



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 5, 2021

Tara Kruse
Global Head, Infrastructure, Data and
Non-Cleared Margin
International Swaps and Derivatives Association, Inc. ("ISDA")
10 E. 53rd Street, 9th Floor
New York, NY 10022

Kyle Brandon
Managing Director, Head of Derivatives Policy
Securities Industry and Financial Markets Association ("SIFMA")
120 Broadway, 35th Floor
New York, NY 10271

Re: Request for No-Action Position under Exchange Act Rule 18a-3
Regarding Collecting Initial Margin from Small Counterparties

Dear Ms. Kruse and Ms. Brandon:

In your letter dated August 5, 2021, (the "Request")¹ on behalf of ISDA and SIFMA, respectively, you request that the staff of the Division of Trading and Markets ("Staff") will not recommend enforcement action to the Securities and Exchange Commission ("Commission") if a security-based swap dealer that does not have a prudential regulator ("nonbank SBSD"), for purposes of paragraph (c)(1)(ii)(B) of Rule 18a-3 under the Securities Exchange Act of 1934 ("Exchange Act") does not collect initial margin from a Phase 6+ Counterparty (as defined below) in connection with non-cleared security-based swaps entered into with such counterparty before September 1, 2022. You state this staff no action position is necessary because the compliance dates for the Commission's initial margin requirements for non-cleared security-based swaps with smaller counterparties differs from those of other regulators, including the Commodity Futures Trading Commission ("CFTC") and U.S. prudential regulators.

I. Background

Based on the Request, we understand the facts to be as follows:

¹ A copy of the Request is attached.

On June 21, 2019, the Commission adopted Rule 18a-3, which prescribes margin requirements for nonbank SBSDs with respect to non-cleared security-based swaps. Rule 18a-3 requires a nonbank SBSD to collect initial margin from a counterparty, unless an exception applies, including an initial margin threshold of \$50 million.² The compliance date for the Commission's margin requirements for non-cleared security-based swaps is October 6, 2021. At the time the Commission adopted these requirements, initial margin rules adopted by CFTC, U.S. prudential regulators, and other international regulators, were being implemented over a four year period, consistent with the original phase-in schedule for initial margin requirements the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") incorporated into the *Margin Requirements for Non-Centrally Cleared Derivatives*³ ("Margin Framework").⁴ This schedule was intended to gradually increase the number of derivatives market participants who needed to prepare to exchange initial margin.

Subsequently, for the reasons discussed in the Request, including the onset of market volatility, shifting priorities and resource restraints resulting from the COVID-19 pandemic, the initial margin phase-in schedule under the Margin Framework was revised in July 2019 and March 2020. Because of these two revisions, the final two initial margin phase-in dates under the Margin Framework are as follows:

AANA Threshold	Initial Margin Compliance Date
Phase 5 - Groups with AANA Greater than €50 billion	September 1, 2021
Phase 6 - Groups with AANA Greater than €8 billion	September 1, 2022

These changes to the initial margin phase-in schedule under the Margin Framework were adopted by the CFTC, U.S. prudential regulators, and other international regulators.⁵

² See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019); See also Rule 17 CFR 240.18a-3.

³ See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD651.pdf>.

⁴ Under the Margin Framework's phase-in schedule, with the schedule originally concluding on September 1, 2020, the point in time when a market participant was to become subject to initial margin requirements depended on whether its average aggregate notional amount ("AANA") of non-cleared derivatives for March, April, and May of a given year exceeded specified cut-offs of €3 trillion (for 2016), €2.25 trillion (for 2017), €1.5 trillion (for 2018), €0.75 trillion (for 2019) or €8 billion (for 2020 and thereafter). The CFTC's and U.S. prudential regulator's AANA amounts are expressed in their respective margin rules in U.S. dollars and, for counterparties covered by the last phase, use the term "material swaps exposure."

⁵ See *supra* note 3.

Because of the latest deferral, security-based swap transactions between nonbank SBSDs and counterparties below the Phase 5 threshold will become subject to initial margin requirements under Rule 18a-3 on October 6, 2021, ten months before they become subject to regulatory initial margin requirements adopted by other regulators, including the CFTC and U.S. prudential regulators. This creates significant unintended impact to the resources of nonbank SBSDs and their security-based swap counterparties because they will need to accelerate the preparation for regulatory initial margin requirements for Phase 6 relationships and those below the Phase 6 threshold at the same time they are completing preparations with Phase 5 relationships. In addition, market participants are preparing for the transition of interbank offered rates to risk-free rates at the end of 2021.

