

*Delivered Electronically*

July 6, 2026

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549

**Re: Staff Report on the Definitions of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant”; Notice, Request for Comment [Release No. 34-105315; File Number S7-2026-14]**

Dear Ms. Countryman:

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Securities Industry and Financial Markets Association (“SIFMA”) (together, the “Associations”)<sup>1</sup> welcome the opportunity to comment on the Staff Report<sup>2</sup> related to the Definitions of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” (“Staff Report”) published by the U.S. Securities and Exchange Commission (“SEC” or “Commission”). The Associations appreciate the SEC’s action in January 2026 to extend the existing *de minimis* thresholds to May 8, 2028.<sup>3</sup> This action appropriately recognizes the effectiveness of the current framework, and for the reasons outlined below, the Associations encourage the Commission to maintain the existing *de minimis* thresholds for credit default swaps (“CDS”) that constitute security-based swaps (“SBS”) and non-CDS SBS.

Below, we detail our support for maintaining the current *de minimis* thresholds for both CDS and non-CDS activity and address several related considerations bearing on the appropriate

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<sup>1</sup> Information about the Associations is included in the Appendix.

<sup>2</sup> Securities and Exchange Commission, Staff Report on the Definitions of ‘Security-Based Swap Dealer’ and ‘Major Security-Based Swap Participant’ (May 6, 2026), available at <https://www.sec.gov/files/rules/other/2026/34-105315.pdf> [hereinafter *Staff Report*]

<sup>3</sup> Securities and Exchange Commission, Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from Certain Aspects of Rule 3a71-2(a)(1) (Jan. 9, 2026), available at <https://www.sec.gov/files/rules/exorders/2026/34-104573.pdf>

calibration of the thresholds, including the SEC’s continued inclusion of “arranged, negotiated, or executed” transactions and the ongoing review of the product scope for SBS. We also urge the Commission to eliminate ongoing regulatory uncertainty by establishing permanent thresholds rather than subjecting them to periodic review and associated potential reduction.

**I. *The SEC’s Data Supports that the Current Thresholds Should Not Be Lowered***

The data presented in the Staff Report supports maintaining the current *de minimis* thresholds for both CDS and non-CDS activity. Across both product categories, the Commission’s own findings show that registered SBSDs already account for the overwhelming majority of dealing activity, such that the existing thresholds already bring substantially all economically significant activity within the SEC’s regulatory perimeter.

In the context of CDS activity, data presented in the Staff Report supports the Associations’ viewpoint that the threshold should be maintained at \$8 billion. The Commission’s own analysis demonstrated that registered Security-Based Swap Dealers (“SBSDs”) were counterparties on at least one side of 99% of new trade activity in 2024; meaning only 1% of total new trade activity involved non-registered entities.<sup>4</sup> This illustrates that the present regulatory threshold is appropriate, as it captures nearly all CDS activity. The concentration is equally pronounced when activity is measured on a dealing basis: registered SBSDs accounted for 94% or \$2.8 trillion of a total of \$3 trillion in potential SBS dealing activity in CDS during the review period, compared to only 6% or \$190 billion accounted for by unregistered SBSDs.<sup>5</sup>

These figures support two conclusions. First, the current \$8 billion threshold is well-calibrated to its regulatory purpose: it already brings within the registration framework substantially all dealing activity that is material to the CDS market, leaving only a *de minimis* residue outside its scope. Second, a reduction in the threshold would yield little corresponding regulatory benefit. Because registered SBSDs already account for 94% of dealing activity, lowering the threshold could at most reach the marginal 6% of activity conducted by entities that currently operate below the registration level—while imposing substantial and disproportionate compliance, capital, and operational burdens on participants whose dealing activity does not present comparable market or systemic risk.

For non-CDS-activity, the data leads to similar conclusions. Staff analysis of the current *de minimis* threshold of \$400 million for non-CDS activity showed that 98% of non-CDS new trade activity involved at least one registered SBSD and was thus subject to the SBSD regulatory

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<sup>4</sup> *Staff Report*, supra note 2, at A-50 to A-51.

<sup>5</sup> *Staff Report*, supra note 2, at A-54.

framework.<sup>6</sup> Only 2% of non-CDS new trade activity involved no registered SBSDs. Moreover, registered SBSDs still accounted for 63% of potential SBS dealing activity in non-CDS compared to 37% for unregistered SBSDs.<sup>7</sup>

Read together, these figures show that the existing threshold already extends the regulatory framework to substantially all non-CDS activity. While the share of dealing activity attributable to unregistered entities (37%) is larger than the corresponding CDS figure, that activity does not sit outside the regulated perimeter; 98% of non-CDS new trade activity has a registered SBSD as a counterparty, meaning the overwhelming majority of new transactions are already subject to the SBSD regulatory framework.

