedging tool. That approach would also be inconsistent with that taken globally. This is just one of many instances in which an effective portfolio margining regime for

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms—both independent and broker-dealer affiliated—whose combined 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. For more information, visit http://www.sifma.org/SIFMA AMG.

[2] SIFMA AMG, Comment Letter to SEC on the Proposed Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants at 14 (Feb. 22, 2013) ("2013 SIFMA AMG Comment Letter").

[3] Futures Industry Association & SIFMA AMG, *Regulatory Recalibration & Industry Collaboration: Key Themes from the Asset Management Derivatives Forum* at 10 (Apr. 2019), https://www.sifma.org/wp-content/uploads/2019/04/FIA-SIFMA-SIFMA AMG-AMDF-2019-Debrief-FINAL.pdf.

uncleared swaps and non-cleared SBS would facilitate smooth functioning of the derivatives markets, which operate on a global scale.

SIFMA AMG members thank the Commissions for their efforts to provide portfolio margining relief. We reiterate the urgent need for coordinated action given the impending registration compliance date for security-based swap dealers ("SBSDs"). In light of the broad scope of the Request and the relatively short comment period, this comment letter focuses on setting forth the broad principles our members would urge the Commissions to preserve in designing a portfolio margining regime for uncleared swaps and non-cleared SBS. In summary, SIFMA AMG respectfully requests market participants be permitted to:

- regardless of the type of dealer counterparty involved, comply solely with the CFTC's margin requirements for uncleared swaps ("CFTC Margin Rules")[4] and related CFTC regulatory requirements[5] when transacting uncleared swaps and non-cleared SBS,[6] *in lieu of* the SEC's margin requirements for non-cleared SBS ("SEC Margin Rules")[7] and related SEC regulatory requirements;[8] and, in addition,

- when transacting with a swap dealer ("SD") that is also registered with the SEC as an SBSD and as a full purpose broker-dealer (a "BD/SD/SBSD"), also be provided the option to portfolio margin all securities positions (cash securities, securities options, and non-cleared SBS) and uncleared swaps, in accordance with the SEC Margin Rules, and, in appropriate cases, FINRA Rule 4210(g), while permitting firms to follow the related regulatory requirements of the SEC/FINRA in their entirety, *in lieu of* the CFTC Margin Rules and related regulatory requirements.

Portfolio Margining Uncleared Swaps and Non-Cleared SBS

Among the highest priorities for regulatory relief for SIFMA AMG members is the ability to portfolio margin uncleared swaps and non-cleared SBS in an efficient manner, without being subjected to conflicting and duplicative regulatory requirements. As the Request noted, there are significant differences between the CFTC Margin Rules and the SEC Margin Rules. In response to the Request's questions as to how to address those differences in the context of portfolio margining, SIFMA AMG respectfully requests that the SEC permit compliance with the CFTC Margin Rules *in lieu of* the SEC Margin Rules when parties are transacting uncleared swaps and non-cleared SBS, on the condition that the dealer fully comports with the CFTC Margin Rules and related regulatory requirements.[9] To the extent the SEC is not willing to permit this relief with respect to all

[4] 17 CFR Part 23, Subpart E. The model-based margin calculation would recognize risk offsets only within the broad risk categories specified in 17 CFR 23.154(b)(2)(v).

[5] Such related regulatory requirements would include capital, segregation, and documentation requirements related to margin for uncleared swaps.

[6] This approach would translate into portfolio margining in a "swap account" as described in Section III.B.3. of the Request, although we are not aware of uncleared swaps having a specific CFTC regulatory account classification (as compared to cleared swaps, which are held in 4d(f) accounts).

[7] 17 CFR 240.18a-3, 240.18a-4.

[8] Such related regulatory requirements would include capital, segregation, and documentation requirements related to margin for non-cleared SBS.

