ISDA. Safe, Efficient Markets

September 11, 2015

Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements - RIN 3038-AC97[1]

The International Swaps and Derivatives Association, Inc. ("**ISDA**")[2] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "**Commission**") with comments in response to the Proposed Rulemaking relating to the cross-border application of the Commission's margin requirements for uncleared swaps.

Executive Summary

We welcome the proposals by the Commission to address the cross-border application of the margin requirements but suggest several changes to the proposed rules. In summary, we suggest that:

1) The Guidance approach should be adopted, with some modifications.

We support the adoption of a modified version of the Guidance approach. (The Guidance approach is the set of cross-border rules applicable to transaction-level requirements in the Commission's cross-border guidance.[3]) Specifically, we propose use of a modified Guidance approach so that the rules apply as follows:

- if a non-US CSE (whether or not guaranteed and whether or not affiliated with a US person and whether or not acting through a US branch) enters into a swap with a non-US counterparty (and the counterparty is not guaranteed by a US person), then the swap is not subject to the Commission's margin rules;

[1] 80 Fed. Reg. 41376 (July 14, 2015).
[2] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 68 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 web site: www.isda.org.
[3] 78 Fed. Reg. 45292.

- if a non-US CSE enters into a swap with a US counterparty, or a US CSE enters into a swap with a non-US counterparty, substituted compliance will be available.

A modified Guidance approach, as we suggest, would comport best with a level competitive playing field, maintaining intact global markets and protecting the U.S. economy.

2) Rules in different jurisdictions should be harmonized; the substituted compliance process should be simplified and the comparability determinations should be based on the BCBS/IOSCO Framework.[4]

The margin rules should be harmonized across jurisdictions, and among regulators in the United States, so that the same requirements are applicable to CSEs in all jurisdictions. Failing such harmonization, a comparability determination should be made for any jurisdiction that adopts margin rules that are broadly comparable to the BCBS-IOSCO Framework. If the Commission is not able to make such a determination as soon as a jurisdiction issues final rules based on the BCBS-IOSCO Framework, then the Commission should make a two year transitional comparability determination. Also, for cross-border swaps, parties should be able to rely on substituted compliance for all the margin rules, not just for posting or collecting initial margin. This would be consistent with comity and the international cooperation underlying the Working Group on Margining Requirements and the original G-20 regulatory reform effort.

3) The Commission should adopt a 5% de minimis exemption patterned after the "emerging markets" exemption in the Guidance.

The margin rules should include an emerging markets exemption for foreign branches of U.S. CSEs, as provided in the Guidance. If the Commission adopts its new hybrid approach, the emerging markets exemption should continue to be available to foreign branches and also be made available to non-U.S. CSEs that are foreign consolidated subsidiaries or guaranteed by a U.S. person. If the Commission declines to adopt an emerging markets exemption, it should provide an exemption for swaps with counterparties in jurisdictions in which clean netting or collateral opinions cannot be obtained, for up to 5% of the notional amount of a CSE's swaps. If such an exemption is not granted, a CSE should not be required to post margin to such counterparties.

4) A swap of a non-US CSE should not be subject to additional requirements because it is executed through or by a US branch.

The use of a US branch by a non-US CSE alone should not result in the imposition of US margin requirements in addition to those otherwise applicable to non-US CSEs.

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[4] BCBS and IOSCO, Margin Requirements for Non-Centrally Cleared Derivatives (March 2015) (the "**BCBS-IOSCO Framework**").

[5] This section responds to the Commission's request for comment on "all aspects" of the proposal, 80 Fed. Reg. at 41381, Questions 3 and 5, 80 Fed. Reg. at 41391, Question 2, 80 Fed. Reg. at 41400, and to the statements of Commissioners Wetjen and Giancarlo expressing interest in further consideration of Guidance approach, 80 Fed. Reg. at 41406-07.

5) The margin rules should only take effect 12 months after the rules are finalized in the US (by both the Commission and the prudential regulators), the EU and Japan.

This period is required because, after the rules are final, it will be necessary for market participants to adopt the operational, risk management, technological and legal enhancements necessary to effectively and safely implement these new regulations.

I. GUIDANCE APPROACH (WITH ADJUSTMENTS) IS PREFERABLE TO THE CFTC'S NEW HYBRID APPROACH AND THE PRUDENTIAL REGULATOR APPROACH[5]

Although the Commission's new hybrid proposal contains generally helpful refinements over the Entity-Level and Prudential Regulator Approaches put forward in the Advanced Notice of Proposed Rulemaking ("**ANPR**"), ISDA continues to recommend the Guidance approach,[6] modified as described in our comment letter, dated November 24, 2014, on the ANPR.

Under our recommended approach, the exclusions under the Guidance for non-US SDs transacting with non-U.S. persons would be retained (whether or not a non-U.S. SD is guaranteed by or affiliated with a U.S. person), as would the potential availability of substituted compliance to foreign branches of U.S. SDs transacting with non-U.S. persons. In addition, our approach expands the range of transactional scenarios under which substituted compliance is potentially available to include certain transactions involving U.S. persons. Specifically, our approach would treat margin regulations that, in the Commission's determination, are broadly comparable to the BCBS-IOSCO Framework as "essentially identical" to the Commission's margin requirements. Accordingly, <u>all categories</u> of swap dealers ("SDs") could comply with BCBS-IOSCO-comparable foreign margin requirements instead of Commission margin requirements whenever a transaction is subject to both sets of requirements.[7] (The present hybrid proposal's offering of partial substituted compliance to U.S. SDs in certain circumstances is a welcome partial movement toward adoption of this principle, but it still leaves key cross-border transactional scenarios potentially subject to two different jurisdictions' margin requirements.) Other recommended modifications to the Guidance approach, including elimination of the affiliate conduit category and of the involvement of a non-U.S. SD's U.S. branch, personnel or agents as a basis for application of Commission margin requirements, are discussed below.[8]

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[5] This section responds to the Commission's request for comment on "all aspects" of the proposal, 80 Fed. Reg. at 41381, Questions 3 and 5, 80 Fed. Reg. at 41391, Question 2, 80 Fed. Reg. at 41400, and to the statements of Commissioners Wetjen and Giancarlo expressing interest in further consideration of Guidance approach, 80 Fed. Reg. at 41406-07.

[6] We do so aware of at least two Commissioners' interest in further consideration of the Guidance approach.