Each nonbank SBSD and each security-based swap counterparty will complete its SEC initial margin agreements as part of a documentation package that will cover all jurisdictions relevant to the relationship to which initial margin requirements will apply. The same global lens applies to the establishment of custody accounts for initial margin segregation. If nonbank SBSDs and their counterparties are unable to allocate resources to meet the Commission's compliance date for smaller counterparties, the ability to continue to trade security-based swaps may be affected.

Based on data analyzed by ISDA in a 2018 study associated with 15 legal entities from seven groups that had participated in the data study and expect to register as SBSDs, these SBSDs collectively trade non-cleared derivatives with 4,352 unique counterparties with AANA below \$50 billion. These SBSD and counterparty pairings result in 6,923 trading relationships, each of which may require initial margin documentation and one or possibly two custodial arrangements. Although some subset of these counterparties may not trade security-based swaps and others may be subject to an exception from initial margin requirements under paragraph (c)(1)(iii) of Rule 18a-3, the data demonstrates that the scale of potential work that would be accelerated under the Commission's compliance date is significant, even though all potential nonbank SBSDs are not included in the data set.⁶ Finally, in contrast to the substantial increase in effort associated with the earlier Commission initial margin compliance date for security-based swap counterparties with AANA below \$50 billion, the amount of initial margin that may not be exchanged during a ten-month period is not significant.

Further, other Commission requirements that nonbank SBSDs will comply with beginning October 6, 2021 (or the date upon which they register as SBSDs) would significantly mitigate the risks arising from nonbank SBSDs not collecting initial margin from smaller counterparties until September 1, 2022. Most notably, a nonbank SBSD will be required to exchange variation margin with such counterparties pursuant to

⁶ Although this data set includes some non-U.S. nonbank SBSDs, which may potentially be eligible for substituted compliance with home country margin requirements that incorporate the phase-in schedule adopted by BCBS and IOSCO, the Request states that failing to provide for a comparable phase-in schedule for U.S. nonbank SBSDs would place U.S. nonbank SBSDs at a significant competitive disadvantage.

paragraph (c)(1)(ii)(A) under Exchange Act Rule 18a-3. In addition, a nonbank SBSD also will be required to (1) calculate the initial margin amount pursuant to paragraph (c)(1)(i)(B) of Exchange Act Rule 18a-3 with respect to each account of a counterparty as of the close of each business day; (2) include the initial margin amount in the calculation of its risk margin amount in determining its minimum net capital requirements under Exchange Act Rule 15c3-1 or 18a-1, as applicable; and (3) deduct the amount of initial margin not collected under an exception to the margin rule (or take a credit risk charge for nonbank SBSDs authorized to use models) in computing its net capital under Rule 15c3-1 or 18a-1, as applicable.⁷ Nonbank SBSDs would also be subject to extensive risk management requirements under Exchange Act Rule 15c3-4 (incorporated pursuant to paragraphs (a)(7) or (10) under Exchange Act Rule 15c3-1 or paragraph (f) under Rule 18a-1, as applicable), and paragraph (e) of Exchange Act Rule 18a-3.

II. Response

Based on the facts and circumstances set forth in the Request, and without necessarily agreeing with your conclusions and analysis, the Staff will not recommend enforcement action to the Commission if a nonbank SBSD, for purposes of paragraph (c)(1)(ii)(B) of Exchange Act Rule 18a-3, does not collect initial margin from a Phase 6+ Counterparty (as defined below) in connection with non-cleared security-based swaps entered into with such counterparty before September 1, 2022, provided the nonbank SBSD makes a record of such Phase 6+ Counterparties, and preserves the record for a period of not less than three years, the first two years in an easily accessible place.

For purposes of this no-action position, a Phase 6+ Counterparty means a counterparty to a non-cleared security-based swap that, combined with all of its affiliates⁸ has a daily AANA of non-cleared swaps, non-cleared security-based swaps, foreign exchange swaps, and foreign exchange forwards in March, April, and May 2021 of \$50 billion or less.⁹

⁷ 17 CFR 240.15c3-1(c)(2)(xv)(A); 17 CFR 240.15c3-1e(a) and (c); 17 CFR 240.18a-1(c)(1)(ix)(A), (d)(1) and (e)(2).