[9] Throughout this letter, where the context allows, references to the CFTC Margin Rules and related CFTC regulatory requirements shall include non-U.S. rules determined "consistent with United States law" pursuant to 17 CFR 23.160(c) or otherwise determined by the CFTC to be comparable or equivalent to such CFTC requirements.

uncleared swaps and non-cleared SBS positions transacted with a BD/SD/SBSD counterparty, we ask that this relief be granted, at a minimum, for non-equity SBS and swaps positions with such counterparty.

In effect, we are requesting that the Commissions permit market participants to maintain the *status quo* under CFTC Staff No-Action Letter 16-71 ("Letter 16-71") even after the SEC Margin Rules come into effect,[10] by allowing dealers to include non-cleared SBS in the same product set as uncleared swaps and to post and collect IM on a portfolio basis across those positions in accordance with the CFTC Margin Rules, while not subjecting those positions also to the SEC Margin Rules or to other related SEC regulatory requirements. In particular, we would recommend that the Commissions adopt a holistic approach that allows meaningful deference in all aspects to the CFTC Margin Rules and related regulatory approaches, including:

(a) requirements for bilateral posting and third-party segregation of IM;

(b) the prohibition on rehypothecation of IM;

(c) thresholds for the applicability of IM requirements (*i.e.*, the "material swaps exposure" ("MSE") threshold of $8 billion and the average aggregate notional amount ("AANA") concept, and each of the relevant phases of the CFTC's implementation schedule);

(d) the ability to treat IM that a dealer posts with a third-party custodian as a current asset in accordance with the CFTC's capital rule for SDs;[11] and

(e) the CFTC's substituted compliance framework, including any comparability determinations that have been made.[12]

In this regard, for non-cleared SBS margined together with uncleared swaps on a portfolio basis under the CFTC Margin Rules, we would ask that the CFTC explicitly recognize for this purpose that such SBS are subject to the supervision of the CFTC and are regulated as "swaps" by the CFTC, as equivalence determinations of international regulators, such as the European Commission's determination allowing compliance with the CFTC Margin Rules in lieu of equivalent requirements under the European Market Infrastructure Regulation, are generally only available where a transaction type is subject to the CFTC Margin Rules, and expressly do not apply to the SEC Margin Rules.[13] This is consistent with the spirit of one of the conditions for the no-action relief in Letter 16-71:

[10] CFTC Staff No-Action Letter 16-71 (Aug. 23, 2016).

[11] 17 CFR 23.100 *et seq.*

[12] Applying the CFTC's IM thresholds with respect to a portfolio of uncleared swaps and non-cleared SBS margined together would allow financial end users facing both prudentially regulated and non-prudentially regulated dealers to apply a consistent scoping analysis for IM across their portfolios of uncleared swaps and non-cleared SBS. Of note, the CFTC Margin Rules currently require daily exchange of variation margin for all uncleared swaps with financial end users, whether or not the financial end user has MSE or has come into scope for IM requirements. A dealer's current exposures to a financial end user would therefore be mitigated under the CFTC Margin Rules just as under the SEC Margin Rules. *See* 17 CFR 23.153(a)-(b), 18a-3(c). Moreover, non-cleared SBS are included in the calculation of an end user's AANA and MSE under the CFTC Margin Rules, and a financial end user whose uncleared swaps and non-cleared SBS together exceed the CFTC thresholds would therefore be required to begin posting IM (assuming the $50 million regulatory IM threshold has also been breached). In addition, both the CFTC and the SEC require SD/SBSDs to include uncleared transactions with *all* financial end users within their capital requirement calculation. *See* 17 CFR 23.100, 18a-1(a)(1); Final Rule, Capital Requirements of Swap Dealers and Major Swap Participants, 85 Fed. Reg. 57462, 57478 (Sept. 15, 2020).

[13] European Commission Implementing Decision (EU) 2017/1857, O.J. L 265, 14.10.2017, at 23-27, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1857&from=ES.

"The security-based swaps shall be treated as if they were swaps for all applicable provisions of Commission Regulations 23.150 – 161."[14]

We believe that portfolio margining relief crafted along these principles would preserve market stability and avoid unnecessary costs and risks associated with an untested hybrid regulatory regime. In addition, we believe operating under the CFTC Margin Rules in portfolio margining uncleared swaps and non-cleared SBS would enhance customer protection and effectively address issues raised by the Request with respect to bankruptcy treatment, as discussed below.

