



CENTER FOR CAPITAL MARKETS  
COMPETITIVENESS



FINANCIAL  
SERVICES  
FORUM



Institute of International Bankers



December 9, 2019

Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve  
System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Robert E. Feldman  
Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW, suite 3E-218  
Washington, DC 20219

Barry F. Mardock  
Acting Director  
Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

Alfred M. Pollard  
General Counsel  
Attention: Comments/ RIN 2590-AB03  
Federal Housing Finance Agency  
Constitution Center (OGC Eighth Floor)  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

**Re: Margin and Capital Requirements for Covered Swap Entities**

Ladies and Gentlemen:

The American Bankers Association, the ABA Securities Association, the Bank Policy Institute, the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce, the Financial Services Forum, the Institute of International Bankers, and the Securities Industry and

Financial Markets Association (together, the “**Associations**”)<sup>1</sup> appreciate the opportunity to provide comments to the Board of Governors of the Federal Reserve (the “**Board**”), the Farm Credit Administration (the “**FCA**”), the Federal Deposit Insurance Corporation (the “**FDIC**”), the Federal Housing Finance Agency (the “**FHFA**”), and the Office of the Comptroller of the Currency (the “**OCC**” and, together with the Board, FCA, FDIC, and FHFA, the “**Prudential Regulators**”) on their proposals (the “**Proposal**”)<sup>2</sup> regarding amendments to margin requirements for uncleared swaps and security-based swaps (together with swaps, “**swaps**”) entered into by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants regulated by the Prudential Regulators (“**Swap Entities**”) under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”).

We support the efforts by the Prudential Regulators to provide relief to legacy swaps that are amended to replace discontinued or unreliable interest rate provisions, reflect logistical or technical changes to the parties’ circumstances, or manage the risk of a swap portfolio. Such changes are necessary to minimize future market disruptions and incentivize systemic risk management practices by Swap Entities.

We also support the efforts by the Prudential Regulators to foster international harmonization, as well as harmonization with other U.S. regulators, of margin requirements for swaps. Specifically, we support the proposal to exempt swaps between affiliates (“**inter-affiliate swaps**”) from initial margin (“**IM**”) requirements, which would more closely align the Prudential Regulators’ requirements with those of the Commodity Futures Trading Commission (“**CFTC**”)<sup>3</sup> and many other G20 regulators. Additionally, we support the addition of a sixth compliance phase for IM requirements for counterparties with average daily aggregate notional amounts (“**AANA**”) from \$8 billion to \$50 billion. This addition would align with the international margin framework, as recently amended by the Basel Committee on Banking Supervision (“**BCBS**”) and the International Organization of Securities Commissions (“**IOSCO**”). Such harmonization efforts will decrease opportunities for regulatory arbitrage, while also reducing the competitive disadvantages currently faced by Swap Entities vis-à-vis firms not subject to the Prudential Regulators’ margin regulations. Adding a sixth compliance phase also will provide the Prudential Regulators with more time to consider possible further actions to address concerns that the last compliance phase will encompass many counterparties that do not pose systemic risk because, for example, their swap portfolios do not give rise to exposure exceeding the \$50 million IM threshold.

**Amendments to Legacy Swaps to Replace Certain Interest Rate Provisions.** Under the Proposal, amendments replacing certain interest rate provisions and follow-on amendments implementing and operationalizing such replacements would not cause legacy swaps to lose their legacy status. The Prudential Regulators’ proposal allows for the replacement of inter-bank offer

---

<sup>1</sup> Descriptions of the Associations can be found in **Appendix A** to this letter.

<sup>2</sup> This comment letter is submitted with respect to the following proposals: Margin and Capital Requirements for Covered Swap Entities, Docket No. OCC-2019-0023/RIN 1557-AE69, Docket No. R-1682/RIN 7100-AF62, RIN 3064-AF08, RIN 3052-AD38, RIN 2590-AB03, 84 Fed. Reg. 59970 (Nov. 7, 2019).