⁸ For this purpose, a person is an “affiliate” of another person if: (a) either person consolidated the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (2) both persons are consolidated with a third person on a financial statement prepared in accordance with such principles or standards; or (3) for a person that is not subject to such principles or standards, if consolidation under (1) or (2) would have occurred if such principles or standards had applied.

⁹ In calculating this amount, a person would (a) count the average daily notional amount of a non-cleared swap, non-cleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the person and an affiliate only one time and (b) not count a swap with a counterparty that is exempt pursuant to 17 CFR 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Exchange Act (15 U.S.C. 78o-10(e)). Such calculation can only be determined by a counterparty and its affiliates and is subject to self-disclosure, which may be delivered using the ISDA Initial Margin Self-Disclosure Letter or any other reasonable method.

Ms. Kruse and Ms. Brandon

Page 5 of 5

August 5, 2021

This Staff position is based strictly on the facts and circumstances discussed in the Request. Any different facts or circumstances from those set forth in the Request may require a different response. This response, furthermore, expresses the Staff's position regarding enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or rules of a self-regulatory organization. This position is subject to modification or revocation at any time.

If you have any questions regarding this letter, please contact Sheila Dombal Swartz at (202) 551-5545 or me at (202) 551-5525.

Sincerely,

Macchiaroli
, Michael A.

Digitally signed by
Macchiaroli, Michael A.
Date: 2021.08.05
15:02:22 -04'00'

Michael A. Macchiaroli
Associate Director

August 5, 2021

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Request for No-Action Position under Exchange Act Rule 18a-3 Regarding Collecting Initial Margin from Small Counterparties

Dear Mr. Macchiaroli:

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Securities Industry and Financial Markets Association (“SIFMA”)¹ (together, the “Associations”) are requesting that the staff of the Division of Trading Markets (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) will not recommend enforcement action to the Commission if a security-based swap dealer that does not have a prudential regulator (“nonbank SBSD”), for purposes of paragraph (c)(1)(ii)(B) of Rule 18a-3 under the Securities Exchange Act of 1934 (“Exchange Act”) does not collect initial margin from a Phase 6+ Counterparty (as defined below) in connection with non-cleared security-based swaps entered into with such counterparty before September 1, 2022. As described below, this staff no-action position is necessary because the compliance dates for the Commission’s initial margin requirements for non-cleared security-based swaps with smaller counterparties differs from those of other regulators, including the Commodity Futures Trading Commission (“CFTC”) and U.S. prudential regulators.

Background

On June 21, 2019, the Commission adopted Rule 18a-3, which prescribes margin requirements for nonbank SBSDs with respect to non-cleared security-based swaps. Rule 18a-3 requires a nonbank SBSD to collect initial margin from a counterparty, unless an exception applies, including an initial margin threshold of \$50 million.² The compliance date for the Commission’s margin requirements for non-cleared security-based swaps is October 6, 2021. At the time the Commission adopted these requirements, it was anticipated that analogous initial margin requirements implemented by other regulators, including the CFTC and U.S. prudential regulators, would likewise already be in effect prior to this compliance date.

¹ Information regarding ISDA and SIFMA is contained in the Appendix.

² See Capital, Margin, and Segregation Requirements for [SBSDs] and Major [SBS] Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019); See also Rule 17 CFR 240.18a-3.

In particular, as the preparation for regulatory initial margin requirements is extensive³ (involving the establishment of new bilaterally executed documentation, custodial arrangements and new internal and external infrastructures), the Basel Committee on Banking Supervision (“BCBS”) and the International Organization of Securities Commission (“IOSCO”) incorporated a four year phase-in schedule for initial margin requirements into their *Margin Framework for Margin Requirements for Non-Centrally Cleared Derivatives*⁴ (the “Margin Framework”), with the schedule originally concluding on September 1, 2020. Under this phase-in schedule, the point in time when a market participant was to become subject to initial margin requirements depended on whether its average aggregate notional amount (“AANA”) of non-cleared derivatives for March, April, and May of a given year exceeded specified cut-offs of €3 trillion (for 2016), €2.25 trillion (for 2017), €1.5 trillion (for 2018), €0.75 trillion (for 2019) or €8 billion (for 2020 and thereafter).⁵ This schedule was intended to gradually increase the number of derivatives market participants who needed to prepare to exchange initial margin.