[7] As an example of the "essentially identical" approach, see CFTC Letter No. 13-45, finding certain risk mitigation requirements under the European Market Infrastructure Regulations to be essentially identical to certain corresponding Commission regulations and allowing all categories of SDs to take advantage of the relief.

[8] We refer the Commission to our comment letter on the ANPR (available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60009&SearchText=) and our response (Mar. 7, 2014) to the Commission's request for comment on Staff Advisory No. 13-69 (available at:

A. REASONS TO PREFER AN ADJUSTED GUIDANCE APPROACH

1. THE GUIDANCE APPROACH WILL CREATE LESS MARKET FRAGMENTATION, HELP PRESERVE MEANINGFUL PRICE DISCOVERY AND PRESENT FEWER COMPETITIVE INEQUITIES AS A RESULT OF ITS GREATER CLARITY AND ITS EMBRACE OF FULL SUBSTITUTED COMPLIANCE AND EXCLUSION.

The Commission's shift from a transaction-level approach, as under the Guidance, to the new hybrid approach will exacerbate market fragmentation, impair liquidity and price discovery, and competitively disadvantage swap dealers affiliated with U.S.-domiciled groups. The reason for each of these harmful effects is the same: within each non-US swaps market, the new hybrid approach imposes the Commission's margin regime on transactions with many classes of liquidity providers without the possibility of full substituted compliance or exclusion. Under the new hybrid approach:

- non-U.S. SDs (transacting with an unguaranteed non-U.S. person) are not within the exclusion if (i) their own obligations are guaranteed by a U.S. person, (ii) they are U.S. branches or foreign consolidated subsidiaries, or (iii) their counterparties are SDs that are U.S. branches or foreign consolidated subsidiaries;[9]

- foreign branches and U.S.-guaranteed non-U.S. SDs would be (i) ineligible for substituted compliance when transacting with U.S.-guaranteed non-U.S. persons and (ii) eligible for substituted compliance only with regard to the obligation to post initial margin when transacting with non-U.S. persons whose obligations are not guaranteed by a U.S. person;

- non-U.S. SDs whose obligations are not guaranteed by a U.S. person, when transacting with U.S.-guaranteed non-U.S. SDs, would be eligible for substituted compliance only with regard to the obligation to collect initial margin; and

- due to the lack of the "emerging markets" exception[10] as found in the Guidance, foreign consolidated subsidiaries, foreign branches and U.S.-guaranteed non-U.S. SDs could effectively be excluded from such markets, as local counterparties may be unable to comply with U.S. margin requirements. See further discussion in Section II.B.

Each of the circumstances described in the bullet points above creates market segmentation, and each should be avoided by returning to the Guidance approach, modified as we suggest.
The Commission's cost-benefit analysis recognizes that the greater segmentation of SDs under

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http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59777&SearchText=) for a broader discussion of our views regarding problems embedded in the Guidance.

[9] The Commission stated that the breadth of the Guidance exclusion was the reason the Commission moved away from the Guidance approach. 80 Fed. Reg. at 41398. ISDA urges the Commission to recognize that the negative effects of the new hybrid approach far outweigh any additional safety to the U.S. financial system that might be achieved by denying the exclusion to certain non-U.S. SDs that in fact are primarily the responsibility of foreign regulators – whether or not they are U.S.-guaranteed or foreign consolidated subsidiaries of U.S. parent entities.

[10] This exception allows foreign branches of U.S. CSEs not to apply Transaction-Level Requirements to a limited amount of transactions in jurisdictions for which a comparability determination, and therefore substituted compliance, would be unavailable. 78 Fed. Reg. at 45351.

its new hybrid approach can result in competitive distortions.[11] However, in finding this segmentation acceptable, the Commission's analysis overall does not give due weight to the hybrid proposal's impact on price discovery, risk management, increased costs and difficulty of compliance, market fragmentation, increased costs for end users resulting from lower pools of liquidity in each jurisdiction or, as explained in Sections I.A.2 and Section II.A.1 below, international comity.

Differences in margin methodology and collateral affect cashflows over the life of a transaction, posing valuation challenges and obscuring the comparability of prices offered by different dealers. As a result, price discovery and transparency would be impaired under the new hybrid approach. Although adoption of a standardized initial margin model could partially mitigate this effect, it is preferable not to impose such disparities in the first instance. Encouraging the adoption of standardized margin models, which ISDA supports, is not a reason to prefer the new hybrid approach. Incentives for their use are largely independent of the Commission's choice of cross-border framework, and therefore the hybrid approach is no more conducive to adoption of a standard industry model than a Guidance approach.

The need to accommodate different margin methodologies within a given cross-border market, to the extent it does not entirely exclude participants, will certainly increase compliance cost and complexity. SDs have built compliance systems, and prevailed on counterparties to modify relationship documentation (e.g., via the ISDA DF Protocols), based on the Guidance approach for Transaction-Level Requirements. Adopting a novel approach with a different matrix of cross-border application will prevent SDs from leveraging off those prior efforts. In addition, the operational complexity of the proposed substituted compliance scheme -- which would apply U.S. requirements to certain aspects of the margin obligation (e.g. VM and IM posting or collection) and foreign requirements to others – will further increase costs.

The partial substituted compliance offered under the new hybrid proposal is insufficient to overcome the segmentation the hybrid proposal would foster. Even in scenarios where full substituted compliance is potentially available, the Commission's proposed element-by-element approach to comparability determinations, to the extent it results in the Commission imposing complex or idiosyncratic conditions, will render substituted compliance ineffective in alleviating the harmful consequences described above. (See further discussion of substituted compliance in Section II.A below.) Nor will post-trade transparency mitigate the adverse effects of market fragmentation on liquidity and price discovery, as suggested by the Commission's question,[12] because the reported prices will not be comparable among different margin regimes or accessible across geographic divisions.

2. <u>THE GUIDANCE APPROACH IS BETTER EXTRATERRITORIAL POLICY</u>

In comparison with the new hybrid approach, the Guidance treatment of margin requirements is fundamentally more consistent with norms of international cooperation and comity.

[11] 80 Fed. Reg. at 41394.

[12] This discussion responds to the Commission's question, "Is swap market fragmentation detrimental to various market participants when there is post trade price transparency of swaps?" 80 Fed. Reg. at 41400.

