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sifma asset management group

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Submitted Electronically

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U.S. Commodity Futures Trading Commission
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Ms. Vanessa A. Countryman
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Re: Joint Request for Comment on Further Implementation of Portfolio Margining and Cross-Margining of Securities and Derivatives; RINs 3038-AF72, 3235-AN80

Dear Mr. Kirkpatrick and Ms. Countryman:

The Securities Industry and Financial Markets Association[1] and its Asset Management Group[2] (collectively, "**SIFMA**") appreciate the opportunity to provide comments to the U.S. Commodity Futures Trading Commission (the "**CFTC**") and the U.S. Securities and Exchange Commission (the "**SEC**" and together with the CFTC, the "**Commissions**") in response to the Commissions' Joint Request for Comment on Further

[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 http://www.sifma.org.

[2] SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

Implementation of Portfolio Margining and Cross-Margining of Securities and Derivatives (the "**Request for Comment**"). The Request for Comment seeks input on potential ways to expand portfolio and cross-margining of securities, derivatives and other assets that are subject to the jurisdiction of either or both Commissions.[3]

As the Commissions recognize, financial markets are becoming increasingly interconnected, and market participants frequently manage portfolios or implement hedging and other trading strategies that use economically related positions across cash securities, listed and over-the-counter options, futures, swaps, and security-based swaps ("**SBS**"). More recently, they also trade other non-securities financial assets, such as digital commodities. These positions may reference the same underlying asset, address the same economic exposure, or otherwise serve related risk-management purposes. Nevertheless, current regulatory requirements often require such positions to be maintained in separate accounts and margined under different methodologies, even where the positions present offsetting exposures. As the Request for Comment observes, this regulatory structure may produce capital inefficiencies or increased liquidity demands "without necessarily enhancing market stability." In some circumstances, preventing recognition of economically offsetting positions may itself increase market and systemic risk by generating duplicative liquidity demands, additional settlement flows, and incentives to unwind otherwise risk-reducing positions during periods of market stress.

These impediments are particularly significant for firms and customers whose activities are subject to both SEC and CFTC requirements. For example, non-bank[4] swap dealers ("**SDs**") that are also registered as security-based swap dealers ("**SBSDs**") are subject to differing margin, segregation, collateral, documentation, and account requirements for their customers' economically related swaps, SBS, and securities positions. As SIFMA and ISDA explained in 2020 in a letter to the Commissions, these differences can prevent firms from recognizing the risk-reducing effect of cross-product hedges, require margin to be exchanged and held separately, and limit the ability to make consolidated margin calls.[5] The resulting burdens may increase customers' hedging and trading costs, reduce incentives to execute effective hedging strategies, create competitive disparities among intermediaries, and increase liquidity, settlement, and operational risks.

SIFMA therefore urges the Commissions to continue their coordinated efforts to ensure that margin requirements more closely reflect the overall risk of an economically integrated portfolio, rather than the regulatory classification of each individual product or

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[3] See 91 FR 39579 (June 30, 2026).

[4] By "non-bank," we refer to registrants that are not subject to the margin requirements of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Farm Credit Administration, or the Office of the Comptroller of the Currency (the "**prudential regulators**").

[5] See Letter from the International Swaps and Derivatives Association, Inc. ("**ISDA**") and SIFMA in response to the *Request for Comment for Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps* (RINs 3038-AF07, 3235-AM64) (Dec. 7, 2020).

the particular account in which it is carried. Portfolio margining and cross-margining should not be understood merely as mechanisms for reducing collateral requirements. Properly designed arrangements can promote more accurate measurement of risk, more efficient collateral management, improved liquidity, and reduced settlement and operational risk without increasing risk to customers and their protected status. Consistent with the approach reflected in the Request for Comment, recognition of offsets should take account of the customer protection, market stability, and other regulatory objectives that support the Commissions' respective margin and segregation requirements.

With those objectives in mind, this letter addresses three areas in which clarification and targeted relief would materially advance the Commissions' initiative. First, the Commissions should facilitate portfolio margining of economically related securities, swaps, SBS, and other derivatives across jurisdictional lines, including by resolving conflicts among applicable margin and segregation requirements. In addition, the Commissions should apply the same risk-based principles to digital commodities and related securities (such as exchange-traded products) and derivatives (such as futures, swaps and options) positions, where differences in regulatory classification or jurisdiction may otherwise prevent recognition of meaningful economic offsets. Finally, the Commissions should facilitate broader cross-margining arrangements across accounts, intermediaries, and clearing organizations, including where related positions are maintained through different regulated accounts or entities but form part of a single risk-management relationship. In this regard, SIFMA strongly supports the Commissions' recent coordinated actions facilitating customer cross-margining of U.S. Treasury securities cleared at the Fixed Income Clearing Corporation ("**FICC**") and related Treasury futures cleared at the Chicago Mercantile Exchange Inc. ("**CME**"), and believes those actions provide an important model for addressing regulatory impediments through complementary relief.

The recommendations below are intended to permit economically related positions to be margined in a manner that better reflects their aggregate risk, while preserving a clear and consistent framework for customer protection, including applicable segregation, customer-property and insolvency protections, as well as the safeguards afforded to intermediaries, clearing organizations, and the broader financial system. SIFMA accordingly recommends that the Commissions establish clear substantive standards and a transparent, coordinated, and expeditious process through which market participants, intermediaries, and clearing organizations may seek any exemptions and other relief necessary to implement additional portfolio-margining and cross-margining arrangements.

I. The Commissions Should Permit Portfolio Margining of Economically Related Products Across Jurisdictional Lines

SIFMA is encouraged that the Commissions are focused on addressing regulatory impediments to broader portfolio margining. Non-bank registrants that conduct securities and derivatives activities across the SEC and CFTC regulatory regimes are subject to differing or conflicting margin, segregation, collateral, and account requirements for economically related positions. These differences can limit recognition of meaningful risk offsets, increase customers' hedging and trading costs, create additional liquidity and operational burdens, and produce competitive disparities among intermediaries. The targeted solutions that SIFMA and ISDA proposed in response to the Commissions' 2020 request for comment remain applicable today and should now be implemented.

These regulatory conflicts arise in different ways depending on the registrant's structure. A non-bank SD that is also registered as an SBSD (an "**SD-SBSD**") may be subject to overlapping SEC and CFTC requirements for swaps and SBS, while an SD or SD-SBSD that is also registered as a full-purpose broker-dealer (a "**BD-SD**" or "**BD-SD-SBSD**", respectively) may face additional requirements applicable to securities positions carried under SEC and Financial Industry Regulatory Authority ("**FINRA**") rules. Similar conflicts arise for standalone SD-SBSDs, including firms registered as over-the-counter ("**OTC**") derivatives dealers ("**OTCDDs**"), and for non-bank SBSDs subject to differing SEC and CFTC treatment of particular margin obligations.