In 2018, ISDA conducted a study⁶ with derivatives market participants to estimate the scale of the final initial margin phase-in period (Phase 5, for counterparties with AANA between €8 billion and €0.75 trillion) to help the industry plan its resourcing and preparation. By assessing the aggregate notional amount of the swaps, security-based swaps and other covered transactions of thousands of market participants, the study found that over 1,100 counterparties with over 9,500 pairings with dealer counterparties⁷ (each a “relationship”) could become subject to regulatory initial margin requirements as of September 1, 2020. The scale of Phase 5 would exponentially dwarf that of all prior phases combined, leading to resourcing issues, preparation bottlenecks and risking the ability of Phase 5 firms to continue to participate in the derivatives market⁸. Notably, the bulk of the Phase 5 counterparties and relationships were concentrated below an AANA of \$50 billion. The Associations engaged with BCBS, IOSCO and global regulators to request a remedy designed to mitigate these risks⁹.

On July 23, 2019, BCBS and IOSCO announced¹⁰ that they had revised the initial margin phase-in schedule in the Margin Framework to divide the final phase for consolidated groups with AANA greater than €8 billion and less than €750 billion for September 1, 2020 into two phases. Under the revised schedule, groups with AANA of less than €750 billion and greater than €50 billion would become subject to regulatory initial margin requirements on September 1, 2020 (Phase 5) and those with AANA of less than €50 billion and greater than €8 billion would become subject to regulatory

³ See ISDA, *Getting Ready for Initial Margin: Steps to Take*, <https://www.isda.org/2020/09/16/getting-ready-for-initial-margin-the-steps-to-take/>

⁴ See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD651.pdf>

⁵ The CFTC’s and U.S. prudential regulator’s AANA amounts are expressed in their respective margin rules in U.S. dollars and, for counterparties covered by the last phase, use the term “material swaps exposure.”

⁶ Initial Margin Phase-In Analysis, September 2018.

⁷ Figures based on USD calculations.

⁸ These challenges are discussed in SIFMA-ISDA whitepaper *Initial Margin for Non-Centrally Cleared Derivatives: Issues for 2019 and 2020*, <https://www.isda.org/a/D6fEE/ISDA-SIFMA-Initial-Margin-Phase-in-White-Paper-July-2018.pdf>

⁹ See <https://www.isda.org/a/5evEE/Initial-Margin-Phase-In-Implementation-Joint-Trade-Association-Comments.pdf>

¹⁰ See <https://www.bis.org/press/p190723.htm>

initial margin requirements on September 1, 2021 (Phase 6). These changes to the schedule were adopted by the CFTC, U.S. prudential regulators, and other international regulators.

With the onset of market volatility, shifting priorities and resource restraints resulting from the COVID-19 pandemic, the Associations and 19 other global financial trade associations requested on March 25, 2020¹¹ that BCBS, IOSCO, and global regulators further revise the initial margin phase-in schedule to delay the final two phases in order to allow derivatives market participants to keep resources focused on market stability. In response to this request, BCBS and IOSCO revised the Margin Framework¹² to defer Phase 5 to September 1, 2021 and Phase 6 to September 1, 2022. These changes to the schedule were adopted by the CFTC, U.S. prudential regulators, and other international regulators.

Because of the latest deferral, security-based swap transactions between nonbank SBSDs and counterparties below the Phase 5 threshold will become subject to initial margin requirements under Exchange Act Rule 18a-3 on October 6, 2021, ten months before they become subject to regulatory initial margin requirements adopted by other regulators, including the CFTC and U.S. prudential regulators. This creates significant unintended impact to the resources of nonbank SBSDs and their security-based swap counterparties because they will need to accelerate the preparation for regulatory initial margin requirements for Phase 6 relationships and those below the Phase 6 threshold at the same time they are completing preparations with Phase 5 relationships. In addition, market participants are preparing for the transition of interbank offered rates to risk-free rates at the end of 2021.

Initial Margin Preparation

For the sake of efficiency, regulatory initial margin preparation is conducted on a global basis, meaning that regulatory compliant initial margin documentation (e.g., a Credit Support Annex (“CSA”)), which establishes the rights and obligation of a market participant to collect regulatory initial margin, is negotiated and executed inclusive of all jurisdictions relevant to the party pairing. Since regulatory initial margin requirements began phasing-in globally from September 1, 2016, there is an established set of regulatory initial margin documentation published by ISDA, which has been used globally by derivatives market participants to meet their documentation requirements. As the Commission’s initial margin requirements differ in certain respects from the Margin Framework (most notably, with different segregation rules and no requirement for nonbank SBSDs to post initial margin), ISDA is preparing amendment agreements to the existing initial margin CSAs for segregated initial margin, and the regulatory variation margin CSA and, potentially, a standalone agreement (in each case, for non-segregated initial margin), which a nonbank SBSD and its counterparty can execute, to the extent applicable, in preparation to comply with Exchange Act Rules 18a-3 and 18a-4 (the “SEC IM Agreements”).

