September 18, 2023 ***Submitted Electronically***

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581

Re: ANPRM on potential amendments to the Risk Management Program (CFTC Regulations 23.600 and 1.11)

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (**"ISDA"**)[1] and the Securities Industry and Financial Markets Association (**"SIFMA"**)[2] (collectively, the **"Associations"**) appreciate the opportunity to submit these comments on the Commodity Futures Trading Commission's (**"CFTC or Commission"**) advanced notice of proposed rulemaking ("**ANPRM**") on potential amendments to the Risk Management Program (**"RMP"**).

We appreciate the Commission's willingness to revisit rules that were implemented more than a decade ago to ensure that they keep pace with evolving industry standards and practices. However, when it comes to the risk management program, the Associations do not support making any amendments to the existing rules. The current framework contains the necessary requirements for swap dealers ("**SDs**") to manage and minimize risk and, at the same time, establishes the appropriate level of transparency that allows the CFTC to fully understand how each SD manages its risks. In fact, since these rules were adopted in 2012, to our knowledge, there have been no major deficiencies with SD's risk management programs that would warrant any regulatory shifts.

Moreover, we believe that the current rules provide a clear and consistent framework for SDs to develop their respective risk management programs, while allowing sufficient flexibility to tailor such programs to an individual firm's risk tolerance. We are concerned that the trajectory of the questioning in the ANPRM signals the Commission's intention to introduce a more prescriptive risk management framework. As

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 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.

[2] The Securities Industry and Financial Markets Association 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 http://www.sifma.org.

explained in more detail below, we do not believe that such an approach would further the Commission's goals of ensuring that SDs have comprehensive and effective risk management programs.

Nonetheless, should the Commission decide to make amendments to its existing framework, we ask that the CFTC maintain the status quo for existing substituted compliance orders (i.e., Canada, Japan, the United Kingdom, EU, Switzerland, Hong King, and Australia) by automatically extending the applicability of such orders without requiring an additional level of review.

Below we provide specific answers to the Commission's questions as they relate to SDs.[3]

CFTC Questions & the Associations' Answers

I. Governance and Structure

1. *Do the definitions of "governing body" in the RMP Regulations encompass the variety of business structures and entities used by SDs and FCMs?*
    a. *Should the Commission consider expanding the definition of "governing body" in Regulation 23.600(a)(4) to include other officers in addition to an SD's CEO, or other bodies other than an SD's board of directors (or body performing a similar function)?*
    b. *Are there any other amendments to the "governing body" definition in Regulation 23.600(a)(4) that the Commission should consider?*
    c. *Should similar amendments be considered for the "governing body" definition applicable to FCMs in Regulation 1.11(b)(3)?*
2. *Should the Commission consider amending the definitions of "senior management" in the RMP Regulations? Are there specific roles or functions within an SD or FCM that the Commission should consider including in the RMP Regulations' "senior management" definitions?*

In response to Questions 1(a)-(c) and 2, the Associations do not support changes to the definitions of governing body or senior management under §23.600. The current definitions appropriately provide flexibility in order to account for the differences in business structures and functions that exist across SDs. Such flexibility is also important because it enables firms to identify personnel within the firm that have the appropriate level of seniority in order to obtain the required senior approvals.

With respect to the definition of "senior management" in particular, the RMP regulations state that senior management should be comprised of those granted with the appropriate authority and responsibility to carry out the duties of senior management. We believe that it is appropriate to leave it to the firm's discretion to identify qualified employees to form part of the SD's senior management, rather than prescribe specific roles or functions that must comprise senior management.

[3] With respect to the risk management program requirements applicable to FCMs, the Associations defer to and support the comments submitted by the Futures Industry Association (**"FIA"**). As a general matter, we agree with the FIA that the Commission's current requirements surrounding RMPs are sufficiently robust and provide the appropriate level of flexibility that is necessary to account for firms' differing business structures and risk exposures.

3. *Should the RMP Regulations specifically address or discuss reporting lines within an SD's or FCM's RMU?*

No, the RMP regulations should not specifically address or discuss reporting lines within an SD's risk management unit (**"RMU"**). The RMP regulations provide sufficient guidance to SDs on how to create, structure, and manage their respective risk management programs. The rules also clearly establish reporting lines by requiring the RMU to have "sufficient authority" and "report directly to senior management." Moreover, the current regulations sufficiently safeguard against potential conflicts of interest between the RMU and business trading unit.[4]

Introducing additional requirements that mandate even more specific reporting lines will only serve to make the rules more complex and prescriptive and will eliminate the flexibility for SDs to structure their RMU in a way that allows such personnel to efficiently monitor and address excessive risks that are particular to the SD's business structure. Additionally, preserving this level of flexibility is important given the differences in business structures and functions that exist across SDs. The Commission has not identified shortfalls with existing governance structures of SD risk management programs and has therefore not set forth a compelling reason to modify a risk management regime that already achieves the Commission's goals.

4. *Should the Commission propose and adopt standards for the qualifications of certain RMU personnel (e.g., model validators)?*

No, the Commission should not adopt standards for the qualification of RMU personnel. The key to risk management is understanding the specific vulnerabilities that are particular to a business and creating specific mechanisms to address those risks. The risks and approaches to address risk will (and should) vary from firm to firm. The same logic applies to risk management personnel, and thus, a "one-size-fits-all" approach would not be appropriate. SDs need the flexibility to hire personnel within their RMU's that are best positioned to manage the risks of their particular business. Moreover, the rules already require that the SD employ "qualified personnel" with "sufficient authority" to the RMU.[5] This standard is sufficient to ensure that the SD's risk personnel are able to carry out the functions of the risk management program.