Against that backdrop, SIFMA continues to support the targeted relief proposed in the 2020 comment letter. Specifically, the requested relief is designed to permit the following:

(1) A BD-SD-SBSD or BD-SD to margin all customer equities positions (including cash equities positions, non-cleared equity SBS of a BD-SD-SBSD, OTC equity options, and uncleared equity swaps) eligible to be margined in a FINRA Rule 4210(g) portfolio margin account in accordance with FINRA Rule 4210(g).
(2) A BD-SD-SBSD or BD-SD operationally to make consolidated margin calls for a customer's uncleared swaps together with its non-cleared SBS of a BD-SD-SBSD and securities positions and hold regulatory margin collected for those positions together, so that the BD-SD-SBSD or BD-SD can apply that margin toward its house margin requirements.
(3) A non-bank SD-SBSD that is either not registered as a BD or that is registered as an OTCDD to portfolio margin all eligible OTC derivatives positions, including OTC securities options, non-cleared SBS, and uncleared swaps, in accordance with CFTC margin and segregation rules.
(4) A non-bank SBSD (whether a BD, OTCDD, or standalone SBSD) not to exchange margin with a counterparty that is not a "financial end user" under the CFTC's margin rules.

These recommendations are narrowly tailored to address specific conflicts among the applicable SEC, CFTC, and FINRA requirements while minimizing departures from the Commissions' existing margin and segregation frameworks. In most cases, the requested relief would permit a registrant to apply existing, and in some cases longstanding, margin, segregation, collateral, or customer-protection frameworks consistently across economically related positions, rather than require the Commissions to develop a new regulatory regime. Importantly, the requested relief is designed to preserve the substantive protections underlying the existing requirements, including appropriate margin collection, restrictions on the use of customer collateral, segregation and customer-property protections, and the recognition of offsets only where supported by an appropriate risk-management methodology. The recommendations therefore would permit recognition of genuine risk offsets and reduce duplicative collateral and operational requirements while maintaining an appropriate and consistent level of customer protection and the safeguards intended to address counterparty credit risk, leverage, and financial stability.

A. Full-Purpose BD-SD-SBSDs and BD-SDs

1. The CFTC Should Provide Relief to Allow a BD-SD-SBSD or BD-SD to Portfolio Margin Uncleared Equity Swaps with Other Equity Positions in an Account Subject to FINRA Rule 4210(g) and SEC Rule 15c3-3

The conflicts described above are particularly evident where a BD-SD-SBSD or BD-SD maintains economically related cash equity and equity-derivative positions for the same customer. Without relief permitting those positions to be portfolio margined under a consistent framework, customers may not be able to recognize risk offsets among products in the same risk category and may consequently choose less effective hedging or investing strategies. To take a simplified example, a customer that seeks to invest in the equity securities of individual issuers may look to hedge the risk of those issuers' business sectors or broader equity macro risk through equity swaps. Another example involves customers who pursue index arbitrage strategies. In the absence of portfolio margining, each such customer may be required to post more collateral than the risk of its positions should require. This can needlessly drain liquidity, which could be deployed more productively elsewhere, and create multiple settlement obligations, which increase settlement and operational risk. Additionally, the customer may be incentivized to trade a non-cleared equity SBS in lieu of purchasing equity securities, even if the pricing is less favorable, and to do so with a bank, rather than a BD-SD-SBSD or BD-SD, in order to have margin requirements that more appropriately reflect the risk of its portfolio.

FINRA Rule 4210(g) has for nearly two decades provided an effective methodology to margin a portfolio of equity positions, including both cash equities and equity derivatives. In concert with SEC Rule 15c3-3, Rule 4210(g) facilitates both prudent risk management and customer protection. Considering that uncleared equity swaps and non-cleared equity SBS (in the case of a BD-SD-SBSD), other than certain variance and other complex swaps and SBS discussed in Section I.A.2 below, present substantially identical risk profiles to the underlying cash equity positions, the Commissions should allow a BD-SD-SBSD or BD-SD to portfolio margin all cash equity positions, equity options, uncleared equity swaps, and non-cleared equity SBS in accordance with the rules and requirements of FINRA Rule 4210(g) and SEC Rule 15c3-3. To facilitate such an approach, SIFMA recommends that the CFTC issue relief from its margin rules for any equity swaps and related collateral held by a BD-SD-SBSD or BD-

SD in a portfolio margin account subject to FINRA Rule 4210(g) and SEC Rule 15c3-3.[6] Specifically, such relief should address the following key topics.

a. *Permit a BD-SD-SBSD or BD-SD to Calculate Initial Margin ("**IM**") Requirements for Uncleared Equity Swaps Using the Methodology Set Forth in FINRA Rule 4210(g) and SEC Rule 18a-3, With Offsets for Non-Cleared Equity SBS (in the case of a BD-SD-SBSD), Equity Options, and Cash Equity Positions, in Lieu of CFTC Rule 23.154*

As noted above, BDs have calculated margin requirements for portfolio-margined equity positions pursuant to FINRA Rule 4210(g) for well over a decade. That rule, as well as the SEC's SBSD margin rule, Rule 18a-3, requires margin for eligible equities positions to be calculated using an SEC-approved theoretical pricing model, which is used to calculate the largest theoretical loss of the portfolio by taking the gain and loss in value of individual eligible products and related instruments at ten equidistant intervals ranging from an assumed movement, both up and down, in the current market value of the underlying instrument. For purposes of the rule, the SEC has approved BDs to use the Theoretical Intermarket Margining System ("**TIMS**") model, which is a univariate risk management methodology that evaluates historical data of approximately 3,000 underlying assets to make the required calculations. TIMS requires that positions that have the same underlier be categorized into classes and that classes be categorized into unique product groups consisting of one or more related classes. TIMS calculates the total risk of a customer's account as the sum of the worst scenario outcomes of each product group in the account, only recognizing offsetting positions in the same product group.

The TIMS methodology is different from the methodology used for purposes of the CFTC's margin rules, but both methodologies are designed to calculate a potential future loss amount in an extreme but plausible scenario, without recognizing offsets across asset classes. Further, based on our members' experience, the TIMS methodology tends to produce more conservative, or higher, IM requirements than the ISDA Standard Initial Margin Model ("**ISDA SIMM**") methodology that is commonly used to satisfy the CFTC's margin rules.

For these reasons, precluding a BD-SD-SBSD or BD-SD from using the TIMS methodology to calculate IM requirements for uncleared equity swaps does not promote risk management. Instead, it can lead to regulatory arbitrage. A customer faced with the

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[6] As additional conditions designed to promote customer protection and reduce leverage, such BD-SD-SBSD or BD-SD also could not (a) rely on the exception from SEC Rule 15c3-3's "excess securities collateral" definition for securities and money market instruments held in a qualified registered SBSD account or third-party custodial account or (b) include amounts for margin held at a qualified registered SBSD account or third-party custodial account as debit items in its reserve formula computation pursuant to SEC Rule 15c3-3.

choice of either entering into an uncleared equity swap on a broad-based basket or index or purchasing or selling the component underlying securities may make the choice that results in the lower margin requirement. Indeed, for this reason, the SEC prohibits BDs from applying the ISDA SIMM to non-cleared equity SBS.