Element 7 of the BCBS- IOSCO framework admonishes that there should be an international margin regime with no "application of duplicative or conflicting margin requirements to the same transaction or activity" and with "substantial certainty as to which national jurisdiction's rules apply".[13] A Guidance approach (supplemented with the "essentially identical" characterization, as described above) achieves this result, whereas the new hybrid approach provides a substituted compliance scheme that leaves key cross-border scenarios uncovered or subjects them to aspects of both U.S. and foreign rules at the same time. (See Section II.A.1 below)). Comity and respect for the supervisory interests of non-U.S. regulators having a primary interest in non-U.S. person counterparties argue in favor of full substituted compliance or exclusion, absent a compelling Commission regulatory interest. As ISDA has explained in prior comment letters, the Guidance's use of guarantee and affiliate conduit concepts is in tension with these principles. The new hybrid approach would further depart from them by asserting Commission jurisdiction over SDs based on secondary factors such as guaranteed or consolidated subsidiary status. (We note, however, the new hybrid approach has abandoned application of the "affiliate conduit" category to non-CSEs, a change which ISDA supports and urges the Commission to incorporate into a Guidance approach.)

B. Purported Benefits of the New hybrid approach Do Not Justify Abandoning the Guidance Approach

1. Always Present Entity-Level Protections Support Access to Full Substituted Compliance.

The Commission's rationale for the new hybrid approach is that a U.S. guarantor or financial statement consolidation alone indicates significant transmission of risk to the U.S. financial system, notwithstanding the substantial protections provided by the relevant jurisdiction's entity-level capital and risk management regulations.[14] (The Guidance approach provides that capital and risk management of a non-US CSE are subject to substituted compliance.)

This rationale is at odds with Commission determinations in other cross-border contexts.[15] Even assuming its validity for argument's sake, it still does not justify denial (or restricted, partial application) of substituted compliance to guaranteed affiliates and foreign branches, as the application of a comparable, BCBS-IOSCO compliant regime would provide similar supplementation of the Commission's entity-level requirements.

Non-U.S. SDs that are "foreign consolidated subsidiaries" of an ultimate U.S. parent would lose their eligibility for the exclusion with respect to their swaps with non-guaranteed non-U.S.

[13] BCBS and IOSCO, Margin Requirements for Non-Centrally Cleared Derivatives (March 2015) at 23.

[14] See Capital Requirements of Swap Dealers and Major Swap Participants, Notice of Proposed Rulemaking, 76 Fed. Reg. 27802 (May 12, 2011); Commission Regulation § 23.600.

[15] See Further Definition of 'Swap', 'Security-Based Swap' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 at n. 188 (swap positions not attributed to guarantor if the guaranteed entity is subject to CFTC capital regulation); Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 77 Fed. Reg. 45292 at n.215 (control by a U.S. person does not require treating the controlled person as a U.S. person). See also 77 Fed. Reg. at 45359 (discussion of affiliate conduit status, where accounting consolidation is merely one of several relevant factors). We assume and, for the sake of avoiding unintended legal uncertainty, request that the Commission clarify that these established positions are not affected by its rationale in the margin context for its new hybrid proposal.

persons under the new hybrid approach (compared to the Guidance approach).[16] Although substituted compliance would potentially be available in place of the exclusion, the difference between the two is not costless, as affected SDs would incur costs of complying with any conditions imposed with respect to substituted compliance and with the Commission's exercise of its related examination authority, in addition to lost business that will result if substituted compliance is not seamless and counterparties are inconvenienced by its application.

2. Migration to Commission Jurisdiction is Not a Practical Concern.

The Commission in support of the new hybrid approach states that the approach lessens incentives for financial groups to shift swaps activity to affiliates subject to the Commission's margin rules. However, the Commission has not articulated a specific harm that would result from such a reallocation. (Competition between different affiliates within the same group poses no policy concerns.) Moreover, given the multiplicity of factors relevant to the choice of booking entity (e.g., differences in capital regimes and the presence of other transactional relationships that enlarge the opportunity for netting), it is by no means clear that the hybrid proposal meaningfully alters incentives.

II. Recommended Changes to the Commission's Proposal

Except where indicated, the following recommendations apply to both the newly proposed approach and the Guidance approach.

A. Substituted Compliance: Response to Qs. 1 -3, 6 p. 41390

1. Substituted compliance requirements should be simplified and comparability determinations should be based on the BCBS/IOSCO framework.

The proposed rule includes a long list of elements and factors that the Commission will consider for a comparability determination. We suggest that the focus should, instead, be on whether a jurisdiction follows the BCBS-IOSCO Framework. If a jurisdiction follows the BCBS-IOSCO Framework, the Commission should make a comparability determination based on whether the jurisdiction's requirements achieve broadly comparable outcomes. Such an approach would comport with the BIS-IOSCO goals of avoiding duplicative or conflicting requirements without compromising the Commission's discretion to make an independent determination.

In the release accompanying the proposed rule (the "Release"), the Commission explains that it will use an "outcome-based" approach rather than looking to whether foreign jurisdictions have

[16] As discussed in the Guidance, the factors that are relevant to the consideration of whether a person is an ''affiliate conduit'' include whether: (i) The non-U.S. person is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. person controls, is controlled by, or is under common control with the U.S. person; (iii) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with such U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates; and (iv) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person. Other facts and circumstances also may be relevant. 77 Fed. Reg. at 45359. As defined in the proposal, accounting consolidation under U.S. GAAP with a U.S. ultimate parent is the sole and sufficient condition for a non-U.S. SD to be categorized as a foreign consolidated affiliate.

adopted rules identical to those adopted by the Commission.[17] However, the Release goes on to describe a complex process in which the Commission will consider, first, whether the foreign rules are consistent with the BCBS-IOSCO Framework and will then make a comparability determination on an element-by-element basis, considering eleven listed elements, while using a standard of review with five different factors. The complexity and specificity of this approach is not consistent with a general outcome-based approach, especially because the BCBS-IOSCO Framework provides a ready standard for comparison.

In addition, the element-by-element approach is inconsistent with the BCBS-IOSCO Framework. Element 7, described above, of the BCBS-IOSCO Framework proposes an approach that would not apply "duplicative or conflicting margin requirements to the same transaction or activity" and requires "substantial certainty as to which national jurisdiction's rules apply."

As explained in our comment letter on the ANPR[18], achieving these BCBS-IOSCO goals will require the Commission to go beyond its substituted compliance framework and adopt the approach it put forward for "essentially identical" non-U.S. requirements. Such an approach would presumptively defer to all BCBS-IOSCO-comparable (as determined by the Commission) margin regimes as "essentially identical" to the Commission's margin requirements and accordingly permit compliance with such foreign margin requirements in place of the Commission's if a transaction is subject to both requirements.