Regardless of the appropriate option, each nonbank SBSD and each security-based swap counterparty will complete its SEC IM Agreements as part of a documentation package that will cover all jurisdictions relevant to the relationship to which initial margin requirements will apply. The same global lens applies to the establishment of custody accounts for initial margin segregation. As the choice of custodian determines the form of CSA that the parties use, where security-based

¹¹ See <https://www.isda.org/a/sM7TE/IMPhase5-6COVID-19Letter.pdf>

¹² See <https://www.iosco.org/news/pdf/IOSCONEWS560.pdf>

swap counterparties in Phase 6 choose to segregate initial margin, an October 6, 2021 compliance date for Exchange Act Rule 18a-3's initial margin collection requirement will force those security-based swap clients to accelerate preparation by 10 months, to expedite commitments on custodian selection and to adjust their resourcing timelines to negotiate documentation, establish custodial accounts, and otherwise prepare infrastructure for posting initial margin. If nonbank SBSDs and their counterparties are unable to allocate resourcing to meet these early deadlines, the ability to continue to trade security-based swaps may be affected.

Although paragraph (c)(1)(iii)(H)(2) of Exchange Act Rule 18a-3 provides for a two-month grace period before a nonbank SBSD must collect initial margin from a counterparty once it exceeds the \$50 million initial margin threshold, in practice the documentation process typically takes longer than two months, so firms can be expected to need to work on compliance before that grace period would start to run.

Scale of Phase 6+

In order to assess the potential scale of the challenge brought on by complying with the initial margin requirements in Exchange Act Rule 18a-3 for counterparties under the \$50 billion AANA threshold in advance of other global jurisdictions, ISDA analyzed the data in its 2018 study associated with 15 legal entities from 7 groups that had participated in the data study and expect to register as SBSDs. As shown in Table 1 below, these SBSDs collectively trade non-cleared derivatives with 4,352 unique counterparties with AANA below \$50 billion.

Table 1

IM Phase	Gross Notionals (USD)	Number of Counterparties	Number of US-based Counterparties	Number of Non-US Based Counterparties
Phase is Undefined	0 to 8 bn	3,723	897	2,826
Phase Six	8 to 50 bn	629	136	493
Phase Five*	50 to 750 bn	264	43	221

*Phase Five is included solely for comparison.

As shown in Table 2 below, these SBSD and counterparty pairings result in 6,923 trading relationships, each of which may require initial margin documentation and one or possibly two custodial arrangements. Although some subset of these counterparties may not trade security-based swaps and others may be subject to an exception from initial margin requirements under paragraph (c)(1)(iii) of Exchange Act Rule 18a-3, the data demonstrate that the scale of potential work that would be accelerated under the Commission's compliance date is significant, even though all potential nonbank SBSDs are not included in the data set.¹³

¹³ Although this data set includes some non-U.S. nonbank SBSDs, which may potentially be eligible for substituted compliance with home country margin requirements that incorporate the phase-in schedule adopted by BCBS and IOSCO, we note that failing to provide for a comparable phase-in schedule for U.S. nonbank SBSDs would place U.S. nonbank SBSDs at a significant competitive disadvantage.

Table 2

IM Phase	Gross Notionals (USD)	Number of Relationships	Number of relationships with US-based Counterparties	Number of relationships with Non-US Based Counterparties
Phase is Undefined	0 to 8 bn	5,218	1,278	3,940
Phase Six	8 to 50 bn	1,705	381	1,324
Phase Five*	50 to 750 bn	1,167	184	983

*Phase Five is included solely for comparison.

In contrast to the substantial increase in effort associated with the earlier SEC initial margin compliance date for security-based swap counterparties with AANA below \$50 billion, the amount of initial margin that may not be exchanged during a ten-month period is not significant. The initial margin amounts in the study were based on portfolios that had been established for two years. Thus, as shown in Table 3 below, even two years into a trading relationship, the callable initial margin amounts (i.e., the amount in excess of the \$50 million initial margin threshold) calculated using ISDA SIMMTM average just \$11.6 million per relationship for Phase 6 counterparties and \$2.7 million per relationship for counterparties below the \$8 billion Phase 6 threshold.