Permitting a BD-SD-SBSD or BD-SD to calculate IM requirements for all equity positions, including equity swaps, equity SBS (in the case of a BD-SD-SBSD), equity options, and cash equity securities, using a single, TIMS-based methodology would help ensure that positions that present substantially identical risks are subject to the same margin methodology. It also would permit the applicable margin requirement to reflect qualifying risk offsets within the portfolio while continuing to apply the risk-based methodology already required for eligible securities and SBS positions.

b. Permit a BD-SD-SBSD or BD-SD to Comply with SEC Rule 15c3-3's Segregation Requirements in Lieu of CFTC Rule 23.157(b)'s Third-Party IM Segregation Requirements in Respect of Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Account

Securities customer property has been subject to the segregation requirements of SEC Rule 15c3-3 for over half a century. That rule is designed to work in concert with the provisions of the Securities Investor Protection Act of 1970 ("**SIPA**"), the insolvency regime applicable to BDs. In adopting SIPA, Congress opted to protect a customer's claims to property it holds with a BD by giving customers' claims priority over other creditors with respect to the distribution of designated "customer property" within an insolvent BD's estate. SEC Rule 15c3-3 accordingly seeks to ensure that a BD has sufficient cash and securities set aside to satisfy all customer claims by requiring a BD to maintain physical possession or control of customer fully paid or excess margin securities and to maintain a deposit in a separate account at a bank representing the net amount of funds that the BD owes customers, and certain other items. Notably, SIPA is premised not on an individual segregation model, but instead on one that facilitates the re-use of customer property to fund customers' activities in a manner that reduces costs to customers without exposing them to material risk.

As revised to address SBS, SEC Rule 15c3-3 requires a BD to maintain physical possession or control of "excess securities collateral,"[7] generally defined to mean securities and money market instruments carried for the account of an SBS customer that have a market value in excess of the current exposure of the BD, after reducing the current exposure by the amount of cash in the account, subject to certain exclusions not relevant here.[8] The rule also subjects a BD to a customer reserve account requirement for

[7] 17 C.F.R. § 240.15c3-3(p)(2).

[8] See 17 C.F.R. § 240.15c3-3(p)(1)(ii). These exceptions are for securities and money market instruments held in either (a) a qualified clearing agency account, but only to the extent they are being used to meet a margin requirement of the clearing agency resulting from an SBS transaction of the SBS customer or (b) a qualified registered SBSD account or third-party custodial account, but only to the extent they are being

cash received from SBS customers.[9] Accordingly, if a BD-SD-SBSD or BD-SD applies these requirements to IM it holds in a FINRA Rule 4210(g) portfolio margin account for an uncleared swap counterparty that is also a "customer" or a "security-based swap customer" under SEC Rule 15c3-3, then the BD-SD-SBSD or BD-SD generally is required to segregate that IM from its own proprietary assets and is restricted from re-hypothecating, re-pledging, or re-using the IM except, in the case of cash IM, to fund extensions of credit made to securities customers.

Under this framework, the uncleared swap counterparty would, with respect to margin for uncleared equity swaps held in a FINRA Rule 4210(g) portfolio margin account, be considered a securities "customer" under SIPA, with a priority right to "customer property" based on its "net equity" claim, because SIPA's "customer" definition includes "any person who has a claim against the debtor for cash [or] securities . . . received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the [SEC]."[10] "Customer property," in turn, includes "cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer,"[11] which would include the IM held by the BD-SD-SBSD or BD-SD for the swap counterparty in the portfolio margin account. "Net equity" is defined in relevant part as the "dollar amount of the account or accounts of a customer,"[12] which would include the dollar amount credited to the portfolio margin account for IM posted by the swap counterparty.

In light of these provisions, applying the Rule 15c3-3 and SIPA framework to an uncleared swap counterparty's IM held in the portfolio-margining account would preserve meaningful customer protections. An uncleared swap counterparty whose IM is held by a BD-SD-SBSD or BD-SD in a portfolio margin account would, with respect to that IM, be shielded from losses borne by unsecured creditors of the BD-SD-SBSD or BD-SD. And, although such a counterparty would bear so-called "fellow customer risk" to the extent the overall amount of securities customer property is not sufficient to meet securities customer net equity claims, the counterparty would be doing so willingly because it chose to take part in a portfolio margining program.

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held to meet a regulatory margin requirement of the SBSD resulting from the BD entering into a non-cleared SBS transaction with the SBSD to offset the risk of a non-cleared SBS transaction between the BD and the SBS customer. The first exception is not relevant here because it pertains solely to SBS that a BD clears for its customer. We propose not to permit a BD-SD-SBSD or BD-SD relying on this relief to use the second exception.

[9] 17 C.F.R. § 240.15c3-3(p)(3).

[10] 15 U.S.C. § 78lll(2)(B)(ii).

[11] 15 U.S.C. § 78lll(4).

[12] 15 U.S.C. § 78lll(11).

c. Permit a Portfolio Margin Customer to a BD-SD-SBSD or BD-SD to Elect Individual Segregation at an Independent Third Party as Envisioned by Dodd-Frank

The Dodd-Frank Act mandates that an SBSD or SD (including one that is a BD) offer its non-cleared SBS or swap counterparty, respectively, the right to elect individual segregation of IM at an independent third-party custodian. The Commissions further implemented this mandate in SEC Rules 15c3-3(p)(4) (for a BD-SBSD) and 18a-4(d) (for a standalone SBSD) and Subpart L of Part 23 of the CFTC's regulations (for an SD). The Commissions should clarify that a portfolio margin customer of a BD-SD-SBSD or BD-SD retains this right to elect individual segregation under those rules. In addition, the SEC should clarify that a BD-SD-SBSD or BD-SD need not take a capital charge for an undermargined account solely because its portfolio margin customer has elected individual segregation, so long as the third-party custody arrangement satisfies the requirements the SEC has previously set out for this purpose in Rule 15c3-1(c)(2)(xv)(C).[13]

These clarifications are necessary for certain types of regulated customers to avail themselves of portfolio margining. For example, in the case of registered investment companies ("**RICs**"), the ability to elect individual segregation at an independent third party may be necessary to comply with separate custody and asset-protection requirements under Section 17 of the Investment Company Act of 1940 (the "**1940 Act**") and the rules thereunder, which subject RICs to separate custody and safekeeping requirements with respect to fund assets and collateral and provide an additional layer of protection for fund assets.[14] As noted in prior letters from our members,[15] the custody requirements under the 1940 Act, along with other protections applicable to RICs, can

[13] Those requirements relate to the type of custodian, the enforceability of the parties' account control agreement, and written documentation of the legal analysis for such enforceability.