2. THE COMMISSION SHOULD, AS SOON AS A NON-US JURISDICTION PUBLISHES ITS RULES , MAKE A 2 YEAR TRANSITIONAL DETERMINATION FOR JURISDICTIONS ADOPTING RULES BASED ON THE BCBS-IOSCO FRAMEWORK

Pending the final comparability determinations, we request that the Commission make a transitional comparability determination, valid for two years, for jurisdictions that adopt rules based on BCBS-IOSCO. This determination should be made as soon as such jurisdictions issue their rules (assuming that the Commission has issued its own rules at that point.)

For ISDA members, it is critical to know as soon as possible when and where substituted compliance will apply. The margin rules will be effective in the EU, Japan, and the US at the same time. As a result, in order for substituted compliance to be useful, it needs to be in place well in advance of the effective date. The models, systems and documentation for margin are being developed now and the presence or absence of permissible substituted compliance is a necessary element in this development.

In addition, the Release indicates that the Commission is familiar with the development of margin rule proposals outside the US, and this familiarity should facilitate a transitional determination. The Release specifically points out that "Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities" and that

[17] 77 Fed. Reg. 41389, col. 2.
[18] See fn. 8 above.

"the Commission has participated in ongoing, collaborative discussions with regulatory authorities in the EU and Japan … ."[19]

3. IF SUBSTITUTED COMPLIANCE IS PERMITTED, ONE SET OF RULES SHOULD APPLY TO THE ENTIRE TRANSACTION

In some situations, even if substituted compliance is permitted, the Commission's new hybrid proposal requires IM posting to comply with one jurisdiction's rules and IM collection to comply with another jurisdiction's rules. In these situations, VM does not benefit by substituted compliance.[20]

The regulations should not split up the application of the margin rules. For any counterparty pair, one set of margin rules should apply. This is particularly important for modeling IM: many of our members intend to use a standardized model for IM and, in the time frame available, it is impractical to develop a model that can account for different margin rules in one netting set. Using different rules for the same counterparty pair raises other issues as well: for example, if different rules apply to posting and collection, and the parties want to use a single custodian and custodial arrangement, the custodial arrangement would have to accommodate overlapping and potentially inconsistent requirements for segregation.

The BCBS-IOSCO Framework supports use of a single set of rules to govern cross-border transactions. As cited above, Element 7 provides that there should be "no application of duplicative or conflicting margin requirements to the same transaction or activity".[21]

B. 5% EXEMPTION: RESPONSE TO Q. 4, P. 41390

The Commission should adopt a 5% de minimis exemption patterned after the "emerging markets" exemption in the Guidance.

We recommend, as part of our modified Guidance approach, that the Commission adopt a de minimis exemption patterned after the "emerging markets" exemption in the Guidance. Specifically, the Commission's margin requirements should not apply to swaps between a foreign branch of a U.S. CSE and an "Emerging Market Counterparty", subject to (i) the limitation that the aggregate notional value of all swaps for which the CSE is relying on the exemption not exceed 5% of the aggregate notional value of all of the CSE's swaps and (ii) the recordkeeping condition set out in the Guidance.[22] An "**Emerging Market Counterparty**" is a non-U.S. person that is not guaranteed by a U.S. person and not located in one of the six jurisdictions listed by the Commission as outside the scope of the Guidance "emerging markets" exception.[23]

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[19] 77 Fed. Reg. 41394, fn. 106.
[20] See Table A, 77 Fed. Reg. 41402.
[21] BCBS-IOSCO framework, Element 7, p. 22.
[22] See 78 Fed. Reg 45351.
[23] "Emerging Market Counterparty" is a misnomer, given the sophistication of some markets for which a comparability determination has not been sought. We use the term in this letter consistently with the Commission's own discussion.

The 5% aggregate notional limitation and associated recordkeeping ensure that the exempted transactions are quantitatively immaterial to the CSE. Nevertheless, as the Commission notes in its discussion of the Guidance emerging markets exemption, dealing activities of CSEs in jurisdictions covered by the exemption may be "an integral element of their global business." Absent an exemption, Commission margin requirements will disrupt established trading relationships, skew competition in favor of local dealers or those supervised by jurisdictions that do not impose their margin regulations in the affected jurisdictions, and curtail hedging and financial flows to those jurisdictions.

If the Commission adopts its new hybrid approach, it should still provide an emerging markets exemption, as discussed above, but extend its availability to non-U.S. CSEs that are foreign consolidated subsidiaries or guaranteed by a U.S. person. As an exclusion would no longer be available for such entities' transactions with non-U.S. persons, the reasons stated above in support of the exemption apply to them.

If the Commission rejects an emerging markets exemption, as described above, we ask the Commission to provide an exemption from the margin requirements for the swaps of a CSE with counterparties in Non-Netting Jurisdictions for up to 5% of the entity's swaps (measured by notional value). For this purpose, "**Non-Netting Jurisdictions**" are those in which it is not possible to get a clean netting opinion or a clean collateral opinion. Without enforceable netting and collateral arrangements there is the risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned in the event of insolvency, which will result in an increase in the risk in posting collateral, or that a CSE may not be able to effectively foreclose on the margin in the event of a counterparty default. Use of a third-party custodian in a different jurisdiction may not remedy issues with the legal enforceability of collateral: a party in a Non-Netting Jurisdiction (a "**Non-Netting Party**") may be subject to local insolvency proceedings and such proceedings may affect the treatment of margin posted by or held (directly or indirectly) by the Non-Netting Party. Because of these issues, imposing margin requirements on swaps with Non-Netting Parties will severely limit such swaps and cause significant disruptions in financial markets, preventing hedging and financial flows between the United States and Non-Netting Jurisdictions. Moreover, requiring collateral posting may prevent parties from using more effective alternative mitigants such as using limits to contain exposures, re-pricing trades, selling options and using short-dated trades. While these swaps are important for individual Non-Netting Parties and Non-Netting Jurisdictions, the overall volume of such swaps is relatively small compared to the total volume of OTC derivatives entered into by swap dealers. (See discussions and charts in Exhibits A and B.)

Furthermore, we ask that the Commission coordinate with other regulators, including the prudential regulators, in order to have harmonization on this topic and to minimize any competitive asymmetry that would result from discrepancies in the rules.

C. NO POSTING TO NON-NETTING JURISDICTIONS: RESPONSE TO Q.5, P. 41391

If the Commission does not adopt the 5% exemption described above, then posting to Non-Netting Jurisdictions should not be required.