It is also important to note that any prescriptive standards that the CFTC might consider could become quickly outdated as risk management standards are dynamic and evolve over time in order to keep pace with financial innovation.

5. *Should the RMP Regulations further clarify RMU independence and/or freedom from undue influence, other than the existing general requirement that the RMU be independent of the business unit or business trading unit?*

As noted above, the Associations believe that the current regulations sufficiently safeguard against potential conflicts of interest between the RMU and business trading unit. Both §23.600(b)(5) and (d) clearly establish that the RMU should operate independently from the business trading unit and that there should be separation between the personnel of each unit.

[4] Both §23.600(b)(5) and (d) clearly establish that the RMU should operate independently from the business trading unit and that there should be separation between the personnel of each unit.
[5] §23.600(b)(5).

6. *Are there other regulatory regimes the Commission should consider in a holistic review of the RMP Regulations? For instance, should the Commission consider harmonizing the RMP Regulations with the risk management regimes of prudential regulators?*

If a US Swap Entity is subject to entity-level risk management supervision by a prudential regulator, then the Commission should permit substituted compliance with such supervision and regulation for §23.600 (like the CFTC permits non-US Swap Entities to comply with their home country regulations that are deemed comparable to §23.600).

SDs that are banks are already subject to comprehensive risk management supervision and regulation by the Prudential Regulators, including with respect to their swaps activities.[6] Deference to the Prudential Regulators in relation to risk management regulation of these SDs would not present a gap in U.S. regulatory oversight. Instead, allowing for substituted compliance with comparable U.S. financial regulations would reduce the cost and complexity of compliance, promote more efficient use of Commission and NFA resources, and align risk management requirements with existing capital frameworks for US SDs, where such deference is already established by CFTC capital rules. Indeed, under the CEA, the Prudential Regulators are responsible for establishing capital requirements for SDs that are banks.[7] Similar alignment with Prudential risk management standards would not obviate the requirement that these SDs continue to provide risk management reporting to the Commission and the NFA, thus allowing for efficient Commission oversight of these SDs.

7. *Are there other portions of the RMP Regulations concerning governance that are not addressed above that the Commission should consider changing? Please explain.*

Under §23.600(c), SDs are required to establish risk tolerance limits as part of their risk management program. These limits are required to be reviewed and approved quarterly by senior management, and then annually by the governing body. The Associations believe that risk tolerance limits are required to be reviewed and approved too frequently. Most firms' risk committees and governing bodies set and approve risk tolerance limits on an annual basis, with interim adjustments made by an independent risk function when needed. Conducting reviews quarterly does not add value as such intervals provide an insufficient amount of time for an SD's RMU personnel to conduct a meaningful and time-intensive analysis of risks and their potential impacts. In most cases, these reviews do not result in any meaningful changes to the annually set risk tolerance limits. In short, the frequency of these reviews has become an increased administrative burden—compromising the robustness of each review and diverting attention away from more strategic risk management activities.

In addition, the governing body should not be required to approve the limits, they should just be informed of the set limits. Requiring the governing body to "approve" the risk tolerance limits results in duplicative obligations for governing body members to oversee matters that have already been considered by the senior management, as well as other governance committees or forums within an SD's broader organization.[8] If anything, this requirement introduces unclear lines of accountability and authority.

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[6] *See, e.g.*, OCC, Comptroller's Handbook, Risk Management of Financial Derivatives (Jan. 1997) at: https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/risk-mgmt-financialderivatives/pub-ch-risk-mgmt-financial-derivatives.pdf.

[7] *See* CEA § 4s(e).

[8] Prudential regulations with respect to governance require policies to be approved by the applicable committees. These committees are ultimately delegated their authority by the Board of Directors. See, for example, the FDIC's Supervisory Guidance for Model Risk Management, which provides as follows: "Model risk governance is provided

II. Enumerated Risks RMPs Must Monitor and Manage

1. *Should the Commission amend Regulation 1.11(e)(3) to require that FCMs' RMPs include, but not be limited to, policies and procedures necessary to monitor and manage all of the enumerated risks identified in Regulation 1.11(e)(1) that an FCM's RMP is required to take into account, not just segregation, operational, or capital risk (i.e., market risk, credit risk, liquidity risk, foreign currency risk, legal risk, settlement risk, and technological risk)? If so, should the Commission adopt specific risk management considerations for each enumerated risk, similar to those described in Regulation 23.600(c)(4)?*

As noted above, the Associations generally defer to the comments regarding questions related to FCM's RMPs submitted by the FIA.

2. *Regulation 23.600(c)(4)(i) requires SDs to establish policies and procedures necessary to monitor and manage market risk. These policies and procedures must consider, among other things, "timely and reliable valuation data derived from, or verified by, sources that are independent of the business trading unit, and if derived from pricing models, that the models have been independently validated by qualified, independent external or internal persons."*

   a. *Does this validation requirement in Regulation 23.600(c)(4)(i)(B) warrant clarification?*

   b. *Should validation, as it is currently required in Regulation 23.600(c)(4)(i)(B), align more closely with the validation of margin models discussed in Regulation 23.154(b)(5)[9]?*

We do not believe that any additional clarification is necessary. The current regulations sufficiently ensure that the risk-related policies and procedures employed by SDs make use of current data and models that are independently validated by subject matter experts.