[14] In addition to Section 17, the 1940 Act contains six separate custody rules for the different types of possible custody arrangements: Rule 17f-1 (broker-dealer custody); Rule 17f-2 (self-custody); Rule 17f-4 (securities depositories); Rule 17f-5 (foreign banks); Rule 17f-6 (futures commission merchants); and Rule 17f-7 (foreign securities depositories). Foreign securities are required to be held in the custody of a foreign bank or securities depository.

[15] See, e.g., Letter from Investment Company Institute to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, and Vanessa A. Countryman, Secretary, Securities and Exchange Commission, at 5–7 (Dec. 7, 2020) (discussing how 1940 Act custody and other asset-protection requirements can limit the portfolio-margining arrangements available to RICs); Letter from Investment Company Institute to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, at 5–7 (Feb. 4, 2013) (noting that RICs may be unable to maintain collateral with a non-bank SBSD and emphasizing the importance of independent third-party custody, which should not be penalized); Letter from Investment Company Institute to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, at 4–6 (Dec. 5, 2013) (reiterating that 1940 Act custody requirements may preclude RICs from holding collateral with a non-bank SBSD and that RICs should not incur additional costs for electing third-party custody).

limit the portfolio-margining arrangements available to RICs, including the use of accounts at a non-bank SBSD or BD on the terms available to other customers. Accordingly, we recommend that the Commissions take the independent safeguards applicable to RICs under the 1940 Act into account when calibrating margin and segregation requirements and remove regulatory impediments that unnecessarily disadvantage RICs' participation in portfolio-margining arrangements.

d. Provide Relief from CFTC Rule 23.152(b)'s IM Posting Requirements for Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Account

Other than its obligation to return customer property, which is addressed by SEC Rule 15c3-3 and SIPA as described above, a BD carrying a customer's cash equity positions generally does not have any future obligations to the customer; instead, any extensions of credit are one-way, by the BD to the customer, such as a margin loan, securities loan, or short sale.[16] Accordingly, a BD is not required to post IM in relation to such positions in view of the liquidity and credit risk to which IM posting requirements would expose the SBSD. Although non-cleared equity SBS do involve credit exposure of the customer to the SBSD, the SEC requires VM posting in relation to such positions. Because the CFTC rules apply a different treatment to uncleared equity swaps, the CFTC should provide an exception from a BD-SD-SBSD's or BD-SD's IM posting requirements in the context of uncleared equity swaps that are portfolio margined in a FINRA Rule 4210(g) account.

If a BD-SD-SBSD or BD-SD is required to post IM in connection with such uncleared equity swaps, either (i) the BD-SD-SBSD or BD-SD would be required to post margin in respect of only the uncleared equity swaps or (ii) the BD-SD-SBSD or BD-SD would be required to post margin in relation to the entire portfolio. In the case of the former, the BD-SD-SBSD or BD-SD could receive less IM from the customer than the IM it would be required to post. This is because calculating the BD-SD-SBSD's or BD-SD's required IM based solely on the parties' uncleared equity swaps fails to take into account the customer's offsetting obligations to the BD-SD-SBSD or BD-SD in connection with its other equity positions. By contrast, the calculation of the IM that the customer is required to post to the BD-SD-SBSD or BD-SD would take account of such risk-reducing effects. In the event of a SIPA proceeding in respect of a BD-SD-SBSD or BD-SD, all of these amounts would generally be netted, thus making the customer responsible for returning the excess IM it has received.[17] Accordingly, such an exclusion

[16] Certain exceptions exist when a BD borrows a customer's fully paid or excess margin securities or enters into hold-in-custody repurchase transactions with the customer, but SEC Rule 15c3-3 has special provisions designed to address these transactions.

[17] See generally 15 U.S.C. § 78lll(11) (providing for a customer's net equity claim to be reduced by any obligations of the customer to the BD); 11 U.S.C. § 553 (preserving mutual rights of setoff); 15 U.S.C. § 78eee(b)(2)(B)(iii) (providing that the stay imposed by Securities Investor Protection Corporation shall not abrogate any right of setoff other than as contemplated by 11 U.S.C. § 553).

results in a needlessly inflated measure of the customer's potential future exposure to the BD-SD-SBSD or BD-SD. Moreover, it would defeat the very premise of portfolio margining, which is that the BD-SD-SBSD's or BD-SD's potential future obligations to the customer should be used to offset the customer's one-way obligations to pay back its margin loans and close out its short cash positions. Stated another way, by extending credit to finance its customer's cash equity positions, a BD-SD-SBSD or BD-SD already has economically put at risk its own funds to support the customer's trading, but excluding the customer's cash equity positions from the BD-SD-SBSD's or BD-SD's IM posting calculation would ignore this economic reality. If those positions were included, however, the BD-SD-SBSD or BD-SD would needlessly be posting IM in respect of positions for which there is either no extension of credit (i.e., fully paid positions) or only a one-way extension of credit by the BD-SD-SBSD or BD-SD to the customer (i.e., where there is only a one-way credit risk).[18] In either case, requiring the BD-SD-SBSD or BD-SD to post IM would increase the BD-SD-SBSD's or BD-SD's liquidity and other risks, as compared to a portfolio that is limited to uncleared swaps and non-cleared SBS.

Additionally, this relief would not result in an overall change to the CFTC's margin framework because it would be limited solely to those uncleared equity swaps that are portfolio margined with other equity positions in a FINRA Rule 4210(g) portfolio margin account, not uncleared swaps more generally. An uncleared swap counterparty would not willingly forego the benefits of third-party segregation and collecting IM from a dealer unless it judged the benefits of portfolio margining to be more significant; as such, this relief is unlikely to apply except where the counterparty has significant cash equities, options, and SBS positions with the BD-SD-SBSD, in addition to its equity swaps.

e. Eliminate Capital Charges for IM Posted Away to Third-Party Custodians

Unless it funds the IM it posts via a loan by an affiliate that has agreed to waive repayment of the loan until IM is returned and agrees that repayment can be satisfied by delivering the IM to the lender, a BD (including one that is an SD or SBSD) or non-bank SBSD must take a deduction for that IM.[19] The CFTC, in contrast, does not impose any similar charge on non-bank SDs.[20]

The SEC's policy in this area puts BDs and non-bank SBSDs at a competitive disadvantage when transacting with other dealers and financial institutions, which are

[18] Although theoretically one could address these issues by eliminating fully paid positions from the IM posting calculation and reducing the BD-SD-SBSD's IM posting obligation to the extent of financing it has extended to the customer, neither the IM framework nor firms' operational processes for making IM calculations contemplate these adjustments.

[19] SEC Release No. 34-86175 (June 21, 2019), 84 Fed. Reg. 43872, 43887 (Aug. 22, 2019).