This residual dealing activity is conducted by participants that currently operate below the \$400 million registration level. Lowering the threshold to capture more of this limited dealing activity would therefore impose registration, capital, and operational burdens on a broad population of smaller market participants whose activity does not present comparable systemic risk, and whose transactions are, in the vast majority of cases, already observable to and regulated through their registered counterparties. Accordingly, as with the CDS threshold, the Associations support maintaining the existing non-CDS *de minimis* threshold.

Maintaining current *de minimis* thresholds is the right outcome to ensure that bank and nonbank dealers can continue meeting their clients' risk management needs. Decreasing the SEC's *de minimis* thresholds would likely lead to a reduction in the number of SBS market participants willing to engage in SBS dealing activity with commercial and financial end-users for fear of exceeding a lower threshold and triggering the SBSD registration requirements. Thus, any reduction in the level of the *de minimis* thresholds could have a significant impact on SBS markets, particularly on those regional and smaller banks and dealers that facilitate access for smaller commercial and financial end-users of SBS.

## ***II. The SEC's Position on ANE Transactions Detrimentally Impacts the Consideration of SBS De Minimis Thresholds***

The SEC rules retain the concept that if a transaction between two non-U.S. counterparties is "arranged, negotiated, or executed" ("ANE") using U.S.-located personnel, then that fact alone triggers application of certain SBS rules, including counting such SBS towards *de minimis* thresholds. The Associations have long emphasized that transactions between two non-U.S. persons do not implicate U.S. market stability or compromise U.S. counterparties solely because

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<sup>6</sup> *Staff Report*, supra note 2, at A-67, A-77.

<sup>7</sup> *Staff Report*, supra note 2, at A-70.

personnel located in the United States had some involvement.<sup>8</sup> The location of personnel or agents within the United States should not form the sole basis for triggering SEC requirements extraterritorially to non-U.S. transactions, where there is no further U.S. nexus and the risk of the transaction is held overseas. This ongoing overreach has practical implications as it continues to add significant costs and operational complexity to SBS cross-border trading.<sup>9</sup>

Notably, as we recently raised in the context of the SEC harmonization initiative with the Commodity Futures Trading Commission (“CFTC”),<sup>10</sup> the divergence between the CFTC’s and SEC’s positions on ANE continues to be one of the most impactful differences imposing significant costs and compliance burdens on market participants without commensurate benefit to regulatory oversight. When the CFTC removed the ANE concept from its rules six years ago, it recognized that the involvement of U.S.-located personnel should not be a relevant factor in applying U.S. rules to transactions between two non-U.S. counterparties. We encourage the Commission to review its current approach and, consistent with the CFTC, remove the ANE requirement to promote cross-border harmonization and eliminate unnecessary costs to market participants.

Further, the treatment of ANE transactions is directly relevant to the Commission’s evaluation of appropriate *de minimis* thresholds. Threshold calibration necessarily depends on an accurate assessment of the size, structure, and risk profile of activity that has a meaningful nexus to the United States. By requiring non-U.S. transactions to be counted toward dealer registration thresholds based solely on the involvement of U.S.-located personnel, the current framework captures activity that does not reflect U.S. market risk or exposure. As a result, the data used to assess market concentration and dealer participation may be distorted. The Commission should therefore evaluate the ANE framework and the appropriate level of *de minimis* thresholds in parallel.

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<sup>8</sup> See ISDA Comment Letter (<https://www.sec.gov/comments/s7-07-19/s70719-5855216-188572.pdf>) and SIFMA Comment Letter (<https://www.sifma.org/advocacy/letters/cross-border-application-of-certain-security-based-swap-requirements>), Re: Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements (July 23, 2019); ISDA Comment Letter (<https://www.isda.org/a/pniDE/isda-comment-ltr-sec-cross-border-proposal-7-13-15.pdf>) and SIFMA Comment Letter (<https://www.sifma.org/advocacy/letters/sifma-and-fsr-submit-comments-to-the-sec-on-title-vii-requirements-to-security-based-swap-transactions>), Re: Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person’s Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Proposed Rules (RIN 3235-AL73) (July 13, 2015).

<sup>9</sup> See ISDA Cross-Border Harmonization Paper (Sept. 2017), available at [assets.isda.org/media/85260f13-47/8a2bfb70-pdf/](https://assets.isda.org/media/85260f13-47/8a2bfb70-pdf/) (listing key derivatives requirements from a broad range of jurisdictions).

<sup>10</sup> See ISDA, SIFMA Letter on SEC-CFTC Harmonization (May 21, 2026), available at <https://www.isda.org/2026/05/21/isda-sifma-letter-cftc-sec-harmonization/>.