We request that CSEs be exempted from the obligation to post margin to a Non-netting Counterparty if the Commission does not adopt the 5% exemption discussed above.

If the counterparty is in a Non-netting Jurisdiction (as defined above), a CSE may be prevented from applying collateral to the obligations of the counterparty and may, in addition, face difficulties in recovering the collateral. As a result, posting margin to a Non-netting Counterparty may increase risk to the CSE rather than decreasing it. Moreover, exempting CSEs from posting will avoid problems with segregation of collateral in the jurisdiction of the Non-Netting Counterparty.

D. USE OF US BRANCH: RESPONSE TO QS. 1 AND 2, P. 41388

A swap of a non-US CSE should not be subject to additional regulation because it is executed through or by a US branch.

A swap of a non-US CSE should not be subject to additional regulation, above and beyond those requirements applicable to non-US CSEs generally, simply because a US branch is used in connection with the execution of the swap. The margin rules address credit risk. As the Release recognizes, a swap booked to a US branch of a non-US CSE is the obligation of the non-US CSE as a whole. As result, the use of the US branch raises no additional credit risks. The Release states that US branches would have an unfair advantage if such branches were excluded from requirements applicable to US CSEs. However, such branches are subject to the applicable foreign requirements and the US requirements generally applicable to non-US CSEs. In other contexts, branches are not subject to host country rules: for example, in the EU, the proposed margin rules would not apply to an EU branch of a US bank entering into a swap with a US counterparty (unless guaranteed by an EU entity).

The costs of imposing rules on US branches are potentially very significant: non-US entities would be required to comply with detailed and extensive US margin requirements in addition to complying with their home country requirements. While substituted compliance may be available in some cases, non-US CSEs will face the burden of determining whether and when substituted compliance applies under US law, and how it fits into local margin regulations. Moreover, the overlapping US and non-US requirements will create uncertainty and dislocations in the market and create obstacles for maximal use of multi-branch netting. [24]

For the same reasons, if the Commission adopts a Guidance approach, footnote 513 of the Guidance and Staff Advisory No. 13-69 should not be incorporated.

[24] While we strongly oppose disparate treatment of US branches on any basis, if the Commission decides to impose additional margin requirements on US branches of non-US CSEs, we recommend that a swap should not be determined to be entered into "by or through" a US branch unless the swap is booked to the US branch. Use of US-located agents, by itself, should not be grounds for determining that the swap was executed by the US branch. See our response (Mar. 7, 2014) to the Commission's request for comment on Staff Advisory No. 13-69 (available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59777&SearchText=).

E. DEFINITION OF US PERSON: RESPONSE TO Q. 2, P. 41384

We support the proposal to limit the definition of "US Person" so that it (a) excludes non-US funds that are majority owned by US persons and (b) does not include the "including but not limited to" preface.

The current proposed definition of US person excludes non-US funds that are majority owned by US persons. Such funds are included in the definition of US person in the Commission's cross-border Guidance. The current proposed definition also removes the "including but not limited to" preface found in the Guidance definition.

We support both changes and recommend that they be applied for all purposes under the Guidance, as the concerns identified regarding the lack of administrability and legal certainty under the Guidance definition apply to all regulatory requirements. Moreover, funds that otherwise fall outside the US person definition, even if majority-owned by US entities, do not pose the same risks to the US economy as US funds. Neither the BCBS-IOSCO Framework nor the proposed EU rules impose rules on the activities of a fund because of the jurisdiction of the fund's owners.

Removing "including but not limited to" will also increase legal certainty. The list of "US persons" is long and detailed. It is not clear what other entities are might be captured by the "including but not limited to" phrase.

However, we object to the removal of U.S. majority ownership as an element from the prong of the U.S. person definition covering unlimited liability entities. If an entity has multiple owners and those owners have unlimited liability for the entity, the jurisdiction of the entity should be that of the majority owner. Otherwise, there is a danger that such entities will have multiple jurisdictions for purposes of the margin rules, creating regulatory confusion and overlap

F. DEFINITION OF GUARANTEE: RESPONSE TO Q. 1 P. 41385

We support the removal of non-guarantee financial arrangements (such as keepwells and liquidity puts) from the definition of "guarantee".

We support this removal because it appropriately limits the definition to instruments that are recourse guarantees. The revised definition of "guarantee" is limited to arrangements in which a swap counterparty has enforceable rights of recourse against the guarantor, and therefore it provides greater certainty and clarity than the Guidance definition, which requires an inquiry into all of the facts and circumstances to determine whether an arrangement supports a party's ability to pay or perform under a swap.

ISDA recommends that this definition of guarantee be applied in all contexts where a U.S. guarantee is a basis for application of Commission regulations under the Commission's cross-border Guidance (e.g., to determine whether a non-U.S. SD's transaction with a U.S.-"guaranteed" person must comply with various other transaction-level requirements via substituted compliance instead of being excluded entirely).

G. Definition of Foreign Consolidated Subsidiary (FCS): Response to Qs. 1 - 3, p. 41387

We support the accounting test for consolidation in the FCS definition (assuming the Commission adopts the new hybrid approach) and ask that it be used throughout the margin rules.

We support the use of US GAAP in the definition of FCS. More broadly, we support the use of accounting standards to determine consolidation and request that the margin rules generally determine consolidation based on the accounting requirement applicable to the ultimate parent of the group.

The proposed margin rules issued by the Commission, the Prudential Regulators and the EU all measure thresholds on an entity group basis.[25] The Prudential Regulators also use the concept of controlled entity and subsidiary in the cross-border application of their rules. These affiliation tests differ from the consolidation test used in the FCS definition: the test used by the Commission (for thresholds but not for the FCS definition) and Prudential Regulators (for thresholds and cross-border applications) is based on control, which includes ownership of more than 25% of the voting securities of a company. The EU test is based on a determination of subsidiary status, which is determined by several factors, including majority ownership.

We urge the Commission to adopt the accounting consolidation test throughout the margin rules, so that the test for group treatment is the same for determination of FCS status and for thresholds (although the test for thresholds will need to recognize non-US accounting for non-US parents). We also ask that the Commission work with the Prudential Regulators and non-US regulators to encourage these other regulators to adopt the accounting test.

