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Invested in America

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Submitted electronically via SEC.gov

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7–08-23

Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the above-referenced proposal (the "Proposal") by the Securities and Exchange Commission (the "Commission or the "SEC").[2]

SIFMA strongly supports modernizing the document submission process for broker-dealers, OTC derivatives-dealers, and security-based swap entities and improving the utility and functionality of the forms and their data for the Commission, market participants, and dealers. Indeed, many of our members currently submit forms electronically even when not required to do so and have sought to engage with the Commission on steps to improve the document submission process. SIFMA also applauds the Commission for taking steps in the Proposal to eliminate unnecessary, confusing, and duplicative requirements.

However, we are concerned that the Proposal includes a number of requirements (*e.g.*, structured data language for unstructured documents) that would impose significant costs and burdens on market participants without providing a clear benefit. In many cases, there are

[1] 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 one 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 https://www.sifma.org.

[2] *See* 88 Fed. Reg. 23920 (Apr. 18, 2023).

mechanisms to achieve the Commission's objectives that would be substantially less costly and burdensome for firms than those proposed by the Commission (for example, allowing firms to submit PDFs via email or a private file transfer service). In addition, some aspects of the Proposal, such as the requirement to submit fillable web forms on EDGAR in lieu of PDFs, would actually undermine the Proposal's goals by introducing inefficiencies and opportunities for human error.

A number of the Proposal's amendments would also introduce uncertainty and ambiguity, which the Commission would need to clarify before finalizing the Proposal. In addition, the Proposal raises a number of technical, operational, and cybersecurity considerations that require careful analysis. For example, before requiring that firms submit forms in structured data language via EDGAR, it will be critical that the Commission not only remediate many of the operational deficiencies that make it difficult for firms to submit the relevant forms via EDGAR, but also conduct sufficient testing to confirm that firms can submit such forms without impediment.

We have outlined a number of concerns with the Proposal below. However, given the breadth of the Proposal and its highly technical nature, firms will need to engage with a number of internal stakeholders in a variety of departments to identify whether individual requirements are workable and to understand the costs and questions they raise. The Proposal's 60-day comment period is insufficient for firms to complete this extensive process. We therefore recommend that the Commission extend the comment period or re-open it after the Commission has engaged with firms about the various issues the Proposal raises.[3]

We also note that some aspects of the Proposal remain incomplete. For example, the Proposal does not address the XBRL taxonomies that firms will need to follow or identify the specific elements that will need to be included on the XML valuation dispute reports. The Commission will need to submit proposals on these items for notice and comment so that it can confirm that they will achieve the objectives the Commission has articulated and will not raise undue burdens, costs, or confusion. In the absence of a proposal on items like these, neither registrants nor other constituencies can provide the Commission with robust feedback.

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[3] *See generally* 5 U.S.C. § 553. *See also Portland Cement Assoc. v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973) (with respect to the standard for adequate notice, "[i]t is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data, or on data that, to a critical degree, is known only to the agency"); Letter from Multiple Trade Associations to Chair Gensler, *Importance of Appropriate Length of Comment Periods* (April 5, 2022), https://www.sifma.org/wp-content/uploads/2022/02/SEC_Joint-Trades_Comment-Period-Letter_4-5-2022.pdf.

Executive Summary

We wish to highlight the following issues and recommendations discussed at greater length below:

- Instead of mandating that firms use specific structured data languages for particular reports, the Commission should adopt a principles-based approach that requires firms to submit reports in a machine-readable form.

- If the Commission does require specific structured data languages, it should not require firms to use Inline XBRL for unstructured reports, such as the CCO Report, since the requisite tagging and taxonomies do not make sense for these reports.

- The Commission should align the FOCUS Report requirements with existing capital requirements, including by removing defunct references.

- The Commission should make clear that the Proposal would not modify the content and format of reports that substituted compliance firms are required to submit.

- The Commission should amend the signature requirements to eliminate unnecessary signatures, clarify the process for submitting electronic signatures, and remove antiquated notarization requirements.

- The Commission should simplify the confidentiality request process to allow a "check-the-box" mechanism.

- The Commission should not require firms to submit Valuation Dispute Reports using fillable web forms.

- The Commission must remediate EDGAR's numerous deficiencies before dramatically expanding the scope of documents firms must submit via EDGAR.

- The Commission should submit proposed XBRL tagging taxonomies and XML fillable web forms to notice and comment so that it can identify potential costs, benefits, and ambiguities with these proposals.

- The Commission should only require compliance once the Commission has implemented and tested the necessary infrastructure for electronic submission and should stage any requirements.

I. Using Structured Data Language for Reports Is Costly and Time-consuming for Firms and Is Not Necessary to Provide the Benefits the Commission Identifies

The Proposal would require that certain forms be filed using a structured data language of XBRL or XML. These include:

- the annual reports for broker-dealers, security-based swap entities ("SBS entities"), and OTC derivatives dealers (*i.e.*, Form X-17A-5 Part III);
- Form 17-H (the quarterly and annual risk assessment report required to be filed under Exchange Act Rule 17h-2T);
- the valuation dispute report required by Exchange Act Rule 15fi-3(c) (the "Valuation Dispute Report"); and
- the report of the chief compliance officer (required by Exchange Act Rule 15fk-1(c)) (the "CCO Report"), which the Proposal would require to be filed using Inline XBRL.