[20] See 17 C.F.R. § 23.101(a)(1)(ii)(C).

usually required to collect IM. Moreover, the SEC's policy penalizes customers that negotiate to collect IM from BDs and non-bank SBSDs. The third-party segregation arrangements involved in these circumstances protect the BD or non-bank SBSD as pledgor by ensuring that the IM is segregated from the estate of the secured party (and therefore immune from the claims of the secured party's general unsecured creditors) and generally providing the pledgor with the ability to access its IM (to the extent it exceeds the secured party's current exposure to the pledgor) in the event of a counterparty default or the termination of the transaction. As long as these conditions are satisfied, the SEC should not impose a net capital deduction.

f. Permit a BD-SD-SBSD or BD-SD to Follow FINRA and SEC Requirements for Eligibility of Collateral, Haircuts, Margin Collection Deadlines, and Documentation in Respect of Uncleared Equity Swaps Portfolio Margined in a FINRA Rule 4210(g) Portfolio Margin Account, in Lieu of Their CFTC Equivalents

Although the requirements are substantively similar, technical differences remain between the Commissions' respective collateral eligibility,[21] haircut,[22] timing,[23] and documentation requirements.[24] For a BD-SD-SBSD or BD-SD seeking to treat related

[21] The SEC permits margin to consist of U.S. dollars, a major foreign currency, the settlement currency of the non-cleared SBS, gold, securities, or money market instruments. See 17 C.F.R. § 240.18a-3(c)(4)(i)(A)-(D). Similarly, where the counterparty is a financial end user, the CFTC permits margin to consist of U.S. dollars, another "major currency," the settlement currency of the uncleared swap, gold, or securities. See 17 C.F.R. § 23.156(a)(1) and (b)(1). However, the SEC and CFTC impose different eligibility criteria for securities. While the CFTC specifically enumerates the types of securities that are eligible as margin, the SEC requires that any margin be readily transferable and have a "ready market."

[22] Both the SEC and CFTC require that a non-bank SBSD or SD, respectively, apply certain standardized haircuts to the value of margin. However, although the SEC allows a non-bank SBSD to choose to use either the standardized market risk deductions set forth in the SEC's capital rules or the haircuts prescribed under the CFTC's margin rules so long as the non-bank SBSD applies the haircuts consistently with respect to a particular counterparty, see 17 C.F.R. § 240.18a-3(c)(3), the CFTC requires a non-bank SD to apply the CFTC's prescribed haircuts. See 17 C.F.R. § 23.156(a)(3) and (b)(2).

[23] The SEC requires that a non-bank SBSD calculate margin amounts for each counterparty each business day. It further requires that any IM or VM be transferred by the business day following such calculation. However, if a counterparty is located in a different country and is more than four time zones away, the margin need not be transferred until the second business day after calculation. See 17 C.F.R. § 240.18a-3(c)(1)(ii). Under the CFTC's margin rules, a non-bank SD must post or collect IM and VM on or before the business day after the day of execution of an uncleared swap. The day of execution is the day the parties enter into an uncleared swap. However, if: (1) each party is in a different calendar day at the time the parties enter into the uncleared swap, the day of execution is the latter of the two dates; and (2) if the uncleared swap is entered into (a) between 4:00 p.m. and midnight in the location of a party, or (b) on a day that is not a business day in the location of a party, then the day of execution is deemed to be the immediately succeeding business day that is a business day for both parties. See 17 C.F.R. §§ 23.151, 152.

[24] The SEC requires that any collateral posted to meet a margin requirement be subject to an agreement between the non-bank SBSD and the counterparty that is legally enforceable. See 17 C.F.R. § 18a-

positions on an integrated basis, those differences can require separate systems, procedures, operational processes, and customer documentation solely to accommodate differing technical requirements. Requiring firms and customers to satisfy overlapping requirements in this manner can materially increase the operational and compliance burden of portfolio margining. These burdens can outweigh any benefits for customers or financial stability, considering the high level of similarity between the two sets of rules.

Accordingly, the CFTC should provide relief from its collateral eligibility, haircut, margin collection deadline, and documentation requirements for uncleared equity swaps that a BD-SD-SBSD or BD-SD portfolio margins in a FINRA Rule 4210(g) account so long as the BD-SD-SBSD or BD-SD complies with the analogous SEC and FINRA requirements, as applicable. This approach would eliminate technical impediments to integrated portfolio margining without dispensing with substantive requirements governing eligible collateral, valuation, timely margin collection, or enforceable documentation.

2. The SEC Should Permit a BD-SD-SBSD to Calculate IM Requirements for Variance and Other TIMS-Ineligible Equity SBS Using ISDA SIMM and to Portfolio Margin Such SBS with Similar "Non-Delta-One" Equity Swaps

As noted above, TIMS calculates margin requirements by stressing equity positions in the relevant portfolio under a range of scenarios and determining how much margin would be necessary under all such scenarios. As a result, TIMS is generally only able to capture the potential future exposure of an equity SBS if the return on that equity SBS is based on the price movement of the relevant underliers. Although that is the case for most equity SBS, the return on certain equity SBS is based on volatility or other factors. For these positions, a non-bank SBSD cannot use TIMS to calculate IM.

The SEC should accordingly provide relief permitting a BD-SD-SBSD to calculate the IM for a TIMS-ineligible equity SBS, including variance and volatility SBS, using an approved industry-standard model, such as ISDA SIMM. Allowing a BD-SD-SBSD to use ISDA SIMM to calculate IM requirements for these positions would promote accurate calculations of IM. Further, such relief would not create inconsistent margin treatment for cash positions relative to corresponding cash equity positions, as there is no cash position analogue to variance, volatility, or other TIMS-ineligible SBS.

The SEC also should permit a BD-SD-SBSD to take into account risk offsets associated with similar "non-delta-one" equity swaps (e.g., equity index variance or volatility swaps) when calculating the margin requirements applicable to TIMS-ineligible

3(c)(4)(i)(E). The CFTC requires that a non-bank SD execute trading documentation with each counterparty that provides the non-bank SD with the right and obligation to exchange VM and IM as required by the CFTC's margin rules and imposes certain requirements on what the documentation must specify. See 17 C.F.R. § 23.158.

equity SBS. Such relief would promote the benefits of portfolio margining, without implicating any of the concerns that the Commissions raise.

3. The CFTC Should Provide Relief Necessary for a BD-SD-SBSD or BD-SD to Make Consolidated Margin Calls and Hold Regulatory Margin on a Consistent Basis in Satisfaction of House Margin Requirements

The technical inconsistencies and differing segregation, collateral eligibility, haircut, deadline, and documentation requirements of the Commissions' respective rules can prevent or limit the ability of a BD-SD-SBSD or BD-SD to make an integrated margin call for all of the swap, SBS (in the case of a BD-SD-SBSD), and securities positions the firm maintains for a customer, which increases settlement risk and reduces liquidity by preventing a firm from netting offsetting margin posting and delivery obligations. In addition, if a firm must hold IM for different positions in different locations, it may be unable to apply that IM holistically toward its non-regulatory ("house") IM requirements for a customer.[25] Further, different segregation, collateral eligibility, haircut, deadline, and documentation requirements increase the compliance burden associated with margin requirements by preventing a customer from relying on a single set of documentation, and can foster uncertainty by applying disparate segregation or insolvency regimes to different parts of the customer's overall portfolio.