Table 3

IM Phase	Gross Notionals (USD)	Callable SIMM IM (USD)	Callable SIMM IM per Counterparty (USD)	Callable SIMM IM per Relationship (USD)
Phase is Undefined	0 to 8 bn	14.0bn	3.8m	2.7m
Phase Six	8 to 50 bn	19.8bn	31.5m	11.6m
Phase Five*	50 to 750 bn	32.8bn	124.4m	28.1m

*Phase Five is included solely for comparison.

Additional Mitigants

Should the Staff take the position requested by this letter, we note that other Commission requirements that nonbank SBSDs will comply with beginning October 6, 2021 (or the date upon which they register as SBSDs) would significantly mitigate the risks arising from nonbank SBSDs not collecting initial margin from smaller counterparties until September 1, 2022. Most notably, a nonbank SBSD will be required to exchange variation margin with such counterparties pursuant to paragraph (c)(1)(ii)(A) under Exchange Act Rule 18a-3. A nonbank SBSD also will be required to (1) calculate the initial margin amount pursuant to paragraph (c)(1)(i)(B) of Exchange Act Rule 18a-3 with respect to each account of a counterparty as of the close of each business day; (2) include the initial margin amount in the calculation of its risk margin amount in determining its minimum net capital requirements under Exchange Act Rule 15c3-1 or 18a-1, as applicable; and (3) deduct the amount of initial margin not collected under an exception to the margin rule (or take a credit risk charge for nonbank SBSDs authorized to use models) in computing its net capital under Exchange

Act Rule 15c3-1 or 18a-1, as applicable.¹⁴ Nonbank SBSBs would also be subject to extensive risk management requirements under Exchange Act Rule 15c3-4 (incorporated pursuant to paragraphs (a)(7) or (10) under Exchange Act Rule 15c3-1 or paragraph (f) under Exchange Act Rule 18a-1, as applicable), and paragraph (e) of Exchange Act Rule 18a-3.

Request

The Associations respectfully request that the Staff will not recommend enforcement action to the Commission if a nonbank SBSB, for purposes of paragraph (c)(1)(ii)(B) of Exchange Act Rule 18a-3, does not collect initial margin from a Phase 6+ Counterparty (as defined below) in connection with non-cleared security-based swaps entered into with such counterparty before September 1, 2022, provided the nonbank SBSB makes a record of such Phase 6+ Counterparties, and preserves the record for a period of not less than three years, the first two years in an easily accessible place.

For purposes of the no-action position, a Phase 6+ Counterparty would mean a counterparty to a non-cleared security-based swap that, combined with all of its affiliates¹⁵ has a daily AANA of non-cleared swaps, non-cleared security-based swaps, foreign exchange swaps, and foreign exchange forwards in March, April, and May 2021 of \$50 billion or less.¹⁶ As noted above, nonbank SBSBs will exchange variation margin with Phase 6+ Counterparties and comply with the capital and risk management requirements under Exchange Act Rule 15c3-1 or 18a-1, as applicable, and Exchange Act Rule 15c3-4 and paragraph (e) of Rule 18a-3(e).

The Associations thank you in advance for your consideration of this important matter. If we may provide further information, please do not hesitate to contact the undersigned.

Sincerely,



Tara Kruse
Global Head, Infrastructure, Data and
Non-Cleared Margin
ISDA



Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

¹⁴ 17 CFR 240.15c3-1(c)(2)(xv)(A); 17 CFR 240.15c3-1e(a) and (c); 17 CFR 240.18a-1(c)(1)(ix)(A), (d)(1) and (e)(2).

¹⁵ For this purpose, a person is an “affiliate” of another person if: (a) either person consolidated the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (2) both persons are consolidated with a third person on a financial statement prepared in accordance with such principles or standards; or (3) for a person that is not subject to such principles or standards, if consolidation under (1) or (2) would have occurred if such principles or standards had applied.

¹⁶ In calculating this amount, a person would (a) count the average daily notional amount of a non-cleared swap, non-cleared SBS, a foreign exchange forward, or a foreign exchange swap between the person and an affiliate only one time and (b) not count a swap with a counterparty that is exempt pursuant to 17 CFR 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Exchange Act (15 U.S.C. 78o-10(e)). Such calculation can only be determined by a counterparty and its affiliates and is subject to self-disclosure, which may be delivered using the ISDA Initial Margin Self-Disclosure Letter or any other reasonable method.

APPENDIX

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 925 member institutions from 75 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, LinkedIn, Facebook and YouTube.

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>.