The Proposal states these structured data requirements would make information in these reports more readily accessible for retrieval, aggregation, and comparison; allow EDGAR to perform technical validations more easily; and potentially allow analysts to avoid manual analysis of financial statements. The Commission also points to "sentiment analysis" (*i.e.*, natural language processing to identify the emotional tone of given text) as another benefit, particularly with respect to the annual reports and the CCO Report.

Utilizing XBRL and XML for these reports would require firms to expend substantial resources and undergo fundamental operational changes. In particular, firms would need to:

- hire additional personnel that are proficient in XBRL and XML;
- develop processes for converting the relevant data into XBRL and XML and uploading that data to EDGAR;
- train new and existing personnel on these processes; and
- overhaul systems and operations to integrate the XBRL/XML production and processing.

The burdens would be especially great for firms that are not affiliates of public reporting companies, since these firms do not currently submit EDGAR filings in XBRL or XML. Moreover, the XBRL resources that public filers have developed for purposes of their 10-K and 10-Q filings would be of minimal utility for other kinds of reports, such as the CCO Report, because these reports rely on different systems, personnel, divisions, processes, and timelines, and would be subject to different tagging taxonomies.

In order to submit forms in XBRL, firms will generally need to hire third-party training providers, since firms often do not have these resources in-house. In addition, many firms would need to purchase XBRL rendering and validation software, and either purchase Inline XBRL tagging software or hire a third-party tagging service provider. The process of diligencing, negotiating with, and onboarding the numerous third-party vendors necessary to implement the structured data requirements would be very time-consuming and expensive. This is in part

because the Commission's own cybersecurity and confidentiality regulations discourage the use of such third-party vendors, and because firms would need to undertake extensive and lengthy third-party risk assessments (especially given the confidential nature of some of the reports). Even with these assessments, using third-party service providers necessarily opens firms up to risks of information leaks and cyberattacks, as the Commission has recognized.

The lack of clarity around the specifics of the Proposal (*e.g.*, tagging requirements and XBRL taxonomies) and the short period of time the Commission has allotted for comments make it difficult to engage with vendors and the various internal stakeholders at firms to collect comprehensive data on the costs of submitting these reports in XBRL and XML. For example, a key consideration in determining the cost of preparing reports in XBRL is the number of required tags, which depends on the granularity of the taxonomy. In some cases, a taxonomy can have 15,000 to 20,000 tags. However, the Proposal does not specify a taxonomy or number of tags.

Nevertheless, we have identified that these costs will be well in excess of the estimates set forth in the Proposal. One firm estimates, for example, that it would cost $20,000 to $40,000 per year per registrant to retain an XBRL tagging service provider and $20,000 to $30,000 per year per entity to purchase the tagging software. It is questionable that there currently are vendors that will be able to both support the breadth of work required by the Proposal and satisfy the Commission's requirements for third-party vendors.

In addition to costs, XBRL requirements will require firms to overhaul their entire timelines for preparing and submitting reports because firms will need to provide service providers with time (often three to four business days) to conduct the XBRL tagging, rendering, and processing. The extent of these timing challenges cannot be fully understood until the Commission finalizes the taxonomies, but given the number of tags typically associated with Inline XBRL reports, we expect the required changes to be quite broad. Firms would also need to manage ongoing edits required to the CCO Report (*e.g.*, senior office and management reviews) against these timelines. SBS entities that rely on substituted compliance pursuant to Exchange Act Rule 3a71–6 would face particularly undue timing pressures, as substituted compliance orders generally require these firms to submit their home country CCO Reports no later than 15 days from submission to the entity's management body.[4]

The use of structured data languages would therefore not be a seamless one—it would take a great deal of time and expense, and it is not clear it is possible. Costs would be ongoing for firms, as they would continually need to train personnel in XBRL/XML updates and pay any third-party software providers.

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[4] *See, e.g.*, 86 Fed. Reg. 59797, 59817 (Oct. 28, 2021) (German substituted compliance order); 86 Fed. Reg. 59776, 59785 (Oct. 28. 2021) (Spanish substituted compliance order); 86 Fed. Reg. 57455, 57462 (Oct. 15, 2021) (Swiss substituted compliance order); 86 Fed. Reg. 41612, 41659 (Aug. 2, 2021) (French substituted compliance order).

The significant costs and burdens of using XBRL and XML might be justified were there clear benefits to market participants and the markets from using them.[5] However, the empirical evidence the Commission provides is limited to a single study that does not even analyze Inline XBRL. Furthermore, the proposed benefits of these structured data languages—such as keyword searching and redlining—are not exclusive to XBRL and XML. Rather, documents in PDF can be searched and redlined with ease. Indeed, most firms currently submit many of their forms in PDF, and we understand the Commission will often redline and search those forms.