In addition, the current regulations have been around for quite some time. During that time, SDs have determined the appropriate qualifications for their RMU personnel, as well as how best to ensure that their model validation policies and procedures are independent. Detailed clarification on independent model validation requirements under Regulation 23.600(c)(4)(i)(B) (including aligning the validation requirements with Regulation 23.154(b)(5)) would likely require SDs to expend additional regulatory costs and resources with little or no observable benefit to the model validation process.

Further, by not prescribing rigid validation requirements, the CFTC provides SDs with flexibility in determining how best ensure independence and the qualifications of RMU personnel. This provides an

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at the highest level by the board of directors and senior management when they establish a bank-wide approach to model risk management. […] In the same manner as for other major areas of risk, *senior management, directly and through relevant committees,* is responsible for regularly reporting to the board on significant model risk, from individual models and in the aggregate, and on compliance with policy" (emphasis added) (available at https://www.fdic.gov/news/financial-institution-letters/2017/fil17022a.pdf). As a result, Rule 23.600(b)(3)'s requirement that the governing body also approve swap specific policies and procedures creates a duplicative burden.

[9] This refers to the control, oversight, and validation mechanisms requirements for risk-based models used to calculate IM.

SD with the ability to develop and implement validation procedures, as well as hire RMU personnel that are appropriate for the SD's specific risk profile and business model.

3. *The policies and procedures mandated by Regulations 23.600(c)(4)(i) and (ii) to monitor and manage market risk and credit risk must take into account, among other considerations, "daily measurement of market exposure, including exposure due to unique product characteristics [and] volatility of prices," and "daily measurement of overall credit exposure to comply with counterparty credit limits." To manage their risk exposures, SDs employ various financial risk management tools, including the exchange of initial margin for uncleared swaps. In that regard, the Commission has set forth minimum initial margin requirements for uncleared swaps, which can be calculated using either a standardized table or a proprietary risk-based model. An SD's risk exposures to certain products and underlying asset classes may, however, warrant the collection and posting of initial margin above the minimum regulatory requirements set forth in the standardized table. Should the Commission expand the specific risk management considerations listed in Regulations 23.600(c)(4)(i)-(ii) to add that an SD's RMP policies and procedures designed to manage market risk and/or credit risk must also take into account whether the collection or posting of initial margin above the minimum regulatory requirements set forth in the standardized table is warranted?*

A requirement to assess the sufficiency of the initial margin ("**IM**") calculated using the standardized scheduled contradicts the rationale behind publication of this method in the Margin Requirements for Non-Cleared Derivatives published by BCBS and IOSCO ("Margin Framework") and its subsequent adoption by the CFTC and global regulators.

The standardized schedule was designed to be both simple and conservative by specifying a notional percentage based on the asset class, and in some cases, the duration (residual maturity). It can be easily employed by market participants for whom there is not sufficient benefit to develop and invest in the resources necessary to implement and maintain a risk sensitive model, like the ISDA SIMM® (SIMM). In exchange, it generally produces a higher IM amount for diversified portfolios.

The Margin Framework recognizes that "some market participants may value simplicity and transparency in IM calculations, without resorting to a complex quantitative model" or that they "may not wish or may be unable to develop and maintain a quantitative model". If the aim of the proposal would be limited to information gathering for the CFTC on the sufficiency of the standardized table and would not entail an obligation to augment the IM amount, then we contend there are less onerous ways the CFTC might assess together with global regulators whether there is a need to recalibrate the standard table and adopt consistent changes to the Margin Framework and global IM requirements.

An obligation to assess the sufficiency of the IM amount calculated using this method also implies an obligation to address any coverage shortfalls by calling for or posting additional segregated margin, while presumably not granting SDs the option to exchange less margin if the assessment affirms the schedule amount is overly conservative. This prospect has legal, practical and market impact.

- Legal impact: The method by which the regulatory IM will be calculated is agreed bilaterally between an SD and its counterparty in the regulatory IM Credit Support Annex ("CSA"). When that choice is SIMM, both the calculation method and the governance framework apply, meaning that there is a right to augment the SIMM amount to ensure compliance with the global standards for minimum IM amount based on 99% confidence of coverage over a 10-day horizon. An SD

does not have a similar right to call or post additional margin when the parties have agreed to use the standard schedule, and therefore all impacted CSAs would need to be amended.

- Practical impact: Even if such amendments were agreed, each SD would use their own established internal risk models to assess sufficiency and such calculations could not be replicated by the counterparty to substantiate the additional IM amount, running counter to the counterparty's fiduciary and other risk management policies. If a uniform method for making this assessment was prescribed by the rules, the counterparties which have chosen the standardized table due to its simplicity would still lack the ability to implement the assessment method. This contradicts a basic tenet of bilateral IM calculations – that they need to be capable of being replicated.

- Market impact: The suggested assessment would also disharmonize the CFTC's requirements for use of the standardized schedule from all other jurisdictions, both global and domestic, competitively disadvantaging non-bank SDs since their counterparties would need to amend their CSAs and be prepared for the prospect that they would be required post additional IM they could not substantiate. Since IM is required to be segregated, an obligation to post additional collateral to top-up the standardized schedule may strain the liquidity of an SD's counterparties.

Most SDs are licensed users of SIMM and it is their primary method of IM calculation. All groups which became subject to regulatory IM requirements between September 1, 2016 and September 1, 2019 (i.e. phases 1-4) are SIMM licensees. In addition, hundreds of parties which became subject to IM requirements on September 1, 2021 (phase 5) or September 1, 2022 (phase 6) are licensed to use SIMM. The standard schedule is only agreed to be used in limited cases to supplement product coverage or at the preference of a subset of phase 5 and 6 firms, including a handful of SDs. Therefore, the primary burden of any additional requirements for the use of the standard schedule would target the smaller SDs who have chosen to use the schedule and the smallest counterparties of all SDs whom the schedule was designed to help. As SD capital requirements take into account counterparty credit risk, any shortfall already has an established mitigant.

