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January 5, 2015

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Constitution Center (OGC Eighth Floor)
400 7th Street, SW
Washington, DC 20024

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Margin and Capital Requirements for Covered Swap Entities, Docket ID OCC-2011-0008/RIN 1557-AD43, Docket No. R-1415/RIN 7100 AD74, RIN 3064-AE21, RIN 2590-AA45, RIN 3052-AC69;

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN 3038-AC97.

Ladies and Gentlemen:

The Global Financial Markets Association ("GFMA")[1] welcomes this opportunity to comment on the captioned rule proposals (the "Proposed Rules") published by the Prudential Regulators[2] and the Commodity Futures Trading Commission (the "CFTC" and,

[1] The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit www.gfma.org.

[2] In this letter, "Prudential Regulators" refers to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the Farm Credit Administration.

together with the Prudential Regulators, the "Agencies") pursuant to their authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Proposed Rules would establish minimum initial and variation margin ("OTC margin") requirements applicable to (a) uncleared swaps and security-based swaps ("SBS")[3] entered into by registered swap dealers, SBS dealers, major swap participants and major SBS participants for which there is a Prudential Regulator and (b) uncleared swaps entered into by swap dealers and major swap participants that do not have a Prudential Regulator.

The GFMA welcomes the Agencies' publication of the Proposed Rules, which incorporate several modifications to the Agencies' original 2011 margin proposals[4] in light of the Basel Committee on Banking Supervision and International Organization of Securities Commissions September 2013 final international policy framework (the "Final BCBS-IOSCO Framework")[5] and the OTC margin framework proposed in April 2014 by European supervisory agencies.[6,7] GFMA acknowledges the efforts of Agencies and their international counterparts in achieving general consistency in the context of OTC margin requirements.

Given differing approaches in the national implementation of certain aspects of the Final BCBS/IOSCO Framework, however, some concerns persist. While our members have a variety of comments regarding the Proposed Rules, GFMA intends for this letter to focus on the cross-border implications.[8] Uncleared swaps are an important tool used by market participants around the globe to support a range of legitimate business practices, including hedging risk and facilitating investment. Consistent and coordinated international requirements are essential given the large percentage of activity that is conducted on a cross-border basis. Deviation between jurisdictions in the regulatory treatment of swaps can increase the risk of arbitrage, stifles competition and fosters otherwise avoidable market fragmentation.

In light of the global nature of the this market, GFMA recommends the Agencies adopt more robust approaches to substituted compliance and continue to engage in international efforts towards further minimizing national differences in OTC margin rule implementation. We also note FSB Chair Carney's 7 November 2014 letter to the G20

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[3] In this letter, "swaps" refers to both covered swaps and SBS.

[4] 76 Fed. Reg. 27564 (May 11, 2011) (original Prudential Regulator proposal) and 76 Fed. Reg. 23732 (28 Apr. 2011) (original CFTC proposal).

[5] BCBS-IOSCO, Margin requirements for non-centrally cleared derivatives (Sept. 2013).

[6] See Consultation Paper regarding draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP (14 Apr. 2014).

[7] As examples, the Agencies have proposed a $65 million initial margin threshold, a broad range of eligible collateral for initial margin, and a phase-in schedule for compliance with initial margin requirements.

[8] For additional comments, see SIFMA comments on "Margin and Capital Requirements for Covered Swap Entities" 79 Fed. Reg. 57348 (24 Sept. 2014); and "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" 79 Fed. Reg. 59898 (3 Oct. 2014), available at: http://www.sifma.org/issues/item.aspx?id=8589952197 (the "SIFMA Uncleared Margin Letter").

Leaders, which highlighted the importance of consistent implementation of agreed upon common standards, and the use of "deferral" to avoid regulatory conflict.[9]

As the Agencies have recognized, the Proposed Rules will in many instances apply in concert with OTC margin requirements adopted in other jurisdictions. The Agencies have also proposed to apply their OTC margin requirements extraterritorially in certain contexts (*e.g.*, to guaranteed affiliates of U.S. persons), as have regulators in other jurisdictions, such as the European Union. The application of multiple OTC margin requirements could disrupt the swaps market given the likelihood that such application would subject market participants to compliance with duplicative, inconsistent or conflicting rules - particularly in the case of two-way margin exchange regimes. An entity organized in the U.S., for example, could be required by U.S. rules to post margin in an amount, in a form, at times or held in a way that is not consistent with the margin collection requirements applicable to a counterparty organized in another jurisdiction. In addition, even where there is not an outright conflict between U.S. and foreign requirements, where differing standards are in place (even if technical details that do not relate to the core risk mitigation objectives of OTC margin requirements - such as the denomination of thresholds and minimum transfer amounts), an unlevel playing field may be created.

Left unaddressed, such conflicts or inconsistencies in OTC margin requirements stand to fragment markets by preventing or deterring certain types of counterparties from trading with each other. Such fragmentation would restrict hedging or investment opportunities by limiting the range of dealers from whom a market participant could source liquidity, with the potential to foreclose access to certain foreign markets entirely. The Agencies could most effectively prevent these adverse consequences by working to coordinate OTC margin requirements internationally. The Final BCBS-IOSCO Framework represents an important step toward the achievement of that objective; however, further efforts should be made to ensure the national implementation of requirements in individual jurisdictions consider the cross-border impact of divergences.