Moreover, given the pace of technological change, it is quite likely that a prescriptive requirement to use a particular structured data language will become obsolete or impractical within a short period of time. Experience demonstrates that such obsolescence can create significant challenges for market participants as well as undue costs and confusion.[6]

Rather than needlessly increasing costs, causing confusion, and laying the groundwork for obsolete standards, the Commission should adopt a principles-based approach under which firms are required to submit forms in a machine-readable format (*e.g.*, in searchable PDF). Such an approach would facilitate data analysis without unduly saddling firms with burdensome and ambiguous requirements that achieve no benefit. [7]

A. The Use of Inline XBRL for Narrative-Based Reports in Particular Would Provide No Material Benefit and Would Cause Confusion

When public reporting firms submit Forms 10-Q and 10-K using Inline XBRL, they typically apply tags on the basis of a U.S. GAAP taxonomy and a firm-specific taxonomy. The goal of such tagging is to facilitate the ability of market participants to compare numerical entries or specific accounting items across firms. This is possible because the entries and items

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5 *See, e.g.*, *SEC v. Business Roundtable*, 647 F.3d 1144, 1148 (D.C. Cir. 2011) (noting that the Commission has a "statutory responsibility to determine the likely economic consequences of" a proposed rule "and to connect those consequences to efficiency, competition, and capital formation"); *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178-79 (D.C. Cir. 2010) (noting that the Commission must articulate the appropriate economic baseline against which to measure the proposed rule's likely economic impact (in terms of potential benefits and costs, including effects on efficiency, competition, and capital formation in the market(s) the rule would affect)); *Chamber of Commerce v. SEC*, 412 F.3d 133, 143-45 (D.C. Cir. 2005) (stating that the Commission has a "statutory obligation to determine as best it can the economic implications of the rule."). *See also* Section 3(f) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(f) ("[w]henever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.").

6 Letter from Multiple Trade Associations to Secretary Fields, *Petition for Rulemaking to Amend Exchange Act Rule 17a-4(f)* (Nov. 14, 2017) (outlining the challenges of the Commission's former "write once, read many" requirement under Exchange Act Rule 17a-4), https://www.sifma.org/wp-content/uploads/2017/11/SIFMA-Submits-Rulemaking-Petition-on-SEC-Electronic-Recordkeeping-Requirements.pdf.

7 Commissioner Hester M. Pierce, *Statement on Trading and Markets Proposal to Move from Paper to Electronic Filing Under Various Rules* (Mar. 22, 2023), https://www.sec.gov/news/statement/peirce-statement-electronic-filing-032223.

are largely standardized, though as a practical matter we understand that analysts and investors do not find the tags useful or relevant. The Proposal would require the use of Inline XBRL for unstructured, narrative-based reports, such as the CCO Report and the compliance and exemption sections of the annual reports. This would not facilitate analysis or comparison, as the narrative reports do not contain standardized, easily comparable elements. That leaves sentiment analyses as the only possible remaining benefit of structured data language. But it is unclear why sentiment analysis, which is typically used for marketing purposes, would be necessary or beneficial for these reports. As a result, requiring firms to use Inline XBRL would not only increase costs without clear benefit, but it would also generate confusion, contrary to the Commission's express intent of modernizing the document submission requirements.

B. The Commission Should Allow Substituted Compliance Forms to Continue Submitting Home-Country CCO Report Equivalents in Their Current State

The proposed requirement to use Inline XBRL for the CCO Report also raises concerns for SBS entities that rely on substituted compliance pursuant to Exchange Act Rule 3a71–6. Currently, these firms submit home-country equivalent reports to the Commission in accordance with the Commission's substituted compliance orders. However, the organization and requirements of these reports is often different from U.S. reports. If the Commission requires firms to use specific tags in their CCO Report—which as discussed above is one of the principal benefits of Inline XBRL—it should allow substituted compliance firms to continue submitting home-country reports in their current form. In other words, the Commission should not force substituted compliance firms to redo their home-country reports with the Commission's preferred tags, since that would significantly impair the aims of the substituted compliance framework.

II. The Commission Should Align the FOCUS Report Requirements with Existing Capital Requirements

A. The Commission Should Conform Focus Report Part II to the SEC's and CFTC's Existing Capital Rules and the Staff's Outstanding Guidance

Currently, Exchange Act Rule 15c3-1 requires a broker-dealer that is also a futures commission merchant (a "BD-FCM") to maintain net capital equal to the greater of what Exchange Act Rule 15c3-1 itself requires and 4 percent of the funds the Commodity Futures Trading Commission (the "CFTC") requires it to segregate. However, this is an outdated, irrelevant requirement, as the CFTC has not imposed the 4% requirement for nearly two decades.[8] Instead, the CFTC uses "risk-based" capital requirements, usually based on a percentage of the future commission merchant's risk margin requirements.[9] In light of this, Commission staff have advised BD-FCMs to record as their minimum capital requirement the greater of the amount required by the CFTC and the SEC.

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8 *See* 69 Fed. Reg. 49784 (Aug. 12, 2004) (replacing the 4 percent segregation requirement with a risk-based requirement).