SIFMA therefore recommends that the CFTC grant the following relief in relation to credit, rate, FX, and commodity swaps, as well as uncleared equity swaps not held in a FINRA Rule 4210(g) portfolio margin account.[26] We emphasize that, even with this relief, a BD-SD-SBSD or BD-SD would still calculate regulatory IM amounts separately for positions in different asset classes, and it would still post IM for its uncleared swaps.[27] The requested relief therefore would address the operational and

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[25] For example, take a customer that has a concentrated position in a foreign equity security with a BD-SD-SBSD as well as a non-deliverable foreign exchange ("**FX**") forward that offsets the FX risk of that security position. The BD-SD-SBSD or BD-SD would be required to calculate and collect regulatory IM separately for the two positions. The BD-SD-SBSD or BD-SD might also require more house IM for the security position than its regulatory IM calculation would dictate, but for house margin purposes it would look to recognize the FX risk offsets between the two positions (resulting in a house IM requirement that is overall less than the overall regulatory IM requirement) and apply regulatory IM collected for both positions towards that house margin requirement. However, if some of the regulatory IM must be held away from the firm at a third-party custodian (e.g., for the FX position), then the firm may not be able to recognize that IM for FINRA purposes. FINRA Rule 4210(g)(1)(H) effectively incorporates house margin requirements into a firm's regulatory obligations for portfolio margin accounts. But a firm likely could not rely on margin for these purposes if it is not within the firm's possession or control (e.g., if it is held away at a third-party custodian).

[26] We note that this relief should also apply to a BD-SD that is not an SBSD.

[27] Where permitted under CFTC No-Action Letter 16-71, the IM posted or collected by the firm could be computed on a portfolio-wide basis across uncleared swaps and non-cleared SBS in the same asset class.

collateral-management consequences of applying different regulatory frameworks to related positions without eliminating the underlying regulatory margin requirements.

a. Provide Relief From CFTC Rule 23.157(b)'s IM Segregation Requirements for a BD-SD-SBSD or BD-SD That Holds IM in Accordance with SEC Rule 15c3-3 and Applies That IM to House Margin Requirements for Securities

Allowing a BD-SD-SBSD or BD-SD to hold IM in accordance with SEC Rule 15c3-3 and apply that IM to house margin requirements would limit the need for such a firm to both post and collect offsetting amounts, without increasing leverage and while continuing to subject customer assets to an established customer-protection and insolvency framework. With respect to leverage, as discussed in Section I.A.1.b above, subjecting IM to SEC Rule 15c3-3 would generally limit the firm's ability to re-hypothecate, re-pledge, or re-use such IM. With respect to customer protection, a customer's claim for the return of margin would be a "customer claim" for purposes of SIPA, though the analysis is somewhat different from the analysis in the context of a FINRA Rule 4210(g) account.

Under SIPA, the definition of "customer" includes "any person . . . who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person . . . as collateral . . . ."[28] As a result, if a customer posts securities to a BD and those securities are held in and serve as collateral for the customer's securities account (e.g., by satisfying house margin obligations), then the customer's claim for such securities would be a "customer" claim under SIPA. Although the foregoing definition does not address cash margin, the SIPA customer definition also includes "any person who has deposited cash with the debtor for the purpose of purchasing securities."[29] If cash margin is applied to house margin requirements associated with a securities account, such margin would constitute cash deposited with the BD for purposes of purchasing securities. Thus, the customer's claim for the return of such margin would similarly be a "customer" claim.

As noted above, "customer property" under SIPA includes "cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer," and a customer's "net equity" claim is the dollar amount of its accounts. Accordingly, the securities or cash margin that a customer posts in relation to uncleared swaps would be customer property and a customer would have a net equity claim in relation to such margin, in each case so long as the margin is subject to SEC Rule 15c3-3 and used to meet house margin requirements for securities.

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[28] 15 U.S.C. § 78lll(2)(A).

[29] 15 U.S.C. § 78lll(2)(B)(i).

b. Permit a BD-SD-SBSD or BD-SD to Follow FINRA and SEC Requirements for Eligibility of Collateral, Haircuts, Margin Collection Deadlines, and Documentation in Lieu of Their CFTC Equivalents

As discussed in Section I.A.1.f above, the Commissions' respective eligible collateral, haircut schedules, timing provisions, and documentation requirements are broadly similar. However, certain technical differences make it difficult to comply with both requirements simultaneously, which can prevent or impede integrated margin calls and may require customers to execute multiple sets of documentation. To ensure those differences do not needlessly increase settlement risk and compliance costs, the CFTC should permit a BD-SD-SBSD or BD-SD to follow the SEC and FINRA collateral eligibility, haircut, margin collection deadline, and documentation requirements for uncleared credit, rate, FX, and commodity swaps, as well as uncleared equity swaps not held in a FINRA Rule 4210(g) portfolio margin account. This relief would permit the firm to apply a coherent set of operational requirements to related positions while remaining subject to substantive collateral, valuation, margin-collection, and documentation requirements.

B. Standalone SD-SBSD (Including an OTCDD)

Nearly every standalone SD-SBSD, as well as most SD-SBSDs that are dually registered as OTCDDs, is eligible for the exemption from the SEC's segregation requirements under SEC Rule 18a-4(f) and therefore subject only to one set of segregation requirements and insolvency treatment.[30] In addition, CFTC No-Action Letter 16-71 permits such a firm to portfolio margin uncleared swaps and non-cleared SBS together under CFTC rules. Accordingly, the recommendations below focus on the remaining steps necessary to permit an SD-SBSD to comply with the CFTC's margin requirements and recognize risk offsets among all eligible OTC derivatives positions in the same risk category.

1. <u>The Commissions Should Permit an SD or SBSD Registered as an OTCDD or Exempt From BD Registration Under SEC Rule 15a-6 to Portfolio Margin OTC Securities Options with Non-Cleared SBS and Uncleared Swaps in the Same Risk Category</u>

SEC Rule 18a-3 permits a non-bank SBSD to recognize risk offsets from uncleared swaps when calculating IM requirements for non-cleared SBS in the same risk category. Similarly, CFTC No-Action Letter 16-71 permits a non-bank SD to recognize risk offsets with non-cleared SBS when calculating uncleared swap IM requirements in

[30] If an SD-SBSD is eligible for SEC Rule 18a-4(f), then it should not be treated as a stockbroker for purposes of the U.S. Bankruptcy Code. Instead, its swaps, SBS, and option counterparties will be general creditors of the SD-SBSD.

relation to the same risk category. However, neither Commission has provided similar relief in relation to OTC securities options positions.[31]

At the same time, standalone SD-SBSDs may be registered as OTCDDs or foreign BDs exempt from BD registration under SEC Rule 15a-6, which permits such firms to transact in OTC securities options with their swaps and SBS customers. Preventing such customers from portfolio margining their options, swaps, and SBS positions together unnecessarily increases margin requirements for customers. SIFMA therefore recommends that the Commissions provide relief permitting, but not requiring, a non-bank SD or SBSD that is an OTCDD or foreign BD exempt from BD registration under SEC Rule 15a-6 to portfolio margin OTC securities options with SBS and swaps in the same risk category.