The Margin Framework also recognizes that the IM amount must be determined in such a way that it "limits the extent to which the margin can be procyclical". An obligation to assess the sufficiency of the IM amount calculated using the standardized table could lead to procyclicality in regulatory IM, resulting in sudden and unplanned increases in IM being collected or posted. This can create liquidity impacts that could ripple through the industry and would go against one of the core principles of the Margin Framework.

For these reasons, the Associations strongly believe that the Commission should not expand the risk management considerations in Regulations 23.600(e)(4)(i)-(ii) to require an SD's policies and procedures designed to manage market risk and/or credit risk to take into account whether the collection or posting of IM above the minimum regulatory requirements set forth in the standardized table is warranted.

4. *The RMP Regulations enumerate, but do not define, the specific risks that SDs' and FCMs' RMPs must take into account. Should the Commission consider adding definitions for any or all of these enumerated risks? If so, should the enumerated risk definitions be identical for both SDs and FCMs?*

It is not necessary for the RMP regulations to provide definitions for the enumerated risks that SDs must take into account. Defining each of the risks will make the regulations more prescriptive, introducing

additional complexity in implementation, without commensurate benefit to regulatory oversight. Firms deal with these risks on a daily basis and have set their own parameters around market, credit, liquidity, foreign currency, legal, operational, or settlement risk and how such risks apply to their particular businesses. Defining each risk will lead to a one-size-fits-all approach, discounting firms' individual risks profiles and how they define and manage their specific risks.

5. *The Federal Reserve and Basel III define "operational risk" as "the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events." Would adding a definition of "operational risk" to the RMP Regulations that is closely aligned with this definition increase clarity and/or efficiencies for SD and FCM risk management practices, or otherwise be helpful? Should the Commission consider identifying specific sub-types of operational risk for purposes of the SD and FCM RMP requirements?*

As explained in our response above, the Associations do not believe it is necessary or appropriate for the Commission to adopt definitions for the enumerated risks under the RMP.

6. *Technological risk is identified in Regulation 1.11(e)(1)(i) as a type of risk that an FCM's RMP must take into account; however, technological risk is not similarly included in Regulation 23.600(c)(1)(i) as an enumerated risk that an SD's RMP must address. Should the Commission amend Regulation 23.600(c)(1)(i) to add technological risk as a type of risk that SDs' RMPs must take into account?*
    - ***a.*** *Should technological risk, if added for SDs, be identified as a specific risk consideration within operational risk, as described by Regulation 23.600(c)(4)(vi), or should it be a standalone, independently enumerated area of risk?*
    - ***b.*** *If technological risk is added as its own enumerated area of risk, what risk considerations should an SD's RMP policies and procedures address, as required by Regulation 23.600(c)(4)?*
    - ***c.*** *Relatedly, although technological risk is included in the various types of risk that an FCM's RMP must take into account, no specific risk considerations for technological risk are further outlined in Regulation 1.11(e)(3). What, if any, specific risk considerations for technological risk should be added to Regulation 1.11(e)(3)? Should the Commission categorize any additional specific risk considerations for technological risk as a subset of the existing "operational risk" considerations in Regulation 1.11(e)(3)(ii), or should "technological risk" have its own independent category of specific risk considerations in Regulation 1.11(e)(3)?*
    - ***d.*** *Should the Commission define "technological risk" in the RMP Regulations? For example, Canada's Office of the Superintendent of Financial Institutions (OSFI) defines "technology risk" as "the risk arising from the inadequacy, disruption, destruction, failure, damage from unauthorized access, modifications, or malicious use of information technology assets, people or processes that enable and support business needs and can result in financial loss and/or reputational damage." If the Commission were to add a definition of "technological risk" to the RMP Regulations, should it be identical or similar to that recently finalized by OSFI? If not, how should it otherwise be defined? Should the Commission consider different definitions of "technological risk" for SDs and FCMs? Should the Commission consider*

providing examples of "information technology assets" to incorporate risks that may arise from the use of certain emerging technologies, such as artificial intelligence and machine learning technology, distributed ledger technologies (e.g., blockchains), digital asset and smart contract-related applications, and algorithmic and other model-based technology applications?

In response to Questions 6(a)-(d), no, the Associations do not believe that technology risk should be an enumerated risk under SD's risk management programs.

We agree with the Financial Stability Oversight Counsel[10] that cybersecurity incidents have the potential to threaten the stability of US financial markets, and thus, have been supportive of regulatory efforts to ensure that market participants have robust policies and procedures in place, as well as the necessary tools, to avoid and quickly respond to cybersecurity threats and incidents. Having said this, we do not believe that technology or cybersecurity risks should be managed at the SD level, but instead should remain within the purview of the entire enterprise. Policies and procedures to address these risks are implemented and managed at the enterprise-level or group-level as they have the potential to threaten the operations of a firm's entire business.

Moreover, many SDs are already subject to supervision from the federal banking agencies where cybersecurity risk is a key concern,[11] and other SDs may also be considered critical infrastructure sector entities subject to CIRCIA's requirements.[12] Requiring additional implementation of policies and procedures at the SD level will result in duplicative regulations—increasing regulatory burdens without commensurate benefit to regulatory oversight.