9 *See* 17 C.F.R. § 1.17(a)(1)(i)(B).

Instead of codifying this guidance and making a corresponding update to Exchange Act Rule 15c3-1, the Proposal would exacerbate the confusion arising from the defunct reference by incorporating it into the FOCUS Report. Far from modernizing the submission process, this would simply cause confusion and would require firms to compute a CFTC value that the CFTC itself no longer views as relevant. It would be much more consistent with the Commission's stated aims of modernization to simply amend the capital section of the FOCUS Report to align with the existing capital requirements and the staff's prior guidance.

In addition, for standalone security-based swap dealers ("SBSDs") and SBSD-OTC derivatives dealers that are dually registered as swap dealers, the Commission should make clear that, when reporting their minimum net capital requirement, these firms should include the greater of the amounts required by CFTC and SEC. This would ensure consistency with staff guidance as well as the approach of BD-FCMs.

In order to implement the foregoing changes, we recommend that the Commission revise Part II of the FOCUS Report in the manner set out in Appendix A.

B. The Commission Should Make Further Technical Amendments to FOCUS Report Part IIC to Align with the Call Report

We support the Commission's efforts to harmonize Part IIC of the FOCUS Report with the Call Report.[10] However, we note that the Commission's proposed amendments to implement these objectives still contain a number of mistakes and divergences from the current version of the Call Report. We have identified and proposed fixes to these errors and omissions in redline form in Appendix B. We ask that the Commission make these changes, and we emphasize that the Commission should continue to update FOCUS Report Part IIC to address any future amendments to the Call Report.

C. The Commission Should Confirm the Continued Applicability of the Manner and Format Order

Currently, non-U.S. SBS entities that rely on substituted compliance for FOCUS Report Part II and Part IIC fill out certain yellow-highlighted fields on these forms in accordance with the "Manner and Format Order" published October 26, 2021.[11] Nothing in the Proposal is clearly at odds with the Manner and Format Order, and we assume that the Commission would not modify the Order without engaging the industry. However, to provide certainty and limit the possibility of ambiguity, we ask that the Commission expressly confirm that nothing in the Proposal will affect the Manner and Format Order or otherwise modify the steps substituted compliance firms must take to satisfy the manner and format conditions of the Commission's substituted compliance orders.

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[10] As the Commission notes, the Call Report is often the term used to refer to Federal Financial Institutional Examination Council Form 031.

[11] 86 Fed. Reg. 59208 (Oct. 26, 2021).

III. The Commission Should Simplify and Clarify the Signature Requirements and Eliminate Notarization Requirements

A. The Commission Should Simplify and Clarify the Signature Requirements

The Proposal contains a number of measures designed to reduce the burden on firms related to signatures on various reports. We appreciate the Commission's efforts in this direction. However, certain aspects of the Proposal are incomplete or could be simplified further without affecting the reliability of reports.

First, with respect to the CCO Report, the Proposal does not specify whether an electronic signature would be allowed or required. If the Commission decides to require electronic submission of the CCO Report (whether or not it requires the CCO Report to be submitted in a structured data language), the Commission should specify that an electronic signature is acceptable, and ensure there is a simple way to provide the signature. We note in this regard that it is not clear that XBRL or XML can accommodate signatures, so the Commission should be clear that signatures need not be provided in any kind of structured data language.

Second, the Proposal would reduce the number of signatures required for the cover pages of Parts II, IIA, and IIC of the Focus Report from three to two. While we welcome this reduction, we encourage the Commission to simply require one signature when the report does not concern operational matters for which the principal operations officer's signature would be appropriate. In such a situation, there is no utility or value in having the principal executive officer or principal operations officer sign, and the requirement to obtain their signatures simply creates a burden and adds confusion.

Third, we ask that the Commission make clear that the electronic signature provisions apply to all FOCUS Report submissions, not just those submitted by nonbank SBS entities. The Proposal appears to evince that intent, but the rule text itself is arguably not as clear as it could be.

Lastly, we recommend that the Commission articulate a clear and workable process for firms to submit electronic signatures. The Proposal states that firms would need to "[r]equire the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity" and "reasonably provide for non-repudiation of the signature." However, it does not clearly indicate what constitutes "authentication" or "non-repudiation" for this purpose. This absence of specificity will lead to uncertainty among firms. The Commission should therefore at the very least provide a safe harbor that firms can know will satisfy these requirements.

B. The Commission Should Eliminate Notarization Requirements

The Proposal would require firms to keep notarized oaths or affirmations of annual reports for six years, the first two years in an easily accessible place. The Commission should eliminate the notarization requirement altogether. Notarization is an antiquated concept that does not provide significant additional certainty as to authenticity, particularly for forms that are

signed electronically. Firms experience great administrative challenges in obtaining notarizations, especially because not all states permit electronic or remote online notarization. Accordingly, the function of notarization is simply to add more cost without corresponding benefit.