<sup>3</sup> See 17 C.F.R. § 23.159.

rates (“**IBORs**”)<sup>4</sup> or any other interest rates that a Swap Entity reasonably expects to be discontinued or determines are no longer reliable due to a significant impairment.

We support the Prudential Regulators’ proposal. Allowing the contemplated amendments would not be a departure from the purpose of the Prudential Regulators’ margin rules as the amendments will not be made to effect material changes to legacy swaps in lieu of entering into new transactions. Instead, the contemplated amendments are to facilitate industry-wide regulatory reforms. Maintaining the legacy status of swaps after such amendments are made will help to ensure an orderly transition away from IBORs that is consistent with the market’s expectations and the positions of foreign regulatory authorities. Additionally, the forward-looking definition of interest rate will minimize future market disruptions by allowing Swap Entities to react with great certainty and promptness when interest rate benchmarks are discontinued or lose market relevance.

We further note that this proposal is generally consistent with the approach advanced by the Alternative Reference Rates Committee (the “**ARRC**”), which is responsible for identifying and developing an implementation plan for U.S. alternative reference rates.<sup>5</sup> The ARRC has submitted a letter on the Proposal, and we support the comments set forth in that letter.

**Initial Margin Requirements for Inter-affiliate Swaps.** We support the Prudential Regulators’ proposal to provide an exemption from IM requirements for inter-affiliate swaps. We also support the Proposal’s definition of “affiliate,” which focuses on the exercise of a controlling influence, either direct or indirect, over the management and policies of another entity.

Swap Entities use inter-affiliate swaps for centralized risk management, which promotes safety and soundness and reduces systemic risk by decreasing group-wide liability exposures to third parties. Providing an exemption from IM requirements for inter-affiliate swaps would foster such systemic risk mitigation. It also would allow Swap Entities to allocate liquid collateral more efficiently internally.

Moreover, providing an exemption from IM requirements for inter-affiliate swaps would more closely harmonize the Prudential Regulators’ requirements with those of the CFTC<sup>6</sup> and many other G20 regulators, thus reducing the competitive disparities faced by Swap Entities vis-à-vis firms subject only to margin rules adopted by the CFTC and foreign jurisdictions.

In the Proposal, the Prudential Regulators asked whether any additional conditions on the exemption were necessary to ensure the safety and soundness of Swap Entities. No additional

---

<sup>4</sup> IBORs include the London Interbank Offered Rate, the Tokyo Interbank Offered Rate, the Bank Bill Swap Rate, the Singapore Interbank Offered Rate, the Canadian Dollar Offered Rate, the Euro Interbank Offered Rate, and the Hong Kong Interbank Offered Rate.

<sup>5</sup> See Letter from ARRC, *Letter Regarding Treatment of Derivatives Contracts Referencing the Alternative Risk-Free Rates and Associated Transitions under Title VII of [Dodd-Frank]* (Jul. 12, 2018). See also Letter from ARRC to CFTC Chairman J. Christopher Giancarlo, *Follow-up Letter Regarding Treatment of Derivatives Contracts Referencing the Alternative Risk-Free Rates* (May 13, 2019).

<sup>6</sup> See 17 C.F.R. § 23.159.

conditions are necessary as the safety and soundness risks associated with inter-affiliate swaps are most effectively addressed through variation margin requirements, credit risk capital requirements, and credit risk limits. These tools mitigate risks without resulting in undue liquidity burdens or disincentivizing efficient and centralized risk management.

The additional conditions imposed by the CFTC in its corresponding exemption for inter-affiliate swaps, which imposes IM requirements only on outward-facing swaps entered into by certain foreign affiliates located outside of jurisdictions where the CFTC has made comparability determinations, are not necessary in the presence of these risk-mitigating tools. Furthermore, if the Prudential Regulators adopted similar conditions, until they have adopted margin comparability determinations for all relevant jurisdictions, such conditions would subject inter-affiliate swaps to duplicative regulation and discourage centralized risk management, even where affiliates are subject to local requirements that comply with the BCBS-IOSCO margin framework. In this regard, we note that the Prudential Regulators have not yet adopted comparability determinations.