The accounting test is preferable to other measures because (as stated by the Commission) it "provides a clear, bright-line test". Entities that prepare consolidated financial statements will readily know which entities are part of their group. Other entities will be able to use well-established accounting principles to make the determination. In addition, the control test (with a 25% limit), which has been developed in the context of bank regulatory requirements, is not appropriate for the margin rules, which are intended to address credit risks of covered swap entities. For example, if an entity makes a passive investment in 30% of the equity of another company, then swap credit exposure to the investor should not be automatically aggregated with swap credit exposure to the equity issuer. Also, for entities other than banks and their affiliates, the 25% control test may be new and unfamiliar.

Moreover, consistency in determining consolidation is of great importance to our members. The largest CSEs have tens of thousands of counterparties. Threshold status must be determined for all counterparties (including non-financial end users under the Commission's proposed §23.155(a)(3)) . Therefore, having a single consistent bright-line test is invaluable in establishing which counterparties must post and which rules apply, both inside and outside the US.

[25] Definition of "Material Swaps Exposure" and "Initial Margin Threshold Amount", 79 Fed. Reg. 59927 (Commission); 79 Fed. Reg. 57390, 1 (Prudential Regulators); Art. 6 GEN (1), Art. 7GEN(1) (EU regulators.)

H. INTER-AFFILIATE SWAPS

Inter-affiliate swaps should be exempt from the IM requirements.

Interaffiliate swaps (whether cross-border or not) should be exempt from the IM requirements because of the lack of systemic risk, the commercial obstacles, and the existing regulatory safeguards for inter-affiliate transactions.

Alternative: If the Commission does not grant an exemption from IM requirements for interaffiliate swaps, ISDA requests the Commission consider an alternative application of the IM requirements to inter-affiliate swaps, specifically: (A) for swaps between a CSE and a less regulated affiliate, the CSE would collect (but not post) IM, subject to an exemption for (i) swaps between the CSE and a wholly-owned subsidiary and (ii) swaps whose IM requirements are below a de minimis threshold; and (B) for swaps between a CSE and a highly regulated affiliate, an exemption from the IM requirement would apply. [26] A "highly regulated affiliate" is an affiliate that is subject to US or other Basel-compliant capital requirements (at the entity level) and US or other BCBS-IOSCO Framework-compliant margin requirements. A "less regulated affiliate" is any affiliate that is not a "highly regulated affiliate".

Our request for special treatment of inter-affiliate swaps is based on the following:

Systemic risk: The proposed approach of imposing IM requirements on inter-affiliate swaps runs counter to the policy objective of reducing systemic risk. For large, global entities it is more prudent and efficient to consolidate risk management expertise and resources, rather than manage multiple risk books that may have natural offsets. The imposition of margin requirements on inter-affiliate swaps would disincentivize centralization of risk management and may result in the dispersion of expertise and resources.

In addition, inter-affiliate transactions do not pose the same risk to the markets as do outward-facing swaps. Unlike transactions between unrelated parties, affiliates of CSEs share full transparency on risk positions, exposures and valuations to centrally and efficiently manage risk. CSEs already manage risk of inter-affiliate trading through VM, parent guarantees and other means, and are often required to do so, for example, because of the "source of strength" doctrine applicable to US bank holding companies.

In addition, imposing IM on inter-affiliate trades will introduce other risks. CSEs and their affiliates will be required to post and segregate IM with third party custodians, trapping significant liquidity and injecting third party risk of the custodian into an inter-affiliate relationship.

Commercial Obstacles: Imposing the IM requirements on inter-affiliate swaps will result in a significant increase in costs for CSEs: CSEs will need to fund and segregate the inter-affiliate IM. Other jurisdictions (as described below) are proposing exemptions for inter-affiliate IM and

[26] This alternative is more fully described as Alternative A in the letter from The Clearing House Association L.L.C., the American Bankers Association ("ABA"), the ABA Securities Association, and the Securities Industry and Financial Markets Association, to the Commission and other regulators, June 1, 2015, p. 7, available at http://www.sifma.org/issues/item.aspx?id=8589954922.

therefore the costs of inter-affiliate IM will place CSEs subject to the US rules at a relative disadvantage. Such increased costs will also decrease liquidity, as it becomes more expensive for CSEs to provide services to certain markets or clients that the CSE can only access through a local or specialized affiliate.

Sections 23A and 23B: The preamble to the Commission's initial margin proposal cites Section 23B as support for the view that transactions between banks and affiliates must be substantially the same or at least as favorable to the bank as those for comparable transactions with non-affiliates.[27] However, the need to execute swaps on such a basis does not mean that IM should be required under the margin rules. The goal of the margin rules is to reduce systemic risk, which is different from the goals of Sections 23A and 23B, which seek to protect a bank affiliate within a bank holding company. Moreover, to the extent that the regulators are concerned about banks receiving adequate collateral for inter-affiliate transactions, the regulators can (and do) address this concern through Sections 23A and 23B and the implementing regulations.

Clearing exemption: In 17 CFR Sec. 50.52, the Commission sets out a clearing exemption for inter-affiliate swaps. The same logic that justifies this exemption also justifies an inter-affiliate IM exemption.

Approach in other jurisdictions: The BCBS/IOSCO Framework did not propose IM requirements on inter-affiliate trades, instead leaving it to the discretion of national supervisors, and a BCBS/IOSCO consultative document observed that these trades "frequently serve risk management or other purposes that are different from non-centrally-cleared derivative transactions with third parties" and that the imposition of IM requirements on these trades "could tie up substantial liquidity".[28] Under the EU law establishing the requirements for uncleared margin rules, an exemption for inter-affiliate trades is available if certain conditions are met.[29] The Japanese proposed margin rules also provide an exception for inter-affiliate swaps.[30] As a result, the lack of an inter-affiliate exemption would result in inconsistent treatment of US and non-US swap entities.

Threshold Calculation: In addition, in the absence of a general exemption for IM, it is not clear how the initial margin threshold of $65 million will apply to inter-affiliate transactions. The $65 million threshold must be applied at a group level and assumes that the parties to the transaction are members of different groups. It is very unclear how the thresholds will be calculated at a group level if the parties to the transaction are members of the same group.

I. COMPLIANCE DATE

27 Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 192, 59898, 59904 (October 3, 2014).

28 BCBS/IOSCO Framework at p. 21, quotes from BCBS/IOSCO Consultative Document, Margin requirements for non-centrally-cleared derivatives, July 2012, p. 28.

29 Article 11(5) – (10) of Regulation (EU) No. 648/2012 (4 July 2012).

30 Financial Services Agency of Japan, draft amendments to the "Cabinet Office Ordinance on Financial Instruments Business" and "Comprehensive Guidelines for Supervision" with regard to margin requirements for non-centrally cleared derivatives, July 3, 2014. Available in Japanese at http://www.fsa.go.jp/news/26/syouken/20140703-3.html.