To the extent the Commission does not eliminate notarization requirements, we request additional clarity on the notarization-related aspects of the Proposal. For example, the Proposal is not clear on how EDGAR would accept the notarizations. It simply points to Volume I of the EDGAR Filing Manual—which requires a notarization be obtained by "manual, electronic, or remote online notarization recognized by the law of [any State]"—and states this would apply to the notarization requirements for the annual reports. But as noted above, not all states permit electronic or remote online notarization. As a result, it is unclear how firms would be able to submit their notarizations. Given these difficulties, it would make sense for the Commission to eliminate the notarization requirements for documents submitted electronically, as we have suggested. If the Commission retains the requirement, it should ensure that its process for submitting notarizations is clear and workable.

We also note that the Commission does not currently require non-bank SBS entities relying on substituted compliance to provide a notarized oath or affirmation in relation to annual reports, as EDGAR removes the requirement for such oath or affirmation when the firm checks the "substituted compliance" box. Nothing in the Proposal purports to change this, but we ask that the Commission expressly confirm that nothing in the Proposal would require substituted compliance firms to begin providing notarized oaths or affirmations.

IV. The Commission Should Simplify the Confidentiality Request Process

The Commission's FAQs[12] provide that firms seeking to request confidentiality for CCO Reports must do so under SEC Rule 83, which requires a separate Freedom of Information Act request. The Commission requires that firms seek confidentiality for Valuation Dispute Reports under SEC Rule 83 as well. This raises an unnecessary logistical hurdle for firms. As part of its efforts to modernize the document submission process and reduce needless costs and expense, the Commission should revise its Rules (specifically, Exchange Act Rule 24b-2) and these forms to allow firms to request confidential treatment on the forms themselves (namely, through a "check-the-box" mechanism). The current requirement to submit a separate confidential treatment request document serves no purpose and fails to give full effect to the advantages of electronic submission.

[12] *See* Commission, "Frequently Asked Questions Regarding Chief Compliance Officer Annual Reports Submitted by Security-Based Swap Dealers and Major Security-Based Swap Participants" (March 3, 2023), https://www.sec.gov/tm/faqs-cco-annual-reports-sbsd.

V. The Proposal's Changes to the Valuation Dispute Report Would Introduce Greater Possibility of Mistakes and Confusion

A. The Proposal's Requirement of Fillable Web Forms Would Introduce Inefficiency and Risk of Error

The Proposal would require SBS entities to submit Valuation Dispute Reports in a custom XML structured data language and indicates that the Commission would prepare a fillable web form into which firms would input the relevant data. This would upend the efficiencies in firms' existing systems and lead to a greater likelihood of error.

Currently, as the Proposal notes, most SBS entities submit Valuation Dispute Reports in PDF to the Commission via email or EDGAR. This serves to reduce the risk of human error and promote efficiency because firms can use their existing systems to populate the PDF automatically. These efficiencies would be lost were firms required to submit Valuation Dispute Reports using a fillable web form because an individual would literally need to copy and paste the text from the relevant data output into the form. In order to minimize the risk of error, firms would likely need to use an "over the shoulder" check, whereby a second individual would watch the first individual input the data. Not only would this create inefficiency for no corresponding benefit, it would also not entirely eliminate the risk of error. The Commission should therefore allow firms to continue submitting their Valuation Dispute Reports (and subsequent amendments and terminations) in PDF. At the very least, the Commission should allow firms to submit a structured data file as the Valuation Dispute Report rather than filling in a web form.

B. If the Commission Requires SBS Entities to Submit Valuation Disputes Using Structured Data, it Must Submit the Details of that Requirement to Notice and Comment

For the reasons discussed above, the Commission should allow SBS entities to submit Valuation Dispute Reports in PDF. However, if the Commission does adopt a fillable web form requirement or another requirement to submit reports using structured data language, it must provide firms with an opportunity to review and comment on the structure and content of the requirement.[13] Otherwise, there will almost certainly be points of confusion and undue costs. For example, the Proposal is not entirely clear whether firms will be required to simply type in data or to submit a file when submitting Valuation Dispute Reports. To the extent firms are required to submit a file, it may be the case that a different structured data language, such as JSON, may be more fit for purpose than XML. But firms cannot address that without having actual detail on what the Commission is contemplating for the form and the form submission process. Similarly, there may be data elements that need to be clarified or that should not be included at all. But again, firms cannot address that if the Commission does not provide firms with the data elements they have in mind.

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[13] *See generally* 5 U.S.C. § 553. *See also Ruckelshaus*, 486 F.2d at 393 (with respect to the standard for adequate notice, "[i]t is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data, or on data that, to a critical degree, is known only to the agency.").

C. The Commission Should Not Require Firms to Provide the Reason for Amendments to Valuation Disputes

The Proposal states that "SBS Entities would be encouraged to provide information to assist the Commission in understanding the purposes of [an amendment to a previously submitted Valuation Dispute Report] or the circumstances of termination of a dispute." Providing such information would be out of step with the approach of the CFTC, which does not ask that swap dealers submit such information. In many cases, there can be a variety of complex reasons for an amendment or termination of a valuation dispute, and there may be a disagreement between the parties on the reason for the termination or amendment. As a result, it would be quite difficult and, in some cases, sensitive for firms to provide this information, and they would need substantial guidance on the scope of information they would need to provide. Accordingly, we agree with the Commission that it should not require SBS entities to provide such information in the Valuation Dispute Reports.