7. *Are there any other types of risk that the Commission should consider enumerating in the RMP Regulations as risks required to be monitored and managed by SDs' and FCMs' RMPs? Geopolitical risk? Environmental, social and governance (ESG) risk? Climate-related financial risk, including physical risk and transition risk such as the energy transition? Reputational risk? Funding risk? Collateral risk? Concentration risk? Model risk? Cybersecurity risk? Regulatory and compliance risk arising from conduct in foreign jurisdictions? Contagion risk?*
    - ***a.*** *Should these potential new risks be defined in the RMP Regulations?*
    - ***b.*** *With respect to each newly suggested enumerated risk, what, if any, specific risk considerations should an SD's or FCM's RMP policies and procedures be required to include?*
    - ***c.*** *Are there international standards for risk management with which the Commission should consider aligning the RMP Regulations?*

[10] FSOC, Annual Report (2021), at 168, available at https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf

[11] With respect to institutions that are subject to the supervision and examination of any agency that is a part of the Federal Financial Institutions Examination Council (the "FFIEC") (which includes, but is not limited to, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency), it is clear that such institutions are required to assess and review their "cyber maturity." As described in the FFIEC's 2015 cyber-assessment guidance, "cybersecurity needs to be integrated throughout an institution as part of enterprise-wide governance processes, information security, business continuity, and third-party risk management." See p.2 of https://www.ffiec.gov/pdf/cybersecurity/ffiec_cat_june_2015_pdf2.pdf.

[12] CIRCIA refers to the Cyber Incident Reporting for Critical Infrastructure Act of 2022. *See* 6 U.S.C § 681(5), § 681b(c)(1).

The Associations strongly discourage the Commission from enumerating additional risk categories under the RMP. Broad and flexible RMP requirements enable firms to design RMPs that are forward-looking, adaptable, and fit for purpose. These aspects are critical for the identification and management of new risk types before they manifest. An enumerated list, in contrast, is inherently backward-looking, focusing on risks that are already known to exist and implying that any risk *not* listed is insignificant or unlikely. Accordingly, we caution against further reliance on enumerated lists and urge the Commission to continue its broad and flexible approach.

While we believe that the risks listed above are certainly important considerations that firms must take into account as part of their overall risk management framework, these risks either (1) are currently managed at the firm's enterprise-level; or (2) already form part of, or are born from, the RMP's enumerated risks. In the first instance, as we discussed in our previous answer, technology and cybersecurity risk is already managed at the enterprise- or group-level. This is also true for reputational risk, geopolitical risk, ESG risk and climate-related financial risk, all of which are typically managed at the firm-wide level given that these risks are not specific to the SD business and impact the SD, as well as other businesses within a firm's broader enterprise.

Furthermore, some of the other risks listed in the Commission's question already fall within the purview of existing enumerated risks. For example, regulatory and compliance risk typically are sub-risks of legal and operational risk. Similarly, collateral risk is a sub-risk of both credit risk and liquidity risk. Finally, concentration risk and contagion risk are sub-risks of both market risk and credit risk. Moreover, some of these risks, such as compliance risk, are addressed elsewhere under the CFTC's regulatory framework.[13] Given the overlap between the various risk types, firms already struggle to clearly define what each enumerated risk means. Additional unnecessary enumeration will only exacerbate this problem and lead to inconsistency across registrants as to how they identify and manage the different risk categories. That inconsistency would, in turn, undermine the CFTC's stated goals.

Finally, as ISDA and SIFMA pointed out in our respective responses to the CFTC's Climate-related Financial Risk Request for Information, the Commission's risk management and client disclosure rules currently provide an adequate regulatory framework for the management of all risks (beyond those specifically enumerated) and safeguard the Commission's ability to obtain information relating to SD's risk exposures, including exposures from non-enumerated risks such as climate-related risks.[14] This is because the current rules already require SDs to account for "any other applicable risks" apart from the rule's enumerated risks.[15] Such "catch-all" requirement should be sufficient addresses any concerns that not all risks are captured under the Commission's enumerated risks.

[13] *See* 17 CFR § 3.3.
[14] *See* ISDA Response to the CFTC Climate RFI and SIFMA Response to the CFTC Climate RFI.
[15] 17 CFR § 23.600(c)(1).

III. Periodic Risk Exposure Reporting (RER)

The Commission seeks comment generally on how the current RER regime for SDs and FCMs could be improved, as well as specific responses to the questions listed below.

Generally, with respect to the Periodic Risk Exposure Reporting ("**RER**") by SDs, the Associations believe no changes to the status quo of current regulations are warranted. Given the diversity across SDs with respect to their businesses and risk tolerances, the current RER rules are fit for purpose. The qualitative aspects of current RER reporting allow firms to tailor the reports to their specific risk profiles, often aggregating internal risk reports, and allows the Commission to focus on the risks most relevant to it.

In addition, given the existence of substituted compliance across multiple jurisdictions with regards to the Commission's RMP regulations, making any prescriptive changes to RER reporting could result in the loss of available substituted compliance.[16] For example, in its 2013 Comparability Determination of the European Union, the Commission provided that quarterly risk reports produced under European standards meet the requirements of § 23.600(c)(2) if the reports are provided in English. If the reporting changes substantially, this could negatively impact the Commission's previous determination, resulting in additional compliance burdens for EU-domiciled SDs.