The margin rules should only take effect 12 months after the rules are finalized in the US (by both the Commission and the prudential regulators), the EU, and Japan.

It appears unlikely that the final rules will be issued in the US, EU and Japan by the end of September 2015. The first compliance date in the BCBS-IOSCO Framework is September 2016 and it therefore appears that, unless the compliance date is changed, the market will have less than a year to implement the rules.

We submit that 12 months after finalization of the rules in the US, the EU and Japan would be the minimum timescale to properly implement the rules. This period is required because, after the rules are final, it will be necessary for market participants to adopt the operational, risk management, technological and legal enhancements necessary to effectively and safely implement these new regulations. In particular, CSEs will need time to finish building, testing and receiving approvals for IM models that are very new to the market. The regulators will also need time to formalize the regulatory approval processes for IM models across multiple jurisdictions.

Counterparties will be required to make changes to their credit support and custodial arrangements, which will require significant amounts of time to negotiate. Each custodian will have its own form of documentation and parties may well have to enter into agreements with multiple custodians. ISDA estimates that 8 000 new accounts will be needed to meet the IM segregation requirements in the first year of implementation.[31] The custodians will not be subject to a direct regulatory obligation to reach agreement by the deadline for the margin requirements. It is our members' experience that it can take one to six months or more to negotiate and establish a custodial arrangement for derivatives trading. The limited number of custodians will exacerbate this challenge.

Many counterparties will also need to develop the infrastructure to support daily margining. While it is true that many parties currently post VM, especially in the inter-dealer market, this practice is far from universal. For example, in certain jurisdictions with less developed derivatives markets, VM posting is not typical. These markets may not currently have well established collateral protection schemes or sufficiently well developed operational procedures to handle daily collection of VM.

Moreover, because the swap market is global, participants need to know the final rules in multiple jurisdictions, including the result of substituted compliance determinations, before making all necessary enhancements. We therefore propose that the 12 month period will start on the date that final rules are issued in the US (by both the Commission and the prudential regulators) and the EU and Japan.

As we have discussed in prior letters and demonstrated in meetings with US regulators, our members are currently devoting significant resources to all aspects of implementation of the proposed margin rules, to the extent possible without final rule text. And, this work will not

[31] See ISDA letter to European regulators, on estimates of numbers of accounts affected by IM segregation requirements, to demonstrate operational challenges, 22 Aug. 2014, available at: file:///C:/Users/504875/Downloads/Aug%2022-ESAs%20Deliverable_IA%20Seg%20Estimates_%2008222014v2%20(2)%20(1).pdf

slow down if the Commission and other regulators defer the compliance date. Rather, extending the compliance date will be in keeping with the ongoing interaction between the market and the regulators that is currently taking place in order to develop a workable, safe margin regime.

* * *

ISDA appreciates the opportunity to provide this letter to the Commission. We would welcome the opportunity to assist the Commission in its efforts to revise the proposed rules. Please feel free to contact us at your convenience.

Sincerely,

Mary Johannes
Senior Director and Head of WGMR Initiative
ISDA

EXHIBIT A

Volumes of OTC Derivatives with Non-Netting Jurisdictions

For purposes of establishing volumes of OTC derivatives with counterparties in non-netting jurisdictions, we provide the following quotation from a 16 January 2015 letter to US regulators.

ISDA member firms were asked to provide the total gross notional amount for their uncleared derivatives for all jurisdictions (netting and non-netting).[32] For all non-netting jurisdictions, they were asked to provide the name of the jurisdiction and the total gross notional amount of uncleared derivatives with counterparties in that jurisdiction. A complete list of the provided jurisdictions and total gross notional percentages can be found in Exhibit C.

Below is a summary, by institution, of the % of total outstanding notional with non-netting jurisdictions and the maximum gross notional % traded with counterparties in a single non-netting jurisdiction. As we observed, only a small percentage of the total outstanding gross notional for uncleared derivatives is concentrated in non-netting jurisdictions, however, there are instances where this concentration may exceed 5% for a given covered swap entity.[33]

	Firm 1	Firm 2	Firm 3	Firm 4	Firm 5	Firm 6	Firm 7	Firm 8	Total
% of total outstanding notional with non-netting jurisdictions	0.2711%	0.4091%	0.5326%	0.5117%	0.3042%	0.4099%	5.4160%	2.6963%	0.5247%
Maximum gross notional % to a single non-netting jurisdiction	0.1346%	0.1311%	0.4199%	0.2619%	0.1056%	0.2011%	2.2356%	1.7083%	0.1893%

32 For purposes of these charts, non-netting jurisdictions are assumed to be those other than the "clean netting jurisdictions" as determined by ISDA opinions. The list of clean netting jurisdictions may be found at http://www.isda.org/docproj/stat_of_net_opin.html. Note that this is not designed to be an exhaustive list of netting and non-netting jurisdictions and has been compiled for ease of reference. Parties are always free to obtain additional opinions or seek alternative advice.

33 We reiterate our request that covered swap entities not be required to post margin (initial margin or variation margin) to counterparties in jurisdictions lacking enforceable netting. As noted in our original response letter to the US Prudential Regulators, without enforceable netting, there is the risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned in the event of insolvency, which will result in an increase in the risk in posting collateral.

There are only two non-netting jurisdictions where the total notional amount exceeds 0.1%[34] of all uncleared derivatives transactions, shown below.

Jurisdiction	Total
CHINA	0.1893%
UNITED ARAB EMIRATES	0.1059%

Below is the count of individual firm exposures to non-netting jurisdictions grouped by percentage of total outstanding notional by (a) less than .05%; (b) between .05% & .1%; and (c) greater than .1%.

Count of exposures:	Firm 1	Firm 2	Firm 3	Firm 4	Firm 5	Firm 6	Firm 7	Firm 8	Total
Less than .05%	27	34	2	16	45	16	32	8	75
Between .05% & .1%	1	2	0	2	1	2	5	1	1
Greater than .1%	1	1	2	1	1	1	5	2	2

34 Total figures were obtained by adding the sum of notional amounts across participants for each jurisdiction as a percentage of the total gross notional.