D. SBS Entities Should be Permitted to Submit Amendments or Terminations of Valuation Dispute Reports Via Email

EDGAR does not have archival capabilities in relation to valuation disputes. As a result, firms do not have a mechanism to associate terminations or amendments with the original Valuation Dispute Report if the dispute lasts longer than 30 days, which is the length of time EDGAR stores these reports. For this reason, firms currently submit amendments and terminations via email using the accession number associated with the original report. Were the Commission to require firms to submit amendments or terminations of valuation disputes via EDGAR, it would upend this process and make it virtually impossible for firms to associate reports with subsequent amendments or terminations. Accordingly, until the Commission modernizes EDGAR to provide more robust archival capabilities, it must continue to allow SBS entities to submit terminations or amendments to Valuation Dispute Reports via email.

VI. The Commission Must Continue to Make ANE Exception Notices Available on its Website

The Commission would require registrants that rely on the ANE Exception (as defined in the Proposal) to submit ANE Exception Notices via EDGAR. The Commission states that this will "enhance the ability of [firms] and their affiliates to access and use the filed ANE Exception Notices to determine their progress toward the ANE Exception's cap on inter-dealer security-based swaps." SIFMA disagrees. As noted below, EDGAR's search functionality is extremely limited. As a result, firms would not be able to access and use ANE Exception Notices on EDGAR in an efficient manner. Accordingly, even if the Commission requires firms to submit ANE Exception Notices via EDGAR, it must continue to publish such notices on its website.

VII. The Commission Should Not Require Firms to Submit Forms Via EDGAR Until it Addresses EDGAR's Technical Deficiencies

The Proposal would require firms to submit multiple forms via EDGAR. While we appreciate the utility of electronic submissions over paper submission, we note that EDGAR in particular contains a number of deficiencies that make it difficult to use.

For example:

- EDGAR currently only allows one password per entity ID. This is already quite problematic for public company filers because a single person at each firm is in effect required to submit all forms. However, it would be especially problematic if firms were required to submit a variety of broker-dealer and SBS entity forms via EDGAR, as different stakeholders may be responsible for each form. Requiring all forms to go through a single individual would impose a severe and unnecessary challenge to firms, especially in situations where that individual is out of the office or on leave. The Commission should update EDGAR so that it permits multiple logins per entity ID in order to allow the relevant stakeholder for each form to submit the form.
- EDGAR's search functionality is currently extremely limited, making it difficult for firms to find important information—including the ANE Exception Notices—that is critical for firms to manage compliance with regulatory requirements.
- EDGAR's validation process does not give any indication as to why it has rejected a file, which means firms are frequently guessing and engaging in trial and error to identify potential validation issues.
- As mentioned, EDGAR does not have archival capabilities in relation to valuation disputes.
- EDGAR has a 25 MB limitation on file size, which means that firms often need to submit multiple files in order to upload a single document.
- Commission personnel are not generally able to address firms' questions regarding EDGAR and to help firms troubleshoot problems. This is problematic now, but would be exponentially more problematic if firms were required to submit a variety of additional forms, each of which with its own unique features.
- EDGAR must have adequate processes in place to ensure that CCO Reports and other confidential reports are and remain confidential.

These deficiencies not only make it difficult, time-consuming, and expensive for firms to submit information via EDGAR, but also can interfere with firms' ability to satisfy their obligations. Accordingly, the Commission should continue to allow firms to submit reports via email, private file transfer systems, or other processes and systems that do not have such limitations.

VIII. The Commission Should Not Require Firms to Comply with the Electronic Submission Requirements Until it Has the Systems, XBRL Taxonomies, and Other Necessary Pieces in Place, and Conducts Sufficient Testing

We understand it will take the Commission some time to make and test the necessary updates to EDGAR. In addition, if the Commission requires firms to use XBRL, it will need to publish appropriate tagging taxonomies. Because of the complexities of XBRL taxonomies and in order to provide the Commission with feedback as to how the taxonomies can be as practical and useful as possible, we believe their publication should also be subject to a notice and comment period.

Firms will not be able to begin taking the steps necessary to comply with any final rule until the Commission completes these steps. For example, firms cannot train personnel on EDGAR and XBRL taxonomies if they do not know how EDGAR will work or what the taxonomies will be. We therefore urge the Commission to set a compliance date only after it has these and other necessary pieces in place.

Furthermore, given the time it will take firms to hire and train staff, identify and retain service providers and software, overhaul their systems, and engage in robust testing with the Commission, as well as attend to the numerous other Commission initiatives that firms are implementing (*e.g.*, T+1), the Commission should not require firms to comply until no less than two years after the Commission makes the necessary updates to EDGAR and finalizes the taxonomies. Moreover, requirements should be staged, such that the Commission should only require forms to transition one new form every quarter so that they can efficiently manage the transition process.