Incorporating OTC securities options into margin calculations would permit the relevant firms to calculate margin requirements that appropriately reflect a customer's portfolio and thereby prevent an undue drain on liquidity and distortion of incentives. In the absence of such relief, customers may face needlessly high margin requirements, an inefficient allocation of resources, and disincentives to mitigate risk.

2. The SEC Should Confirm That a Standalone SD-SBSD, as Well as an OTCDD, May Take Into Account Uncleared Credit Swaps When Calculating IM Requirements Applicable to Non-Cleared Credit SBS, so Long as the Standalone SD-SBSD Has Model Approval to Cover Both Products

As in the context of a BD-SD-SBSD, the SEC should confirm that its margin rules permit a standalone SD-SBSD, as well as an SD-SBSD that is also an OTCDD, to take into account offsets between non-cleared credit SBS and uncleared credit swaps when calculating IM, so long as the firm has model approval to cover both products. Such confirmation would avoid an unintended distinction based solely on the firm's registration structure and would permit the approved model to recognize qualifying offsets within the same risk category.

3. The CFTC Should Codify No-Action Letter 16-71 to Ensure Recognition of Permissible Offsets Between Swaps and Security-Based Swaps

As discussed above, the SEC's margin framework permits an SBSD to recognize appropriate offsets among SBS and other positions under an approved margin methodology, and CFTC No-Action Letter 16-71 provides corresponding relief permitting certain non-cleared SBS to be included with uncleared swaps for purposes of

[31] In particular, SEC Rule 18a-3(d)(2)(ii), which permits a standalone SD-SBSD (including an OTCDD) to use a model to compute IM requirements for equity SBS, does not appear to permit the firm to include equity options in the customer's account.

the CFTC's margin requirements. SIFMA recommends that the CFTC codify the relief provided by No-Action Letter 16-71 and expressly provide that SBS included in an eligible portfolio may be treated together with uncleared swaps for purposes of calculating regulatory initial margin and recognizing permissible risk offsets.

Codification of the no-action relief would provide regulatory certainty that such offsets may be recognized under the CFTC margin framework and ensure consistent recognition by relevant regulators and self-regulatory organizations. This treatment would better align the CFTC and SEC margin frameworks and permit firms to realize the portfolio-margining efficiencies that No-Action Letter 16-71 was intended to facilitate.

4. The SEC Should Permit Compliance with CFTC Requirements for Eligibility of Collateral and Margin Collection Deadlines in Lieu of Analogous SEC Requirements for Non-Cleared SBS Portfolio Margined With Uncleared Swaps Under CFTC No-Action Letter 16-71

Even if a firm can apply risk offsets across products, technical conflicts between the Commissions' respective collateral eligibility and margin collection deadline requirements can limit the ability of the firm to make consolidated margin calls. This limitation does not serve significant policy ends, considering the Commissions' requirements are quite similar. Indeed, the SEC itself has noted that the CFTC's margin requirements are "largely comparable."[32]

Therefore, SIFMA recommends that the SEC grant relief to standalone SD-SBSDs, including OTCDDs, from the SEC's collateral eligibility and margin collection deadline requirements in relation to non-cleared SBS that the SD-SBSD portfolio margins with uncleared swaps in accordance with CFTC No-Action Letter 16-71, so long as the firm complies with the CFTC's analogous requirements, either directly or through substituted compliance. This relief would facilitate the ability of a standalone SD-SBSD to portfolio margin uncleared swaps with non-cleared SBS without negatively affecting any of the SEC's policy goals.

C. The Commissions Should Harmonize Counterparty Classifications and Margin Treatment

Under the CFTC's margin rules, a non-bank SD is exempted from exchanging margin with a counterparty that is not a "financial end user," regardless of whether that counterparty satisfies the requirements set out in the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("**TRIPRA**").[33] The CFTC's approach aligns not only with

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[32] Id. at 43909.

[33] See Public Law 114-1, 129 Stat. 3 (2015).

the approach taken by the prudential regulators, but also with the approach adopted by the Working Group on Margin Requirements.[34]

The SEC takes a different approach under its margin rules and requires an SBSD to exchange margin with a counterparty unless that counterparty is a "commercial end user" within the scope of TRIPRA. The requirement that SBSDs post margin to these entities actually exposes SBSDs to greater credit risk. In the event the counterparty defaults and fails to return any excess margin, the SBSD would be exposed to losses. In addition, the posting requirement locks up significant liquidity that SBSDs could deploy to reduce costs to customers or address liquidity stress scenarios.

Accordingly, to promote SBSD safety and soundness and avoid an unnecessary reduction in SBSD liquidity, SIFMA recommends that the SEC align its counterparty classifications and margin treatment with the CFTC framework, including by exempting SBSDs from exchanging margin with counterparties that are not "financial end users."

II. Digital Commodities

Recent years have seen a dramatic expansion of interest by retail and institutional customers in trading digital commodities, such as Bitcoin, as well as growth in related securities products (such as ETFs and options on ETFs) and derivatives products (such as futures, options, and swaps). Needing to margin all these products separately results in greater counterparty credit and operational risk for market participants and end users, with associated impairment of liquidity and overall market functioning. Separate margining also makes the U.S. market unduly costly and illiquid relative to foreign markets, which have more unified regulatory structures.

Pending legislation, such as the Digital Asset Markets Clarity Act, would address these issues by mandating that the CFTC and SEC facilitate portfolio margining of these products alongside standing up a framework for regulation of the digital commodity spot market. But the Commissions do not need to wait on legislation when they could use their existing authorities to achieve this important policy objective.

In particular, to support growth of digital commodity markets in the United States, SIFMA recommends that the Commissions take the following steps in relation to portfolio margining:

- The SEC should work with FINRA to permit a BD to recognize offsets as between digital commodities and related securities positions held together

[34] The Working Group on Margin Requirements was established by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**") to develop internationally consistent margin standards for non-centrally cleared derivatives in response to the G20's derivatives-reform agenda. See BCBS-IOSCO, Margin Requirements for Non-Centrally Cleared Derivatives (Sept. 2013), as subsequently revised.

in a portfolio margin account under Rule 4210(g) (e.g., to recognize offsets between a long position in Bitcoin and a short position in a Bitcoin ETF);

- The SEC should amend Rule 15c3-3 to establish clear and consistent customer protection requirements for digital commodities held by a BD for customers;[35]

- The CFTC should work with derivatives clearing organizations so they can accept readily marketable digital commodities as collateral for futures, options, and cleared swaps; and

- The CFTC and SEC should amend their uncleared margin rules to recognize readily marketable digital commodities as eligible collateral, at least for uncleared swaps and non-cleared SBS that directly or indirectly relate to those digital commodities.

