



October 22, 2020

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

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

Dear Mr. Kirkpatrick:

The Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”, or “AMG”)¹ appreciates the opportunity to submit comments with respect to the notice of proposed rulemaking published by the Commodity Futures Trading Commission (the “CFTC” or the “Commission”) regarding the proposed amendments to the minimum transfer amount (“MTA”) requirements under the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (the “Proposal”).² SIFMA AMG commends the Commission’s efforts to consider and implement the CFTC’s Global Markets Advisory Committee’s (“GMAC”) recommendations to improve scoping and implementation of the initial margin requirements for non-cleared swaps.³ We are specifically supportive of the proposed amendments to codify an MTA of up to \$50,000 for separately management accounts (“SMAs”) and the proposed revisions to recognize that a covered swap entity may apply separate MTAs for initial margin (“IM”) and variation margin (“VM”) with each counterparty.⁴

SIFMA AMG is supportive of any Commission action that would help asset managers address issues associated with the operation of SMAs as they may be captured in the final phases of the margin

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

² See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 59470 (September 22, 2020).

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

⁴ Proposal at 59473.



requirements. As discussed in earlier requests and submissions to the Commission with respect to the Margin Requirements for Uncleared Swaps⁵, asset managers are often hired by clients (e.g., pension funds, endowments, etc.) to exercise investment discretion over a specified amount of the client's assets through SMAs. These accounts face unique operational challenges when implementing the margin requirements as properly noted in the Proposal.⁶

SIFMA AMG believes the Commission's proposed changes would help alleviate the operational and practical challenges associated with the application of the margin requirement's minimum transfer amounts to SMAs. AMG requests that the Commission confirm that the permissibility for separate MTAs for initial margin and variation margin would be extended to SMAs of a counterparty (up to \$50,000 per SMA in accordance with the proposed change to the definition of "minimum transfer amount" in Regulation 23.151).

Further, SIFMA AMG members support the recommendations made within the GMAC Report and request that the Commission consider in the very near future the other recommendations made within the GMAC Report. We believe the suggested changes would not only align the CFTC's margin requirements with other jurisdictions in accordance with the BCBS-IOSCO framework, but would also provide certainty and consistency for those market participants that will be subject to the final phases of the implementation schedule. Moreover, we believe the recommendations within the GMAC report would remove unnecessary burdens upon counterparties and relationships that are brought into scope and are not likely to be required to exchange regulatory IM. We commend the CFTC for the timely action taken to address certain recommendations in the GMAC Report and encourage the CFTC to consider and propose the other recommendations as well as work with the US prudential regulators to achieve full US consistency with these components of the margin rules.

I. Application of MTAs to SMAs

SIFMA AMG is supportive of the CFTC's proposal to amend the definition of MTA in Commission Regulation 23.151 to allow a covered swap entity ("CSE") to apply an MTA of up to \$50,000 to each SMA owned by a counterparty with which the CSE enters into uncleared swaps. As discussed in the Proposal, the amendments would codify the relief granted to SMAs in No-Action Letter 17-12⁷ ("Letter #17-12"). Letter #17-12 stated that the CFTC's Division of Swap Dealer and Intermediary Oversight would not recommend

⁵ SIFMA AMG Letter to Global Regulators re: Margin Requirements for Non-Centrally Cleared Derivatives – Remaining Stages of Initial Margin Phase-In (September 13, 2019), available at [<https://www.sifma.org/wp-content/uploads/2019/09/SIFMA-AMG-Letter-on-the-Margin-Requirements-for-Non-Centrally-Cleared-Derivatives-Final-9-13-19.pdf>]; CFTC Letter No. 17-12 (February 13, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-12.pdf>.

⁶ Proposal at 59472.

⁷ CFTC Letter No. 17-12 (February 13, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-12.pdf>.



an enforcement action if a swap dealer (an “SD”) applies an MTA no greater than \$50,000 to each SMA of a legal entity, subject to certain conditions specified in the letter.⁸

As discussed in the GMAC Report and AMG’s September 2019 Letter, SMAs are created by a client such as a pension fund, insurance company or retail fund that invests in different investment strategies by engaging multiple asset managers.⁹ These accounts are important tools for the client to achieve diversity of investment strategy. The challenges faced by asset managers as they apply the current MTA requirements to their SMA clients and the importance of the relief provided in Letter #17-12 has been represented by SIFMA AMG in the past, and most recently, in the GMAC Report. Specifically, as discussed in the GMAC Report and the Proposal, when a client establishes an SMA with multiple asset managers there is both a lack of transparency with respect to trading information and a lack of control over all of the SMA client’s assets, beside those under management. This scenario makes it impractical, if not impossible, to split a single MTA across multiple SMAs without requiring swap dealers to negotiate sub-allocations of the aggregate \$500,000 MTA per SMA Client across an SMA client’s multiple managers. Additionally, as stated in the GMAC report,