1. *At what frequency should the Commission require SDs and FCMs to furnish copies of their RERs to the Commission?*

2. *Should the Commission consider changing the RER filing requirements to require filing with the Commission by a certain day (e.g., a week, month, or other specific timeframe after the quarter-end), rather than tying the filing requirement to when the RER is furnished to senior management?*

With respect to Questions 1 and 2 under this Section, the current frequency of RER reporting is sufficient. Quarterly reporting is appropriate given the time necessary to create the RER reports and ensure that such reports are reviewed by relevant internal committees.[17] Separately, it's important to recognize that the current rules also require any material changes to risk exposure be immediately presented to the senior management and governing body—this requirement is sufficient to address any material changes to risk in the periods between the quarterly reports.

3. *Should the Commission consider harmonizing or aligning, in whole or in part, the RER content requirements in the RMP Regulations with those of the National Futures Association (NFA)'s SD monthly risk data filings?*

No. The current form of RER should be maintained. The NFA's SD monthly risk data filing differs greatly from the Commission's RER in content, and would not benefit from harmonization. We believe both reports in their current form are useful and would not recommend aligning the two reports. We also agree with the comments of the FIA that the costs of such alignment would significantly outweigh the benefits when the current RER regime is fit for purpose in terms of providing the Commission with transparency into each FCM's risk exposure on a quarterly basis.

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[16] *See* 2013 Comparability Determination of the European Union: Certain Entity Level Requirements, 78 Fed. Reg. 78923, 78929 (December 27, 2013). The CFTC has also made a similar determination for other jurisdictions.

[17] Notably, the FIA also supports maintaining the status quo of quarterly reports for similar reasons.

4. *Are there additional SD or FCM-specific data metrics or risk management issues that the Commission should consider adding to the content requirements of the RER?*

5. *Should the Commission consider prescribing the format of the RERs? For instance, should the Commission consider requiring the RER to be a template or form that SDs and FCMs fill out?*

With respect to questions 4 and 5, the Associations support maintaining the status quo of RER reporting, as discussed above.

6. *In furtherance of the RER filing requirement, should the Commission consider allowing SDs and FCMs to furnish to the Commission the internal risk reporting they already create, maintain, and/or use for their risk management program?*
    - ***a.*** *If so, how often should these reports be required to be filed with the Commission?*
    - ***b.*** *If the Commission allowed an SD or FCM to provide the Commission with its own risk reporting, should the Commission prescribe certain minimum content and/or format requirements?*

Similar to our responses above, we do not believe any changes are necessary. SDs already leverage the information from their internal risk reporting in creating their RERs; thus, we do not think there would be any additional value in requiring SDs to provide their internal risk reporting to the Commission.

7. *Should the Commission consider prescribing the standard SDs and FCMs use when determining whether they have experienced a material change in risk exposure, pursuant to Regulations 23.600(c)(2)(i) and 1.11(e)(2)(i)? Alternatively, should the Commission continue to allow SDs and FCMs to use their own internally-developed standards for determining when such a material change in risk exposure has occurred?*

The Commission should continue to allow SDs to use their own internally-developed standards for determining what constitutes a material change in risk exposure. Prescribing a "one-size fits all" standard for what represents a material change would not accurately reflect firms' individual risk profiles.

There can be various situations where a change in risk exposure might be considered material for one SD but not for another. The materiality of a change in risk exposure can vary based on factors such as risk appetite and business strategies. For example, one SD may engage in less volatile trading strategies in a particular swap asset class where it has less expertise (e.g., physical commodities), while another SD may be more willing to endure market swings with respect to the same asset class because of that SD's particular expertise and business in the underlying cash market. A change in risk exposure that exceeds the risk tolerance of the first SD may be considered material for them, while the same change may fall within the acceptable risk tolerance of the second SD.

Similarly, SDs have different portfolios with varying compositions of swaps, other derivatives and underlying cash positions. A change in risk exposure that affects a significant portion of one SD's portfolio may be considered material for them, while another SD with a different portfolio composition may not be as significantly impacted by the same change.

Allowing each SD to determine the materiality standard it uses based on its own internal standards, business strategies, expertise and risk appetite can account for these differences and promote risk management practices that are tailored to each SD's specific circumstances.

8. *Should the Commission clarify the requirements in Regulations 23.600(c)(2)(i) and 1.11(e)(2)(i) that RERs "shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure" of the SD or FCM?*
9. *Should the Commission consider setting a deadline for when an SD or FCM must notify the Commission of any material changes in risk exposure? If so, what should be the deadline?*
10. *Should the Commission consider additional governance requirements in connection with the provision of the quarterly RER to the senior management and the governing body of a SD, or of an FCM, respectively?*

11. *Should the Commission require the RERs to report on risk at the registrant level, the enterprise level (in cases where the registrant is a subsidiary of, affiliated with, or guaranteed by a corporate family), or both? What data metrics are relevant for each level?*

With respect to questions 8, 9, 10, and 11, and as discussed above, the Associations do not believe any changes to current RER reporting are warranted. Consistent with the Associations' comments above, SDs have become familiar with the current RER requirements and have incurred significant costs developing systems and processes to comply with them. Changing these requirements would likely require significant adjustments and investments in technology, training, and resources with little or no material benefit to SDs. Specifically addressing question 8, the Associations believe that the rules surrounding material changes in risk exposure should continue to focus on the "detection" of risk (as opposed to occurrence). Starting at this stage is important because it results in SDs alerting the relevant internal committees that can make any necessary adjustments.