Absent reforms to the ANE approach, any analysis of whether the thresholds are appropriately calibrated risks overstating the scale of dealer activity attributable to the United States and therefor appropriate to be included. This, in turn, may lead to thresholds that are set inappropriately and not warranted by the actual level of risk and activity occurring within the U.S. financial system.

Removing the requirement to include ANE transactions in *de minimis* counting would result in a more accurate dataset that reflects genuine U.S.-connected dealing activity. Such an approach would allow the Commission to assess more accurately whether existing thresholds are effectively capturing systemically relevant market participants, consistent with the statutory objectives of dealer regulation. Moreover, aligning the SEC's framework with the CFTC's approach by removing the ANE requirement would not only yield a *de minimis* dataset that reflects only genuine U.S.-connected dealing activity, but would also meaningfully reduce compliance and operational costs, enhance cross-border harmonization, and support more efficient and competitive U.S. derivatives markets.

### **III. *The Product Scope of SBS Transactions May Also Impact SBS De Minimis Threshold Levels***

The Commission, jointly with the CFTC, is also currently seeking feedback on whether the swap and SBS product definitions remain appropriate.<sup>11</sup> This effort is directly relevant to the calibration of SBS *de minimis* thresholds. The set of products currently classified as SBS defines the universe of activity that is measured against, and counted toward, those thresholds, and any change to that classification would necessarily alter the volume and composition of activity captured.

While product definition questions remain unanswered, the underlying measure of SBS activity itself remains subject to change. Regardless, this uncertainty only strengthens the case against lowering the thresholds: lowering the thresholds while the set of products counted as SBS remains unresolved could sweep in market participants based on an activity measure that may itself be inflated.

### **IV. *The SEC Should Eliminate Regulatory Uncertainty By Establishing Permanent Thresholds***

In 2018, the CFTC confronted a similar question on whether to lower its swap dealer *de minimis* threshold of \$8 billion. Rather than permit the threshold to fall from \$8 billion to \$3 billion in

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<sup>11</sup> 91 Fed. Reg 37873 (June 24, 2026), available at <https://www.govinfo.gov/content/pkg/FR-2026-06-24/pdf/2026-12743.pdf>

aggregate gross notional amount as previously scheduled, the CFTC adopted a final rule permanently maintaining the \$8 billion threshold.<sup>12</sup> That determination rested on data analysis materially similar to the SEC staff's findings discussed above including that the overwhelming majority of swap activity already involved at least one registered swap dealer. The CFTC concluded that the \$8 billion threshold already captured the entities whose dealing activity is significant to the market, and that lowering it would extend registration to participants whose comparatively modest activity would not meaningfully advance the customer-protection, market-efficiency, or transparency objectives of dealer regulation.<sup>13</sup>

The Commission should follow the same course and eliminate ongoing regulatory uncertainty by establishing permanent *de minimis* thresholds for SBS registration. The current disposition where thresholds are periodically reviewed (and subject to potential reduction) creates ongoing lack of clarity for market participants regarding the conditions under which SBS registration will be required. This uncertainty is particularly burdensome given the significant operational, compliance, and capital implications associated with registration. Moreover, regulatory uncertainty undermines the ability of market participants to deploy capital and resources efficiently, as firms must prepare for multiple potential regulatory outcomes. Establishing permanent *de minimis* thresholds would provide the certainty necessary to support orderly and efficient SBS markets. This would allow firms to make long-term business and risk management decisions with confidence. Absent such certainty, the regulatory framework risks discouraging participation by non-systemic market participants, while providing limited incremental benefit to market oversight or risk mitigation.

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<sup>12</sup> 83 Fed. Reg. 56666 (Nov. 13, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-11-13/pdf/2018-24579.pdf>

<sup>13</sup> *Id.* at 56674–56677.

We appreciate the opportunity to submit our comments on the Staff Report. The Associations strongly urge the Commission to eliminate market and regulatory uncertainty by permanently retaining the current *de minimis* thresholds for CDS and non-CDS activity.

The Associations' members are strongly committed to maintaining safe and efficient derivatives markets and hope that the Commission will consider our suggestions, as they reflect the extensive knowledge and experience of swaps and SBS professionals within our membership. We look forward to working with the Commission as it continues to consider these important issues.

Please do not hesitate to contact Nicolette Cone ([ncone@isda.org](mailto:ncone@isda.org)), Christopher Young ([cyoung@isda.org](mailto:cyoung@isda.org)), or Kyle Brandon ([kbrandon@sifma.org](mailto:kbrandon@sifma.org)) should you have any questions or need additional information.

Sincerely,



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International Swaps and Derivatives  
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Kyle Brandon  
Managing Director, Head of Derivatives  
Policy  
SIFMA

### **Appendix: Information about the Associations**

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](http://www.isda.org).

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's 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>.