Features of the CFTC Margin Rules, including bilateral posting and third-party segregation of IM, are preferable from a customer protection perspective because they are designed to mitigate credit exposure to dealer counterparties regardless of the different types of specialized customer protection and bankruptcy regimes that may apply to the dealer (including non-U.S. regimes, as discussed below).[15] Providing for bilateral posting and third-party segregation of margin for portfolios of uncleared swaps and non-cleared SBS, as under Letter 16-71, would further the Commissions' objectives of investor protection and mitigation of systemic risk. These safeguards would protect a financial end user upon the default of its counterparty even in the absence of insolvency.[16] If, as under the SEC's rules, a dealer were not required to post collateral with a third-party custodian to secure financial end users, such as SIFMA AMG members, the failure of even one dealer could cause ripple effects throughout the financial system.[17] Moreover, some funds, including those registered under the Investment Company Act of 1940 ("1940 Act"), are required by law to segregate collateral with their qualified custodians.

SIFMA AMG also supports application of the CFTC Margin Rules' absolute prohibition on rehypothecation of IM.[18] Rehypothecation is antithetical to the primary purpose of IM: the mitigation of credit risk.[19] Rehypothecated IM may not be available to be returned to the pledgor in the event of a default by, or insolvency of, the secured creditor.[20] Accordingly, consistent with domestic and international standards, including rules applicable to funds that are regulated under the 1940 Act, a dealer should not have the ability to rehypothecate IM posted by a counterparty for uncleared swaps and non-cleared SBS margined on a portfolio basis.

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[14] Letter 16-71, condition 4.

[15] 2013 SIFMA AMG Comment Letter at 5.

[16] *See* CFTC, Final Rule: Margin Requirements for Uncleared Swaps for Swap Dealers, 81 Fed. Reg. 636, 649 (Jan. 6, 2016) (explaining that "[t]he posting requirement [for covered swap entities] under the final rule is one way in which the Commission seeks to reduce overall risk to the financial system, by providing initial margin to non-dealer swap market counterparties that are interconnected participants in the financial markets (i.e., financial end users that have material swap exposure)" and acknowledging commenters' views that a bilateral IM requirement "not only would better protect financial end users from concerns about failure of a CSE, but also would act as a discipline on CSEs by requiring them to post margin reflecting the risk of their swaps business"); 2013 SIFMA AMG Comment Letter at 5-6.

[17] *See* 81 Fed. Reg. at 649; 2013 SIFMA AMG Comment Letter at 5.

[18] *See* 2018 SIFMA AMG Comment Letter at 3 ("Consistent with domestic and international standards, including rules applicable to funds that are regulated under the Investment Company Act of 1940, SBS Entities should not have the ability to rehypothecate initial margin posted to them.").

[19] SIFMA AMG, Comment Letter to Multiple Regulators Regarding Margin and Capital Requirements for Uncleared Swaps at 23 ("2014 SIFMA AMG Comment Letter").

[20] *See* 81 Fed. Reg. at 688 n. 392 (Jan. 6, 2016) ("[A] default or liquidity event that occurs at one link along the rehypothecation chain may induce further defaults or liquidity events for other links in the rehypothecation chain as access to the collateral for other positions may be obstructed by a default further up the chain. Also, in the event of one default along the chain, there is an increased chance that each party along the chain will ask for the rehypothecated collateral to be returned to them at the same time, leaving just one party with the collateral. This spiraling event is the result of only one asset being pledged for all the positions along the rehypothecation chain."); *see also* 2014 SIFMA AMG Comment Letter at 23.