“it prevents the parties from having to negotiate amendments to the sub-allocations in the collateral documents based on the changes in the number of asset managers or alternative, to set the MTA at zero for all SMAs, resulting in frequent transfers of small amounts of collateral.”¹⁰

We appreciate the CFTC’s understanding of these concerns and highly encourage the codification of the proposed \$50,000 MTA per SMA as set forth in the Proposal.

The Proposal notes a concern that the proposed application of the lower MTA for SMAs could provide an incentive for owners of SMAs to create separate accounts to formulate their trading strategies to reduce or avoid margin transfers; these concerns are mitigated by the minimal \$50,000 per SMA and the limitations required by the proposed rule. While it may be the case that multiple SMAs may be established on behalf of a client that could result in total unsecured exposure for that client exceeding \$500,000, the increased unsecured exposure would still be insignificant. We believe the Commission’s justification for allowing an MTA – that \$500,000 in exposure is too immaterial to warrant the certain operational burdens – also applies to the “low level” \$50,000 MTA being proposed for SMAs.¹¹ We also agree with the Commission’s assessment that an owner’s inability to net collateral across separate accounts should serve as a disincentive to the fragmentation of investment across many SMAs for purposes of reducing or avoiding

⁸ See Proposal at 59472; see also Letter #17-12 at 5.

⁹ See GMAC Report at 14-16.

¹⁰ See GMAC Report at 55.

¹¹ See Proposal at 59472.



margin transfers.¹² Moreover, the limitations within Letter #17-12 that require SMAs to be granted authority under an investment management agreement create practical, as well as, cost challenges that will further disincentivize the creation of unnecessary SMAs.¹³

II. Application of Separate MTAs for IM and VM

SIFMA AMG is fully supportive of the Commission's proposal to revise the minimum transfer amount margin documentation requirements outlined in Commission regulation 23.151, 23.152(b)(3), 23.153(c) and 23.158(a), consistent with CFTC No-Action Letter #19-25 ("Letter #19-25") that would permit a covered swap entity to apply separate MTAs for IM and VM with each counterparty, provided that the MTAs corresponding to IM and VM are specified in the margin documentation required by Commission regulation 23.158 and that the MTAs, on a combined basis, do not exceed the MTA specified in Commission regulation 23.151.¹⁴ We further agree with the Commission's preliminary belief that codifying the terms of Letter #19-25 would accommodate widespread market practice that would help facilitate the CFTC margin requirements. As this relief is set to expire on December 31, 2021, the Commission's codification of this relief would provide the market with much needed legal certainty.¹⁵

While AMG is appreciative of the Commission's efforts to codify the no-action relief in Letter #19-25, we request, in line with the GMAC Report¹⁶, that the Commission confirm that the ability to apply separate MTAs for IM and VM extends to the \$50,000 MTA for SMAs as well. As it stands, the current language in the proposal could be ambiguous as to applicability to SMAs. While we believe this is intended by the Commission in the Proposal, further clarification in the final rule would be appreciated and provide managers acting on behalf of SMAs with the same efficiencies as noted in the Proposal permitting the split of MTAs across IM and VM for all other entities.

III. CFTC Should Consider other GMAC Recommendations

In addition to the above comments, we continue to encourage the Commission to consider adopting the short-term and long-term recommendations outlined in the GMAC Report with respect to scoping and implementation. As we approach the final phases on the implementation schedule of the margin

¹² *Id.*

¹³ The Proposal includes certain conditions set forth in Letter #17-12 for use of the \$50,000 MTA per SMA, including that the swaps of an SMA are (i) entered into by an asset manager on behalf of the SMA pursuant to the authority granted under an investment management agreement, and (ii) are subject to a master netting agreement that does not permit the netting of IM or VM obligations across SMAs.

¹⁴ *Id.*

¹⁵ CFTC NO-Action Letter No. 19-25 (December 6, 2019), available at <https://www.cftc.gov/csl/19-25/download>.

¹⁶ See GMAC Report at 56.



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requirements, it is increasingly important that the Commission remove unnecessary burdens asset managers face as they prepare to comply with the Commission's margin requirements.

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

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

Respectfully submitted,

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