12. *Should the Commission require that RERs contain information related to any breach of risk tolerance limits described in Regulations 23.600(c)(1)(i) and 1.11(e)(1)(i)? Alternatively, should the Commission require prompt notice, outside of the RER requirement, of any breaches of the risk tolerance limits that were approved by an SD's or FCM's senior management and governing body? Should there be a materiality standard for inclusion of breaches in RERs or requiring notice to the Commission?*
13. *Should the Commission require that RERs contain information related to material violations of the RMP policies or procedures required in Regulations 23.600(b)(1) and 1.11(c)(1)?*
14. *Should the Commission require that RERs additionally discuss any known issues, defects, or gaps in the risk management controls that SDs and FCMs employ to monitor and manage the specific risk considerations under Regulations 23.600(c)(4) and 1.11(e)(3), as well as including a discussion of their progress toward mitigation and remediation?*

In response to questions 12, 13, and 14, the Associations believe there is no need to mandate the inclusion of breaches, material violations, gaps, or defects into the RER. Current regulations already cover these areas sufficiently to ensure that SDs can appropriately monitor compliance with the risk management program. For example, the rules already require that each SD establish policies and procedures that detect

violations of the risk management program and to take disciplinary action against violators.[18] Material violations of the RMP policies and procedures, and any known issues or gaps in the risk management controls would also be reported to the Commission through the annual compliance report process.[19] Additionally, SDs have their own robust internal processes in place to address any breaches, material violations, gaps, or defects, including any violations of risk tolerance limits or policies.

Separately, with respect to risk tolerance limits in particular, a breach of a risk tolerance limit would not necessarily mean that there is a concern that an SD is exceeding the firm's risk appetite. Thus, including information around breach of risk tolerance limits may not necessarily provide meaningful information to the CFTC. Risk tolerance limits are put in place to control business activity, and to the extent that a limit is breached, SDs have robust internal processes and procedures in place to address such situations.

IV. Other Areas (Affiliate-Related Questions)

1. What risks do affiliates (including, but not limited to, parents and subsidiaries) pose to SDs and FCMs? Are there risks posed by an affiliate trading in physical commodity markets, trading in digital asset markets, or relying on affiliated parties to meet regulatory requirements or obligations? Are there contagion risks posed by the credit exposures of affiliates? Are there risks posed by other lines of business of an SD, or of an FCM, respectively, that are not adequately or comprehensively addressed by the Commission's regulations, including, as applicable, the Volcker Rule regulations found in 17 CFR part 75?
2. Do the current RMP Regulations adequately and comprehensively address the risks associated with the activities of affiliates (whether such affiliates are unregulated, less regulated, or subject to alternative regulatory regimes), or of other lines of business, of an SD or of an FCM, respectively, that could affect SD or FCM operations? Alternatively, to what extent are the risks posed by affiliates discussed in this section adequately addressed through other regulatory requirements (for example, the Volcker Rule or other prudential regulations, or applicable non-U.S. laws, regulations, or standards)?

It is difficult to make any broad risk assessments with respect to the affiliates of an SD since these entities can engage in a wide range of business activities (e.g., banking, clearing, investment management, insurance, etc.) and can participate in a variety of financial markets (e.g., digital asset markets) as well as non-financial markets and activities (e.g., physical commodity markets). As a general matter, however, we believe that the CFTC's current SD regulations (including the current SD RMP regulations and the Volcker Rule) and the CFTC's plenary regulatory oversight over the swap market adequately and comprehensively address any potential risks to SDs, which may be posed by their affiliates.

Affiliates of an SD do not generally pose any material risks to SDs since their affiliates operate as separate legal entities with their own management and operations. This legal separation ensures independence and reduces the risk of any adverse impact on the SD's operations. Similarly, affiliates of an SD typically maintain their own financial resources and capital adequacy, separate from the SD. This financial independence ensures that any financial difficulties or losses incurred by an affiliate of an SD do not directly impact the SD's financial stability or ability to meet its obligations.

With respect to contagion risks, affiliates of an SD generally have their own independent credit profiles unless an SD has agreed to guarantee the financial and/or contractual obligations of its affiliates. This

[18] 17 CFR § 23.600(c)(7).
[19] For example, these issues may be reported under the "material non-compliance" or "areas for improvement" sections of the annual compliance report. *See* 17 CFR § 3.3(e).

means that the creditworthiness and ability of the SD and its affiliates to meet their financial and contractual obligations are assessed separately from each other. As a result, the credit exposures of the SD does not automatically impact the creditworthiness or financial stability of its affiliates, and vice versa.

Relatedly, U.S. and non-U.S. bankruptcy laws generally provide certain protections to solvent affiliates in the event of the insolvency or bankruptcy of a failing affiliate. Affiliates are separate legal entities, distinct from each other and the parent company. This legal separation ensures that the credit exposures and liabilities of one affiliate are not automatically transferred to or assumed by other affiliates, including an SD affiliate. While the specific protections provided by bankruptcy laws may vary depending on the jurisdiction and the applicable legal framework, bankruptcy law protections generally aim to safeguard the interests of solvent affiliates and mitigate the potential spillover effects of an affiliate's insolvency on solvent affiliates' operations.

To the extent that SDs rely on their affiliates to meet their CFTC and other regulatory requirements or obligations, SDs typically have legal agreements in place with their affiliates that outline the responsibilities, obligations, and potential liabilities of each party. These agreements provide legal protections and mechanisms to mitigate any potential risks arising from the activities of an SD's affiliates. For example, SDs will enter into ISDA Master Agreements and related documentation with affiliates within their corporate group for the purposes of transferring and managing risk exposures through inter-affiliate swaps. This documentation in part allows SDs to monitor, control, and coordinate their risk management activities in compliance with the RMP regulations.