In light of the safeguards described above, we believe a portfolio margining relief that preserves these principles would offer certainty and customer protection benefits in an insolvency scenario. As the Request notes, it is not clear whether, and the extent to which, non-cleared SBS and uncleared swaps positions and assets would be eligible for customer treatment under Subchapter III of Chapter 7 of the U.S. Bankruptcy Code ("Subchapter III").[21] Subchapter III only gives customer treatment for non-cleared SBS to the extent of any margin delivered, depending on where and how such margin is held.[22] As such, and because the SEC Margin Rules do not require an SBSD to post IM, in an insolvency scenario, a counterparty would likely have an uncollateralized exposure as opposed to a customer claim with respect to a non-cleared SBS and uncleared swaps portfolio margined in accordance with the SEC Margin Rules. By contrast, because the CFTC Margin Rules require two-way posting of IM, with such IM held with an unaffiliated third-party custodian subject to a perfected security interest of the secured party, a counterparty to non-cleared SBS and uncleared swaps portfolio margined pursuant to the CFTC Margin Rules would be secured to the extent of the IM posted by the insolvent dealer.[23] The CFTC Margin Rules' prohibition on rehypothecation of such IM and requirement that the relevant custodial agreements be valid and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding, provide additional assurance that IM would be available to a non-defaulting counterparty in an insolvency scenario. In enacting the CFTC Margin Rules, the CFTC recognized the need to account for the different regulatory and insolvency regimes to which dealers may be subject. As noted above, the primary bankruptcy regime that may apply to an insolvent dealer may be a non-U.S. regime, with the result that the extent of bankruptcy protection may not ultimately be determined by U.S. law or regulation.[24]

Given SIFMA AMG's support for a bilateral obligation to post IM with a third-party custodian, we would further request that the SEC allow a dealer to apply the CFTC's capital treatment for uncleared swap margin to non-cleared SBS margined with uncleared swaps on a portfolio basis. We do not believe that a dealer should be subject to a capital charge for unsecured receivables resulting from posting IM with a third-party custodian pursuant to CFTC Margin Rules.[25] As we have stated previously, capital and collateral requirements should generally be

[21] 11 USC 741-753. While an SBS constitutes a "security" for purposes of Subchapter III, those provisions only treat a party to a non-cleared SBS as a "customer" to the extent of any margin delivered to or by the party with respect to which there is a customer protection or segregation requirement. Section 3E(g) of the Exchange Act, 15 USC 78c–5(g). This would likely only be the case under the SEC Margin Rules to the extent a customer's positions and assets at an SBSD are subject to omnibus segregation. Moreover, a swap does not constitute a "security" under Subchapter III.

[22] *Id.* Subchapter III is also unclear as to the treatment of uncleared swaps in a portfolio margining account carried as a securities account, providing only that an account holding SBS shall be considered a "securities account" unless it is a portfolio margining account carried as a futures account. 15 USC 78c–5(g) ("An account that holds a security-based swap, other than a portfolio margining account referred to in section 78o(c)(3)(C) of this title shall be considered to be a securities account, as that term is defined in section 741 of title 11."). While this suggests by negative implication that a portfolio margining account that holds SBS and is not carried as a futures account can be a "securities account," Subchapter III does not otherwise address how portfolio margined positions would be dealt with in that scenario.

[23] In the preamble to the CFTC Margin Rules, the CFTC stated that "the ultimate purpose of the custody agreement is twofold: (1) That the initial margin be available to a counterparty when its counterparty defaults and a loss is realized that exceeds the amount of variation margin that has been collected as of the time of default; and (2) initial margin be returned to the posting party after its swap obligations have been fully discharged," 81 Fed. Reg. at 670-71, and has promulgated the custodial requirements under 17 CFR 23.157(c) to ensure this is the case. Thus, to the extent U.S. law applies, application of the CFTC Margin Rules would obviate the need to engage in case-by-case analysis with respect to the treatment of different products based on the applicable insolvency regime; applicable margin requirements; and the manner in which margin is held.

[24] *See* 17 CFR 23.160(d), (e) (establishing rules for jurisdictions where netting and compliance with custodial arrangement requirements are unavailable); CFTC, Final Rule: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 Fed. Reg. at 34832-34 (May 31, 2016) (discussing accommodation of foreign jurisdictions where there may be legal or operational limitations on compliance with the CFTC Margin Rules).