* * *

We appreciate the Commission's efforts to modernize the filing process, and believe the Proposal represents a good first step towards this goal. Given the complexity and scope of the Proposal, we reiterate our request to extend the comment deadline so that members have sufficient time to provide the Commission with thoughtful feedback.

SIFMA greatly appreciates the opportunity to submit this comment letter on the Proposal. If you have any questions or require additional information, please do not hesitate to contact the undersigned.

Sincerely,

Kyle Brandon
Managing Director, Head of Derivatives Policy
Securities Industry and Financial Markets Association

Cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner

APPENDIX A

Suggested Edits to FOCUS Report Part II

FOCUS Report Part II	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS
	Items on this page to be reported by a: Stand-Alone Broker-Dealer Broker-Dealer SBSD (other than OTC Derivatives Dealer) Broker-Dealer MSBSP

Calculations of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$	3640
2. Minimum tentative net capital requirement	$	12055
3. Excess tentative net capital (difference between Lines 1 and 2	$	12056
4. Tentative net capital in excess of 120% on minimum tentative net capital requirement reported on Line 2	$	12057

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement		
A. $6^2/_3$% of total aggregate indebtedness (Line Item 3840)	$	3756
B. 2% of aggregate debt items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	$	3870
~~C. 4% of funds required to be segregated under 17 CFR 240.15c3-1(a)(1)(iii), if applicable~~	~~XXXXX~~	~~$~~
~~D. Minimum ratio required under 17 CFR 240.15c3-1(a)(1) (greater of [Line 5A or Line 5B, as applicable] and Line 5C)~~	~~XXXXX~~	~~$~~
C~~E~~. Percentage of risk margin amount computed under 17 CFR 240.15c3-1(a)(7)(i) or (a)(10), if applicable	$	12058
D~~F~~. ~~Minimum ratio net capital requirement~~Greater of [Line 5A or Line 5B, as applicable] plus Line 5C, if applicable ~~(Line 5D plus Line 5E, if applicable)~~	$	12060
6. Fixed-dollar minimum net capital requirement	$	3880
7. For broker-dealers engaged in reverse repurchase agreements, 10% of the amounts in 17 CFR 240.15c3-1(a)(9)(i)-(iii)	$	12059
8. Minimum net capital requirement (Greater of (i) Line 5D plus Line 7, (ii) Line 6, and (iii) Item 7490~~) plus greater of Line 5F and Line 6)~~	$	3760
9. Excess net capital (Item 3750 minus Item 3760)	$	3910
10. Net capital and tentative net capital in relation to early warning thresholds		
A. Net capital in excess of 120% of minimum net capital requirement reported of Line 8	$	12061
B. Net capital in excess of 5% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	$	3920

FOCUS Report Part II	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS
	Items on this page to be reported by a: Stand-Alone SBSD / SBSD registered as an OTC Derivatives Dealer

Calculations of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$	3640
2. Fixed dollar minimum tentative net capital requirement	$	12062
3. Excess tentative net capital (difference between Lines 1 and 2)	$	12063
4. Tentative net capital in excess of 120% on minimum tentative net capital requirements reported on Line 2	$	12064

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement – Percentage of risk margin amount computed under 17 CFR 240.18a-1(a)(1)	$	12065
6. Fixed-dollar minimum net capital requirement	$	3880
7. Minimum net capital requirement (greater of (i) Lines 5, (ii) and Line 6, and (iii) Line Item 7490)	$	3760
8. Excess net capital (Item 3750 minus Item 3760)	$	3910
9. Net capital in excess of 120% of minimum net capital requirement reported on Line 7 (Line Item 3750 – [Line Item 3760 x 120%])	$	12066

FOCUS Report Part II	COMPUTATION OF CFTC MINIMUM CAPITAL REQUIREMENTS
	Items on this page to be reported by: Futures Commission Merchant Swap Dealer (SD) CFTC Introducing Broker

ADJUSTED NET CAPITAL REQUIRED

A. Risk-based customer risk

i. Amount of customer risk

Maintenance margin $ 7415

ii. Enter 8% of Line A.i. $ 7425

iii. Amount of non-customer risk

Maintenance margin $ 7435

iv. Enter 8% of Line A.ii. $ 7445

v. Amount of uncleared swap margin $ 7446

vi. Enter 2% of Line A.v. $ 7447

vii. Enter the sum of Lines A.ii, A.iv, and A.vi. $ 7455

B. Minimum dollar amount requirement $ 7465

C. Other NFA requirement $ 7475

D. Minimum CFTC adjusted net capital requirement

Enter the greatest of Lines A.vii, B, or C $ 7490

~~E. Minimum net capital requirement (enter greater of Item 3760 or Item 7490, as applicable)~~ ~~$ XXXXX~~

~~F. Excess adjusted net capital (Item 3750 minus Line E)~~ ~~$ XXXX~~

FG. CFTC early warning level -

i. If an FCM, or an FCM also registered as a SD, enter the greatest of 110% of Line A.vii, 150% of Line B, or 150% of Line C $ 7495

ii. If a SD not also registered as an FCM, enter the greatest of 120% of Line A.vii, Line B, or Line C $ XXXX