We encourage the Prudential Regulators to re-engage with their regulatory counterparts in Europe, the United Kingdom (subject to the outcome of Brexit), and Asia to consider making comparability and substituted compliance determinations, similar to those made by the CFTC, with respect to the margin requirements for uncleared swaps. The absence of such comparability and substituted compliance determinations by the Prudential Regulators continues to create market dislocation and fragmentation.

**Compliance Period for Initial Margin Requirements.** The Proposal would add a sixth compliance phase for IM requirements. The compliance date for counterparties with AANAs from \$50 billion to \$750 billion would remain as September 1, 2020. Counterparties with AANAs from \$8 billion to \$50 billion would have their compliance date extended to September 1, 2021.

We support this addition as it is consistent with the compliance period for IM requirements adopted by the BCBS and IOSCO in July 2019.<sup>7</sup> Such harmonization is necessary to prevent fragmentation in the global markets while also minimizing the potential for regulatory arbitrage and competitive disparities.

Additionally, the extension of the compliance period for counterparties with an AANA from \$8 billion to \$50 billion is necessary to reduce the potential for the market disruption that could occur if all counterparties with AANAs from \$8 billion to \$750 billion came into scope for IM requirements at the same time. There are a significant number of Swap Entities' counterparties who would be caught by the existing phase five compliance date, and therefore, retaining that date for counterparties with AANAs from \$8 billion to \$50 billion would put substantial strain on the market and Swap Entities' resources. The costs to Swap Entities of ensuring that all such counterparties with AANAs from \$8 billion to \$750 billion are in compliance with IM requirements at the same time would exceed any risk mitigation benefits that would be achieved from having those counterparties come into compliance on September 1,

---

<sup>7</sup> See BCBS and IOSCO, *Margin requirements for non-centrally cleared derivatives* (Jul. 2019).

2020, especially since very few of them will have swap portfolios that give rise to exposure exceeding the \$50 million IM threshold.

Finally, the addition of a sixth compliance period also provides the Prudential Regulators with more time to consider possible further actions with respect to the last compliance phase of IM requirements. We believe the Prudential Regulators should use this time to evaluate whether to adjust that phase to reduce the number of in-scope counterparties whose swap portfolios will not give rise to exposure exceeding the \$50 million IM threshold.

**Initial Margin Trading Documentation.** The Proposal would specify that IM trading documentation must be in place only at the time a Swap Entity is required to collect or post IM with respect to a counterparty. The Prudential Regulators should adopt this clarification. This clarification increases certainty for Swap Entities and more explicitly aligns the Prudential Regulators' rules with internationally-agreed standards, including those of BCBS and IOSCO<sup>8</sup> and the CFTC,<sup>9</sup> for IM documentation for swaps.

**Amendments to Legacy Swaps for Logistics or Risk-Management.** The Proposal would clarify that amendments made for logistical reasons or risk-management purposes and arising from certain routine industry practices over the life-cycle of a swap would not cause legacy swaps to lose their legacy status. Permissible amendments would include technical changes to operational or administrative provisions (such as amending addresses), reducing the notional amount of a swap, or modifying terms based on portfolio compression exercises.

We support this clarification. The contemplated amendments do not raise concerns of attempted evasion or delay in the application of the Prudential Regulators' IM requirements. Such amendments also do not reflect an attempt by the parties to the swap to alter their exposure to market risks. Instead, such amendments would reflect either non-economic changes in a party's circumstances or systemic risk mitigation efforts, both of which increase certainty for market participants. For example, amending swaps as part of portfolio compression exercises reduces the size of gross derivatives exposures and generally reduces the number or frequency of payments between parties, thus maintaining or reducing the portfolio's risk profile.

Additionally, the amendments contemplated by the Proposal would reduce operational burdens associated with replacing IBOR provisions. Specifically, permitting amendments resulting from portfolio compression exercises would allow parties to replace portfolios of IBOR-based swaps with replacement swaps generated through such compression exercises, rather than necessitating parties to enter into new swaps.