[25] *See* SIFMA AMG, Comment Letter to SEC on Capital, Margin, and Segregation Requirements for Security-Based Swaps Dealers and Major Security-Based Swaps Participants and Capital Requirements for Broker-Dealers at 3 (Nov. 19, 2018) ("2018 SIFMA AMG

supportive of third-party custodial arrangements.[26] A capital charge needlessly increases the cost of transactions to the dealer, which may be passed on, directly or indirectly, to the dealer's counterparties.[27] Moreover, the CFTC's capital rules, like the SEC's, require an opinion that the collateral is remote from the custodian's insolvency, assuring that it would be returned to a non-defaulting dealer. We therefore believe it is appropriate to treat IM posted by a dealer for a portfolio of swaps and SBS pursuant to the CFTC Margin Rules as a current asset under the CFTC capital rules' provisions related to margin for uncleared swaps and non-cleared SBS.

We would also request clarification that the portfolio margining approach outlined above remains applicable in the event that a portfolio includes only non-cleared SBS and not swaps at any given time, whether as a result of a change in the relevant reference index from broad to narrow (or single-name) or because of changes in a counterparty's trading strategies or risk management needs over time. This would provide stability and consistency to the trading relationship by allowing an arrangement documented to be governed by one regulatory regime to remain under the same regime, notwithstanding changing market conditions or fluctuations in the portfolio's composition.[28]

With respect to the use of internal models to calculate required amounts of IM for portfolios of uncleared swaps and non-cleared SBS positions, we would favor the use of established margin methodologies that have previously met with regulatory approval (*e.g.*, the ISDA Standard Initial Margin Methodology). We would further urge the regulators to require transparency to counterparties as well as to regulators with respect to a model's design and function. As we have stated previously, financial end users must be able to independently verify the calculation of any IM amounts calculated through models.[29] Otherwise, financial end users will be confronted with a "black box" that will not allow them to predict, or understand, their margin requirements. As a result, we believe that the Commissions should require dealers to share with a counterparty the model it uses to calculate that counterparty's margin amount. Doing so would increase transparency and promote accountability from a dealer whose model is being used, and minimize the negative effects of inaccurate collateral calls.

Portfolio Margining Uncleared Swaps and Non-Cleared SBS with Cash Securities When Transacting with a BD/SD/SBSD

Another priority area for SIFMA members is the ability to portfolio margin efficiently and safely when transacting with a BD/SD/SBSD positions involving uncleared swaps and non-cleared SBS, together with cash market

Comment Letter"). Section 23.101(a)(1)(ii)(C) of the CFTC's capital rules permits an SD following the "Net Liquid Assets" capital approach to recognize unsecured receivables from third-party custodians as a current asset, where the receivable represents IM posted by the SD with a third-party custodian for uncleared swaps or security-based swaps pursuant to applicable margin rules. SEC interpretive guidance provides an exception from the requirement to take a capital charge on IM that an SBSD voluntarily posts with a third-party custodian only in very specific circumstances in which an affiliate funds the IM posting through a loan agreement and waives repayment of the loan until the IM is returned to the SBSD. SEC, Final Rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers, 84 Fed. Reg. 43872, 43887 (Aug. 22, 2019).

[26] 2018 SIFMA AMG Comment Letter at 3.

[27] *Id.* at 19.

[28] The need for operational stability also supports the above request that the SEC permit application of the CFTC Margin Rules' IM thresholds as to non-cleared SBS portfolio margined with uncleared swaps. If the SEC did not permit parties to portfolio margin uncleared swaps and non-cleared SBS under the CFTC Margin Rules unless and until they are subject to mandatory IM under those rules, an entity that falls under Phase 6 of the CFTC Margin Rules' implementation period for IM could be forced to apply the SEC Margin Rules from the compliance date of the SEC Margin Rules in 2021 until September 2022, when the entity would come into scope of the CFTC Margin Rules' IM requirements. These complications and uncertainty could cause financial end users to trade non-cleared SBS and uncleared swaps only with dealers regulated under the U.S. prudential regulators' margin rules or EMIR regulations and avoid trading with non-prudentially regulated SD/SBSDs that are U.S. entities.