III. The Commissions Should Facilitate Broader Cross-Margining Arrangements

Cross-margining is an important complement to portfolio margining. Market participants use cross-margining to recognize related exposures across accounts, intermediaries, affiliated entities or clearing organizations, which is particularly important where separate positions are economically part of the same risk-management strategy. When used appropriately, cross-margining aligns margin requirements with actual portfolio risk. For example, some swaps may be centrally cleared through a clearing broker while related swaps remain subject to a bilateral netting agreement. In those circumstances, the intermediary's group-wide credit exposure may be affected by the customer's full relationship, rather than solely by the uncleared swap portfolio.

Evaluating related exposures on a consolidated basis can strengthen risk management and market stability by allowing margin and other risk controls to more accurately reflect the concentrations and potential behavior of the customer's overall positions under stress. Current clearing requirements and regulatory account structures may require these positions to be maintained and margined separately, preventing recognition of related offsets, and resulting in a margin requirement that may not fully reflect group-wide credit risk, capital inefficiencies and increased liquidity demand. Further, the current regulatory regimes do not necessarily enhance market stability as

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[35] For digital commodities held outside a securities portfolio margin account, the SEC should affirm its existing staff guidance regarding treatment under SIPA. See Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology at Questions 7 and 8, *available at* https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology. For digital commodities held within a securities portfolio margin account, we would be pleased to work with the SEC to address how to recognize those assets as factoring into customer property and net equity claims under SIPA.

they often do not capture a participant's full economic position. Recognizing offsets among positions across accounts through an appropriate margin methodology can produce a more accurate measure of risk and reduce duplicative liquidity demands without reducing the margin required under applicable clearinghouse rules.

SIFMA recommends that the Commissions take two complementary actions to facilitate broader cross-margining. First, the Commissions should permit registrants subject to their respective margin requirements, where supported by a legally enforceable arrangement, to recognize offsets between uncleared positions and related positions maintained in other accounts when calculating applicable initial margin requirements.[36] Second, the Commissions should establish a coordinated and expeditious process for reviewing additional cross-margining programs that require relief from the rules of one or both Commissions. Expanded cross-margining programs should preserve applicable customer protections and be designed so that customers do not lose protected status solely because economically related positions are held across different categories of accounts or intermediaries.

A. The Commissions Should Build on the FICC-CME Precedent to Expand Cross-Margining Opportunities

SIFMA strongly supports the Commissions' April 2026 coordinated actions facilitating customer cross-margining of cash-market U.S. Treasury positions cleared at FICC and related Treasury futures positions cleared at CME. As Chairman Selig observed, the arrangement enables "more efficient risk management across related products" and "moves us closer toward a more modern, robust market structure."[37] The Commissions should build on this precedent by using coordinated relief to address regulatory impediments to additional appropriately structured arrangements.

The FICC-CME program addresses customer positions cleared at separate clearinghouses. Market participants also use contractual arrangements to manage related cleared and uncleared exposures, although these relationships often are not recognized under current margin requirements. Market participants may use cross-margin arrangements where an SD or its affiliate enters into uncleared swaps with a customer and serves as the customer's clearing broker. Under this arrangement, the clearing broker collects the full amount required under applicable central clearinghouse rules, without reduction for related uncleared exposures. The customer grants the uncleared counterparty a subordinated lien on the customer's residual interest in collateral maintained in the clearing account. The uncleared counterparty then calculates its IM requirement after recognizing qualifying offsets with related cleared positions and collects any amount by which that requirement exceeds the margin already posted and

[36] The Commissions should coordinate with the prudential regulators in this regard.

[37] CFTC, CFTC Approves Order to Further Strengthen U.S. Treasury Market Liquidity, Release No. 9214-26 (Apr. 15, 2026), https://www.cftc.gov/PressRoom/PressReleases/9214-26.

available under the arrangement. In a default, the claims of the clearing broker and customers entitled to statutory protection remain senior to the uncleared counterparty's claim.

Similar arrangements may be used with prime-brokerage cash positions, repo and securities-lending transactions, and related uncleared swaps. These arrangements demonstrate that cross-margining can promote effective credit-risk management and reduce duplicative collateral demands without reducing required clearinghouse margin or disturbing applicable priority protections. Their benefits remain incomplete, however, where regulatory IM requirements do not recognize the same legally enforceable economic relationships.

Accordingly, the CFTC and SEC should permit non-bank SDs and SBSDs subject to their respective margin requirements to recognize offsets between uncleared swaps or non-cleared SBS and related positions covered by a legally enforceable cross-margin arrangement[38] when calculating regulatory IM.

B. The Commissions Should Establish a Clear and Coordinated Process for Reviewing Cross-Margining Arrangements

The Commissions should establish a clear and predictable process for coordinating their review of proposed cross-margining arrangements and any related requests for exemptive or other relief. Greater coordination among the SEC, CFTC, relevant prudential regulators and self-regulatory organizations, including concurrent review and coordinated staff engagement where practicable, would reduce the cost, uncertainty and delay associated with navigating multiple regulatory regimes. The process also should provide sufficient transparency regarding the considerations relevant to such reviews and should permit materially similar arrangements to rely on, where appropriate, previously approved structures and conditions. Such an approach would facilitate additional cross-margining opportunities while preserving the ability of each regulator to impose conditions tailored to the particular risks, customer-protection considerations and legal framework applicable to the proposed arrangement.

Appropriately structured cross-margining can align margin requirements more closely with the aggregate risk of a customer's positions, improve collateral and liquidity management, and reduce unnecessary funding, settlement and operational burdens. The Commissions should therefore permit recognition of additional legally enforceable cross-

[38] Provisions relevant to the legal enforceability of these arrangements would include: (i) cross-default and close-out netting upon the occurrence of a customer default; (ii) the ability to apply excess collateral, following a customer default, against amounts owed by a clearing or prime-brokerage customer to the uncleared counterparty under uncleared swaps; and (iii) in the case of cross-entity master agreements, the ability to apply receivables or collateral owed to the customer against amounts owed by the customer to the clearing/prime broker, including where the relevant entities include both U.S. and non-U.S. registrants.

margin arrangements under their respective margin rules, and establish a transparent and coordinated process for reviewing arrangements that require exemptive or other relief.

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SIFMA appreciates the opportunity to respond to the Request for Comment and the Commissions' consideration of our comments as set forth above. We would welcome the opportunity to meet with the staff of the Commissions to discuss our recommendations and any other aspects of the Request for Comment. If you have any questions or require additional information, please do not hesitate to contact the undersigned.

Sincerely,

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William C. Thum
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SIFMA AMG

cc:

<u>Commodity Futures Trading Commission</u>

The Hon. Michael S. Selig, Chairman
DJ Hennes, Director, Market Participants Division
Richard Haynes, Acting Director, Division of Clearing and Risk

<u>Securities and Exchange Commission</u>

The Hon. Paul S. Atkins, Chairman
The Hon. Hester M. Peirce, Commissioner
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Jamie Selway, Director, Division of Trading and Market