Where affiliates of an SD engage in regulated businesses and activities in the United States or across multiple jurisdictions, the affiliates' businesses and activities are subject to the comprehensive oversight and supervision of competent local regulators. The same is true when an SD engages in other lines of business, which are subject to another regulator's comprehensive oversight and supervision (e.g., a bank SD). These other regulators—such as the U.S. prudential regulators, the Securities and Exchange Commission and the Federal Trade Commission—have specialized knowledge and expertise in specific areas relevant to the oversight of an affiliate or an SD's other line of business outside of swap dealing. Showing deference to these regulators allows the CFTC to leverage these regulators' expertise since they may have a deeper understanding of the business activities, market dynamics, and associated risks of the affiliate or an SD's other business lines. This deference can lead to more effective, efficient, and informed regulatory oversight over the affiliate or an SD's other business lines.

It is also worth noting that the CFTC has traditionally focused on, and should continue maintaining, appropriate mechanisms for information sharing, coordination, and collaboration with both domestic and international regulators.[20] These mechanisms have helped the Commission ensure effective oversight and regulatory consistency when it comes to the activities of an SD's affiliates, or to an SD's other lines of business. This is especially true where an SD and its affiliates operate across multiple jurisdictions. The CFTC has previously addressed issues related to affiliate risk exposures in several of its final rulemakings after careful evaluation of public comments as required under the Administrative Procedure Act. The following bulleted list highlights just a few examples of where CFTC regulations have comprehensively and adequately addressed affiliate risks.

[20] *See, e.g.*, Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Coordination in Areas of Common Regulatory Interest and Information Sharing, July 11, 2018, available at https://www.cftc.gov/sites/default/files/2018-07/CFTC_MOU_InformationSharing062818.pdf. See also Memorandum of Understanding Concerning Cooperation and the Exchange of Information in the Context of Supervising Covered Firms, Oct. 6, 2016, available at https://www.fca.org.uk/publication/mou/fca-cftc-mou-covered-firms.pdf.

- Inter-affiliate Swap Clearing Exemption. In order to address the potential for credit risks exposures arising within the context of affiliated swap transactions, the CFTC promulgated CFTC Rule 50.52, which allows SDs and other swap counterparties to elect not to clear their inter-affiliate swaps, which are subject to the CFTC's clearing requirement.[21] To addresses these potential risks, among other things, the CFTC has established the following conditions on affiliated counterparties electing not to clear their swap transactions: (1) those counterparties must be majority-owned affiliates whose financial statements are included in the same consolidated financial statements; (2) both affiliated counterparties must elect not to clear the swap; (3)(a) the terms of the swap are documented in a swap trading relationship document, or (b) comply with the requirements of CFTC Rule 23.504 where one of the affiliated counterparties is an SD; (4)(a) the swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap, or (b) if one of the affiliated counterparties is an SD, the requirements of the RMP regulations must be met, and (5) each swap entered into by the affiliated counterparties with unaffiliated counterparties must be cleared.

- Uncleared Swap Margin between Margin Affiliates. The CFTC's uncleared swap margin rules also adequately address risks among affiliates. Specifically, under CFTC Rule 23.151 an SD is not required to collect IM from its margin affiliates, provided that the SD meets the following conditions: (1) the swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (2) the SD exchanges variation margin with its margin affiliates in accordance with CFTC Rule 23.159(b).[22]

- Swap Dealer De Minimis Aggregation. The CFTC also has addressed concerns related to the swaps exposures and attendant risks among affiliates when further defining the term "swap dealer". In particular, after consideration of 1,095 comments,[23] the CFTC and SEC jointly adopted the SD de minimis exception, which requires each person engaged in swap dealing below an $8 billion threshold to count such person's in-scope swaps (or a $25 million threshold in the case of in-scope swaps with "special entities") along with the in-scope swaps of the person's affiliates (i.e., any other entity controlling, controlled by or under common control with the person) over the course of the immediately preceding 12 month period.

> *3. Should the Commission further expand on how SD and FCM RMPs should address risks posed by affiliates in the RMP Regulations, including any specific risks? Should the Commission consider enumerating any specific risks posed by affiliates or related trading activities within the RMP Regulations, either as a separate enumerated risk, or as a subset of an existing enumerated area of risk (e.g., operational risk, credit risk, etc.)?*

We do not believe that the CFTC should propose amendments to the RMP regulations or provide additional guidance further expanding on how SD RMPs address the risks which may be posed by the legally separate activities of an SD's affiliates. The RMP regulations currently require an SD to

[21] *See* 17 CFR § 50.52.
[22] *See* 17 CFR § 23.151.
[23] *See* the CFTC's public comment file for CFTC and SEC, Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 75 Fed. Reg. 80174 (Dec. 21, 2010), available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=933.

appropriately identify, monitor, and control all relevant risks related to the SD's operations, irrespective of how those risks may arise. Moreover, the current RMP regulations sufficiently emphasize the importance of SDs having robust internal controls and clear governance structures, which establish clear lines of accountability, responsibility, and oversight across affiliates to the extent that they are engaged in swap activities on behalf of the SD. In practice, SDs' RMPs address and managed affiliate risks as a sub-risk of credit risk, operational risk, and legal risk.

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We appreciate the opportunity to submit our comments in response to the ANPRM. Our members are strongly committed to maintaining the safety and efficiency of the U.S. swaps markets and hope that the Commission will consider our suggestions, as they reflect the extensive knowledge and experience of risk management professionals within our memberships.

Sincerely,

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