[29] 2013 SIFMA AMG Comment Letter at 16.

securities and securities options.[30] We request that for counterparty relationships involving a BD/SD/SBSD, the Commissions (i) permit, as discussed above, compliance solely with the CFTC Margin Rules and related regulatory requirements in their entirety, under the approach discussed above, and (ii) also provide counterparties the option, as determined and documented by the parties, to comply solely with FINRA Rule 4210(g) (in the case of equity positions) or otherwise with the SEC Margin Rules and related regulatory requirements in their entirety, when portfolio margining cash securities with uncleared swaps and non-cleared SBS, *in lieu of* the CFTC Margin Rules and related regulatory requirements. Regarding such optionality, we appreciate that the Commissions may wish to impose safeguards to prevent inappropriate regulatory cherry-picking and to protect the interests of end user counterparties, while also ensuring the continuity and consistency needed for the stability of a trading relationship.

Regarding internal firm models that may be used to calculate IM for uncleared swaps, non-cleared SBS, securities options, and securities cash products on a portfolio basis, SIFMA AMG would urge regulators to require dealers using such models to provide transparency to counterparties as well as to regulators with respect to the model's design and function. As noted above, such transparency is necessary to allow end users to predict and understand a dealer counterparty's collateral calls.

Conclusion

To build a workable portfolio margining regime, we urge the Commissions to work together to defer, where appropriate, to the other's margin rules and related capital and other regulatory frameworks in their entirety, so that market participants can rely, for a particular trading relationship, on a single, cohesive set of rules in their totality. A portfolio margining framework that does otherwise will prove financially burdensome and operationally unworkable in practice.

The framework recommended in this letter sets forth the principles our members would urge the Commissions to preserve in designing portfolio margining relief. The recommended framework provides a straightforward, practical approach for portfolio margining that would offer the greatest certainty and market stability. While this letter presents our highest priority comments given the short comment period and the broad strokes of the Commissions' request for comment, we ask that the Commissions confirm that they will remain open to further comments as markets and priorities evolve. In addition, we will likely have additional and more specific comments once the Commissions propose a rulemaking or a proposed portfolio margining order.

Given the impending compliance dates for the SEC Margin Rules and the final phases of the CFTC Margin Rules, there will need to be significant lead-up time to respond to any new relief by the Commissions (or lack thereof) for portfolio margining, both for operational purposes and in terms of preparing and implementing new documentation. Accordingly, we respectfully request that the Commissions provide an indication of their direction of relief on portfolio margining of uncleared swaps and non-cleared SBS (whether through a final rule, joint agency

[30] As to treatment in insolvency, the Securities Investor Protection Act ("SIPA"), 15 USC 78aaa *et seq.*, does not expressly address whether SBS and swaps would be eligible for customer treatment. As noted by the Request, swaps and SBS are not expressly included in the definitions of "customer," "customer property," and "net equity" under SIPA. Related claims would generally constitute unsecured claims against a broker-dealer, though there is at least an argument that margin held by a broker-dealer in a securities account for a customer should constitute customer property. 15 USC 78lll(4) ("The term 'customer property' means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted."). SIPA is also silent as to the treatment of swaps positions in a portfolio margining account carried as a securities account, as the statute only expressly gives customer treatment to claims for futures or options on futures in a portfolio margining account carried as a securities account. 15 USC 78lll(2)(B)(ii). If SIPA does not apply, Subchapter III may apply instead, and as discussed above, the treatment of these issues under Subchapter III can be fact-dependent.

advisory, staff no-action letter pending a final rule, or otherwise) as expeditiously as possible, and ideally no later than the end of the first quarter of 2021.

SIFMA AMG again thanks the Commissions for the opportunity to comment on this important initiative. Please do not hesitate to contact me at (212) 313-1176 or JSilverstein@sifma.org with any questions.

Respectfully submitted,

/s/ Jason Silverstein, Esq.

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