GFMA recognizes, however, that efforts at such coordination are likely to fall short of a single comprehensively harmonized rule set. Different statutory frameworks and underlying commercial and insolvency laws, for example, create limitations on the extent of possible harmonization. These limitations require regulators to fashion measures that mitigate the potential for cross-border conflicts and inconsistencies without exposing their local financial systems to undue risk, either directly or as a result of regulatory arbitrage.

As reflected in the Proposed Rules, one measure to mitigate these cross-border conflicts and inconsistencies is to permit substituted compliance based on the comparability of another jurisdiction's rules. The different cross-border proposals contained in the Proposed Rules embrace substituted compliance to varying degrees, but not in a manner that would comprehensively address every set of circumstances where

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9 See FSB Chairman Mark Carney letter to G20 Leaders (7 November 2014), "Fourth, the support of G20 Leaders is now needed for the next phase of the FSB's work to promote a system based on mutual trust and co-operation. This is essential to help maintain an open global financial system. Building trust relies on consistent implementation of agreed common standards; on the recognition that each jurisdiction will need to take account of its own circumstances while implementing internationally agreed minimum standards; and on deferral to the regulatory regimes of others as set forth by Leaders in St Petersburg, so that inefficient duplication and conflicts of regulation can be avoided.", available at: http://www.financialstabilityboard.org/wp-content/uploads/FSB-Chair's-Letter-to-G20-Leaders-on-Financial-Reforms-Completing-the-Job-and-Looking-Ahead.pdf.

cross-border conflicts or consistencies could arise.[10] Concerns in deferring to other regulators via substituted compliance are not founded if the international coordination efforts reflected by the development of the Final BCBS-IOSCO Framework are faithfully adhered to in the national implementation of OTC margin requirements.

Further, jurisdictions should not seek to adopt a "stricter rule applies" approach, which would effectively eliminate the benefit of substituted compliance (i.e., mitigating the opportunity for competitive disparities to arise from inconsistent requirements). Indeed, from a prudential oversight perspective, a truly outcome-based approach would not look at the outcome of an individual transaction or counterparty pair – an approach that significantly increases the cost and complexity of compliance and creates the conditions for market fragmentation and price skewing – but would instead look to whether, as a whole, giving deference to an equivalent foreign OTC margin framework would give rise to unacceptable levels of aggregate unmargined risk.

In conjunction with adopting an effective substituted compliance framework, the Agencies can also ensure that national differences in OTC margin requirements do not promote regulatory arbitrage by working with their counterparts in other jurisdictions (through BCBS-IOSCO, the OTC Derivatives Regulations Group or otherwise) to resolve any material differences during the period prior to finalization of national OTC margin requirements. In this way, the Agencies could assess the comparability of foreign OTC margin requirements based on consistency with international standards, which themselves would reflect consistency with all of the material aspects of U.S. OTC margin requirements. The Agencies also could make comparability determinations for other major jurisdictions (such as the European Union and Japan) in conjunction with, or shortly following, the finalization of U.S. OTC margin requirements, without the need for an additional application process. This would provide market participants with much needed clarity, and enable them to take these comparability requirements into account during the implementation process.

The Agencies should further consider limiting the extraterritorial application of U.S. OTC margin requirements, in order to mitigate the risk of cross-border conflicts and inconsistencies. The extraterritorial application of U.S. law is warranted only under circumstances where U.S. regulatory interests are strong and there is no other means for satisfying those interests. The application of OTC margin requirements, especially in regards to the imposition of two-way margin regimes, will present significant challenges for market participants if tasked to comply with multiple, overlapping regimes. By unnecessarily expanding the extraterritorial scope of U.S. OTC margin requirements, the risk of such conflicts with foreign law is further increased. We draw your attention to the detailed analysis and recommendations made in the SIFMA Uncleared Margin Letter in this regard.[11]

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[10] See SIFMA Uncleared Margin Letter at pages 30-32 for detailed examples of such conflicts and inconsistencies.

[11] See SIFMA Uncleared Margin Letter at pages 32-36.

We would be pleased to provide further information or assistance at the request of the Agencies.

Respectfully Submitted,

Kenneth E. Bentsen, Jr.
Chief Executive Officer
GFMA

cc: Honorable Janet L. Yellen, Chair
Honorable Stanley Fischer, Vice Chairman
Honorable Daniel K. Tarullo, Governor
Honorable Jerome H. Powell, Governor
Honorable Lael Brainard, Governor
Board of Governors of the Federal Reserve System

Honorable Thomas J. Curry, Comptroller of the Currency
Office of the Comptroller of the Currency

Honorable Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corporation

Honorable Jill Long Thompson, Chair and Chief Executive Officer
Farm Credit Administration

Honorable Melvin L. Watt, Director
Federal Housing Finance Agency

Honorable Timothy G. Massad, Chairman
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Commodity Futures Trading Commission

Honorable Mary Jo White, Chair
Honorable Luis A. Aguilar, Commissioner
Honorable Daniel M. Gallagher, Commissioner
Honorable Kara M. Stein, Commissioner
Honorable Michael S. Piwowar, Commissioner
Securities and Exchange Commission

Honorable Jacob J. Lew, Secretary of the Treasury and Chairman, Financial Stability Oversight Council
Honorable Sarah Bloom Raskin, Deputy Secretary of the Treasury
United States Department of the Treasury