GH. CFTC Adjusted Net Capital in excess of early warning level (Item 3750 minus Line GF.i or FG.ii, as applicable) $ XXXX

APPENDIX B

Suggested Edits to FOCUS Report Part IIC

FOCUS Report Part IIC	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 — SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD
	Bank MSBSP

	Assets		**Totals**
1.	Cash and balances due from depository institutions (from FFIEC Form 031's Schedule RC-A)		
	A. Noninterest-bearing balances and currency and coin		$_____ 0081b
	B. Interest-bearing balances		$_____ 0071b
2.	Securities		
	A. Held-to-maturity securities		$_____ ~~1754b~~JJ34b
	B. Available-for-sale debt securities		$_____ 1773b
	C. Equity securities with readily determinable fair values not held for trading		$_____ JA22b
3.	Federal funds sold and securities purchased under agreements to resell		
	A. Federal funds sold in domestic offices		$_____ B987b
	B. Securities purchased under agreements to resell		$_____ B989b
4.	Loans and lease financing receivables (from FFIEC Form 031's Schedule RC-C)		
	A. Loans and leases held for sale		$_____ 5369b
	B. Loans and leases held for investment	$_____ B528b	
	C. LESS: Allowance for loan and lease losses	$_____ 3123b	
	D. Loans and leases held for investment, net of allowance (Line 4B minus Line 4C)		$_____ B529b
5.	Trading assets (from FFIEC Form 031's Schedule RC-D)		$_____ 3545b
6.	Premises and fixed assets (including capitalized leases)		$_____ 2145b
7.	Other real estate owned (from FFIEC Form 031's Schedule RC-M)		$_____ 2150b
8.	Investments in unconsolidated subsidiaries and associated companies		$_____ 2130b
9.	Direct and indirect investments in real estate ventures		$_____ 3656b
10.	Intangible assets (from FFIEC Form 031's Schedule RC-M)		$_____ 2143b
11.	Other assets (from FFIEC Form 031's Schedule RC-F)		$_____ 2160b
12.	Total assets (sum of Lines 1 through 11)		$_____ 2170b

FOCUS Report Part IIC

REGULATORY CAPITAL (INFORMATION AS REPORTED ON FFIEC FORM 031 - SCHEDULE RC-R)

Items on this page to be reported by a: Bank SBSD

Bank MSBSP

	Capital	**Totals**
1.	Total bank equity (from FFIEC Form 031's Schedule RC, Line 27A)	$_____ 3210b
2.	Tier 1 capital	$_____ 8274b
3.	Tier 2 capital	$_____ 5311b
4.	Total capital	$_____ 3792b
5.	Total risk-weighted assets	$_____ A223b
6.	Total assets for the leverage ratio	$_____ A224b

Capital Ratios	(Column A is to be completed by all banks. Column B is to be completed by advanced approach institutions that exit parallel run only.)	**Column A**	**Column B**
7.	~~Tier 1~~ Leverage ratio	_____% 7204b	
8.	Common equity tier 1 capital ratio	_____% P793b	_____% P793bb
9.	Tier 1 capital ratio	_____% 7206b	_____% 7206bb
10.	Total capital ratio	_____% 7205b	_____% 7205bb

FOCUS Report Part IIC	INCOME STATEMENT (INFORMATION AS REPORTED ON FFIEC FORM 031 - SCHEDULE RI)
	Items on this page to be reported by a: Bank SBSD / Bank MSBSP

		Totals	
1.	Total interest income	$	4107b
2.	Total interest expense	$	4073b
3.	Total noninterest income	$	4079b
4.	Total noninterest expense	$	4093b
5.	Realized gains (losses) on held-to-maturity securities	$	3521b
6.	Realized gains (losses) on available-for-sale debt securities	$	3196b
7.	Income (loss) before applicable income taxes and discontinued operations	$	4301b
8.	Net income (loss) attributable to bank	$	4340b
9.	Trading revenue (from cash instruments and derivative instruments)		
	A. Interest rate exposures	$	8757b
	B. Foreign exchange exposures	$	8758b
	C. Equity security and index exposures	$	8759b
	D. Commodity and other exposures	$	8760b
	E. Credit exposures	$	F186b
	Lines 9F and 9G are to be completed by banks with $100 billion or more in total assets that are required to complete lines 9A through 9E above.		
	F. Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets (year-to-date)		
	i. Gross ~~credit~~ debit valuation adjustment (D~~C~~VA)	$	FT36b
	ii. D~~C~~VA hedge	$	FT37b
	G. Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities		
	i. Gross credit valuation adjustment (CVA)	$	FT38b
	ii. CVA hedge	$	FT39b
10.	Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account		
	A. Net gains (losses) on credit derivatives held for trading	$	C889b
	B. Net gains (losses) on credit derivatives held for purposes other than trading	$	C890b
11.	Credit losses on derivatives	$	A251b