\* \* \*

---

<sup>8</sup> See BCBS/IOSCO statement on the final implementation phases of the *Margin Requirements for non-centrally cleared derivatives* (Mar. 5, 2019).

<sup>9</sup> See CFTC, *Initial Margin Documentation Requirements*, CFTC Letter No. 19-16 (Jul. 9, 2019) (clarifying that "the documentation governing the posting, collection, and custody of [IM] is not required to be completed until such time as the [IM] amount exceeds \$50 million").

We would be pleased to provide further information or assistance at the request of the Prudential Regulators or their respective staffs. Please do not hesitate to contact the undersigned if you should have any questions with regard to the foregoing.

Respectfully submitted,

Rob Nichols  
President and CEO  
American Bankers Association

Cecelia Calaby  
Executive Director and General Counsel  
ABA Securities Association

Greg Baer  
President & CEO  
Bank Policy Institute

Tom Quaadman  
Executive Vice President  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce

Kevin Fromer  
President and Chief Executive Officer  
Financial Services Forum

Briget Polichene  
Chief Executive Officer  
Institute of International Bankers

Kenneth E. Bentsen, Jr.  
President & CEO  
SIFMA

cc:

The Honorable Jerome Powell, Chairman, Board of Governors of the Federal Reserve System

The Honorable Randall Quarles, Vice-Chairman of Supervision

Ms. Constance Horsley, Deputy Associate Director, Division of Supervision and Regulation

Ms. Lesley Chao, Lead Financial Institution Policy Analyst, Division of Supervision and  
Regulation

Mr. John Feid, Principal Economist, Division of Supervision and Regulation

Ms. Patricia Yeh, Senior Counsel, Legal Division

Mr. Jason Shafer, Senior Counsel, Legal Division

Ms. Justyna Bolter, Senior Attorney, Legal Division

The Honorable Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation

Ms. Irina Leonova, Senior Policy Analyst, Capital Markets Branch, Division of Risk  
Management Supervision

Mr. Thomas F. Hearn, Counsel, Legal Division

The Honorable Joseph Otting, Comptroller of the Currency, Office of the Comptroller of the  
Currency

Mr. Chris McBride, Director for Market Risk, Treasury and Market Risk Policy

Ms. Allison Hester-Haddad, Counsel, Chief Counsel's Office

Mr. Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit  
Administration

Mr. Jeremy R. Edelstein, Associate Director, Finance & Capital Market Team, Office of  
Regulatory Policy

Mr. Timothy T. Nerdahl, Senior Policy Analyst, Office of Regulatory Policy

Mr. Clayton D. Milburn, Senior Financial Analyst, Office of Regulatory Policy

Mr. Richard A. Katz, Senior Counsel, Office of General Counsel

Mr. Alfred M. Pollard, General Counsel, Federal Housing Finance Agency

Mr. Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling &  
Simulations

Mr. James P. Jordan, Associate General Counsel, Office of General Counsel

## **Appendix A: Background on the Associations**

The **American Bankers Association** is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard more than \$14 trillion in deposits, and extend more than \$10 trillion in loans.

The **ABA Securities Association** is a separately chartered affiliate of the American Bankers Association, representing those holding company members of the American Bankers Association that are actively engaged in capital markets, investment banking, swap dealer and broker-dealer activities.

The **Bank Policy Institute** is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

The U.S. Chamber's **Center for Capital Markets Competitiveness's (CCMC)** mission is to advance America's global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative in the world. CCMC advocates on behalf of American businesses to ensure that legislation and regulation strengthen our capital markets allowing businesses—from the local flower shop to a multinational manufacturer—to mitigate risks, manage liquidity, access credit, and raise capital.

The **Financial Services Forum** is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace, and a sound financial system. For more information, visit [fsforum.com](http://fsforum.com).

**IIB** is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax, and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions. Further information is available at [www.iib.org](http://www.iib.org).

**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>.