EXHIBIT B

Counterparties in non-netting jurisdictions - list of jurisdictions and total gross notional %[35]

Jurisdiction	Firm 1	Firm 2	Firm 3	Firm 4	Firm 5	Firm 6	Firm 7	Firm 8	Total
ABU DHABI		0.0994%							0.0156%
ANDORRA		0.0003%			0.0004%	0.0009%		1.7083%	0.0197%
ANGOLA					0.0004%				0.0001%
ANTIGUA AND BARBUDA					0.0000%				0.0000%
ARGENTINA					0.0001%		0.0018%		0.0001%
BAHRAIN	0.0014%	0.0117%	0.0019%	0.0179%	0.0044%		0.2423%		0.0130%
BANGLADESH							0.0182%		0.0005%
BELIZE					0.0000%				0.0000%
BOTSWANA	0.0001%				0.0003%				0.0001%
BRUNEI DARUSSALAM					0.0053%		0.0599%		0.0024%
BULGARIA		0.0003%			0.0002%				0.0001%
BRUNEI				0.0024%		0.0031%			0.0009%
CHINA	0.1346%	0.1311%	0.4199%	0.2619%	0.1056%	0.2011%	0.6593%	0.8811%	0.1893%
COOK ISLANDS					0.0000%				0.0000%
COSTA RICA	0.0005%	0.0002%							0.0002%
COTE D IVOIRE	0.0005%	0.0004%			0.0043%		0.0912%	0.0120%	0.0033%
CROATIA		0.0027%		0.0104%	0.0011%	0.0008%			0.0030%
DJIBOUTI							0.0027%		0.0001%
DOMINICAN REPUBLIC								0.0001%	0.0000%
DUBAI		0.0160%							0.0025%
ECUADOR							0.0000%	0.0034%	0.0000%
EGYPT					0.0000%	0.0035%	0.0556%		0.0018%
ESTONIA	0.0000%	0.0003%			0.0001%				0.0001%
FRENCH POLYNESIA	0.0000%							0.0004%	0.0000%
FUJAIRAH		0.0003%							0.0000%
GAMBIA							0.0002%		0.0000%
GHANA		0.0004%					0.0058%		0.0002%
GEORGIA	0.0000%				0.0001%				0.0000%
GIBRALTAR	0.0001%	0.0044%			0.0008%				0.0008%
GUAM	0.0000%								0.0000%
HONDURAS	0.0002%	0.0015%					0.0042%		0.0004%
ISLE OF MAN		0.0068%			0.0005%	0.0011%			0.0013%
JORDAN		0.0003%			0.0000%		0.0391%		0.0010%
KAZAKHSTAN	0.0004%				0.0008%				0.0002%
KENYA		0.0038%					0.0087%		0.0008%
KIRIBATI							0.0012%		0.0000%
KUWAIT	0.0007%	0.0010%		0.0016%	0.0030%	0.0056%	0.0285%		0.0025%
LAO PEOPLE'S DEMOCRATIC REPUBLIC							0.0022%		0.0001%
LATVIA	0.0005%	0.0014%		0.0023%	0.0008%	0.0010%			0.0011%
LEBANON		0.0001%		0.0077%	0.0040%		0.0081%		0.0026%
LIBERIA	0.0007%	0.0013%			0.0067%	0.0013%			0.0017%
LIECHTENSTEIN	0.0207%	0.0148%		0.0133%	0.0179%	0.0027%	0.0133%		0.0150%
LITHUANIA	0.0011%	0.0016%		0.0020%	0.0003%	0.0019%			0.0013%
MACAU	0.0002%				0.0013%		0.0294%		0.0010%
MARSHALL ISLANDS	0.0005%				0.0030%	0.0030%	0.0006%		0.0010%
MONACO		0.0030%			0.0004%		0.0002%		0.0005%
MOROCCO		0.0044%		0.0020%	0.0002%		0.0209%		0.0017%
MOZAMBIQUE							0.0000%		0.0000%
NAMIBIA							0.0024%		0.0001%
NEPAL							0.0000%		0.0000%
NIGERIA	0.0000%	0.0003%			0.0038%		0.0023%		0.0007%
OMAN	0.0029%	0.0000%			0.0010%		0.0999%		0.0035%
PAKISTAN				0.0023%			0.0282%		0.0012%

[35] Note that this is not designed to be an exhaustive list of netting and non-netting jurisdictions and has been compiled for ease of reference. Parties are always free to obtain additional opinions or seek alternative advice.

Jurisdiction	Firm 1	Firm 2	Firm 3	Firm 4	Firm 5	Firm 6	Firm 7	Firm 8	Total
PANAMA	0.0007%	0.0017%	0.0008%	0.0050%	0.0067%	0.0032%	0.0121%	0.0565%	0.0040%
PAPUA NEW GUINEA								0.0000%	0.0000%
PUERTO RICO	0.0004%	0.0008%			0.0008%	0.0016%			0.0006%
QATAR	0.0043%	0.0188%		0.0037%	0.0039%	0.0051%	0.3305%		0.0145%
RAS AL KHAIMAH		0.0000%							0.0000%
ROMANIA		0.0001%			0.0003%		0.0013%	0.0077%	0.0002%
RUSSIAN FEDERATION	0.0109%	0.0608%		0.0426%	0.0066%	0.0114%	0.0678%		0.0263%
SAINT VINCENT AND THE GRENADINES					0.0000%				0.0000%
SAMOA					0.0000%				0.0000%
SAN MARINO					0.0000%				0.0000%
SAUDI ARABIA	0.0128%	0.0180%		0.0675%	0.0655%	0.0456%	1.2927%		0.0695%
SENEGAL							0.0085%		0.0002%
SERBIA		0.0000%							0.0000%
SHARJAH		0.0005%							0.0001%
SRI LANKA							0.0158%		0.0004%
SUDAN					0.0010%				0.0002%
TRINIDAD AND TOBAGO					0.0002%				0.0000%
TURKMENISTAN				0.0031%					0.0007%
TUNISIA							0.0009%		0.0000%
UGANDA					0.0000%		0.0000%		0.0000%
UNITED ARAB EMIRATES	0.0750%		0.1099%	0.0602%	0.0437%	0.0585%	2.2356%		0.1059%
URUGUAY	0.0002%			0.0018%	0.0000%	0.0586%	0.0132%		0.0073%
VENEZUELA	0.0017%	0.0006%		0.0039%	0.0082%			0.0246%	0.0031%
VIETNAM							0.0090%	0.0021%	0.0002%
ZAMBIA							0.0023%		0.0001%
Non netting % of Total Gross Notional	0.2711%	0.4091%	0.5326%	0.5117%	0.3042%	0.4099%	5.4160%	2.6963%	0.5247%