September 12, 2018

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Secretariat of the International Organization of Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

Re: Margin Requirements for Non-Centrally Cleared Derivatives – Final Stages of Initial Margin Phase-In

Ladies and Gentlemen,

The International Swaps and Derivatives Association (ISDA), the Securities Industry and Financial Markets Association (SIFMA), the American Bankers Association (ABA), the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) and the Institute of International Bankers (IIB) (together, the Associations[1]) appreciate the efforts of regulators towards developing and implementing margin requirements for non-centrally cleared derivatives. In accordance with the Basel Committee on Bank Supervision and International Organization of Securities Commissions (BCBS-IOSCO) *Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives*

[1] See Appendix for description of the Associations.

(Final Framework)[2] regulators have established standards for margin requirements for non-centrally cleared derivatives (commonly referred to as the "Uncleared Margin Rules" or "UMR"), to be phased in over time.[3] These requirements are a key aspect of the G20's financial regulatory reform agenda covering the over-the-counter derivatives markets and market participants, the goals of which our members fully support.[4]

We are writing to request the assistance of regulators around the globe to address impending substantive challenges associated with the final phases of UMR. In most jurisdictions, the final phases of these rules come into effect on September 1, 2019 (Phase 4) and 2020 (Phase 5) with the introduction of initial margin (IM) requirements for a large universe of counterparties. As described in a white paper recently published by ISDA and SIFMA (the White Paper[5]), the final phases of UMR implementation will present significant obstacles and disruptions if applied as currently planned, given the large number of relatively smaller counterparties that will be brought within scope. In addition, a recent data gathering exercise conducted by ISDA (the Quantitative Analysis) demonstrates that the vast majority of these counterparties are firms whose inclusion in the UMR rules will provide little (if any) additional benefit towards meeting the policy objectives of regulators towards mitigating systemic risks. On the contrary, the low thresholds mean many of these Phase 5 entities may be dissuaded from engaging in transactions which help to manage their risk, given the associated cost burdens of UMR.

Executive Summary:

The final phases of UMR implementation present serious logistical challenges. As described in greater detail in the White Paper, in-scope market participants face a number of major hurdles, which are exacerbated given the number of counterparties expected to come into scope. These include large scale efforts to re-document every bilateral relationship in accordance with UMR, operationally set up third-party segregated accounts and adopt IM modeling to minimize the dispute resolution process, among other key tasks.

To better understand the scope of these challenges, ISDA undertook a data collection which served as the basis for the findings presented in the Quantitative Analysis, which has

---

[2] *BCBS-IOSCO Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives* (Sept. 2013), available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD423.pdf.

[3] Initial and variation margin collected and posted under UMR is referred to as "regulatory margin."

[4] G20 Pittsburgh Summit (Sept. 24-25, 2009).

[5] Available at: https://www.sifma.org/resources/submissions/initial-margin-for-non-centrally-cleared-derivatives-issues-for-2019-and-2020/ or https://www.isda.org/2018/07/19/initial-margin-for-non-centrally-cleared-derivatives-issues-for-2019-and-2020/.

been provided in conjunction with this letter.[6] The data covers 16,340 separate legal counterparties, with 34,680 individual relationships.[7] Based on the current regulatory requirements, we estimate the following impacts for Phase 5 of UMR:

- Over 1,100 newly in-scope counterparties (NISCs), which have over 9,500 new relationships with other counterparties subject to UMR.[8]
- Each of the 9,500 new relationships requires new or amended documentation that must be tested and uploaded into systems.
- Up to 19,000 segregated IM custody accounts must be set up and tested (two per relationship, for the posting and collection of IM).
- Depending on the IM calculation method, between 26-45% of the smallest counterparties, and 69-78% of counterparty relationships, are unlikely to exchange any IM at all, as they fall below a USD 50 million IM exchange threshold (IM exchange threshold).[9] As such, these counterparties will be required to engage in IM preparations despite the fact they will not exchange IM.

Thus, the analysis shows that IM implementation as currently planned will bring into scope counterparties that pose no systemic risk and will actually exchange little or no IM, while still being subject to the full panoply of implementation and compliance burdens. Targeted recalibrations that more appropriately tailor IM requirements to the relevant risks are warranted, and can be achieved without impairing the ability to meet the policy objectives of mitigating systemic risk.

At the same time IM should be calibrated to address the specific risks such non-centrally cleared derivatives pose, as central clearing is sufficiently incentivized directly. Central clearing has grown steadily since clearing mandates were implemented in 2013, incentivized by the associated benefits of multilateral netting. It is not necessary or appropriate to impose prohibitive IM requirements on Phase 5 counterparties that pose little systemic risk as a further incentive to clear. From a cost-benefit perspective, a large portion of Phase 5 counterparties will not exchange material (or, in many cases, any) amounts of IM, yet they will still face the same significant implementation and compliance burdens and ongoing costs as those that will, without any attendant benefit in terms of systemic risk mitigation. In fact, imposing such burdens and costs may have an inapposite impact on the

---

[6] As these estimates are based on submissions by most (but not all) currently in-scope dealers, these numbers will be higher when viewing the entirety of market participants.

[7] An individual in-scope separate legal counterparty may have multiple relationships with different legal entities.

[8] See Tables 6 and 8 of the Quantitative Analysis.

[9] See Tables 1, 13 and 15 of the Quantitative Analysis.

policy goals of regulators, as NISCs are deterred from utilizing derivatives to effectively manage their risk.

Based on the Quantitative Analysis, the Associations have made a number of targeted recommendations regulators may implement to mitigate the negative impacts market participants will face during the final stages of UMR implementation. We encourage regulators to further review the issues and findings described in greater detail in the White Paper and Quantitative Analysis, and consider the modifications recommended below. Without timely and, to the greatest extent possible, globally consistent regulatory action, there will be insurmountable hurdles to UMR implementation for many market participants, limiting access to the derivatives market.

The Associations recommend that global regulators modify UMR as follows:

A. Recalibrate IM requirements to more appropriately address systemic risk

1. *Raise the Gross Notional Threshold for Phase 5 to EUR/USD 100 Billion,*[10] *or the equivalent in the currency of other UMR*
2. *Remove physically settled foreign exchange swaps and forwards from aggregate average notional amount calculations for Phase 5*

B. Remove Burdens to Use Globally Approved IM Models, including the ISDA SIMM

1. *Exempt Phase 4-5 non-dealer counterparties from prudential-style governance of IM models designed for bank capital standards. Model governance requirements for broadly accepted, regulator approved internal IM models such as SIMM should be limited to entities brought in scope by Phases 1, 2 and 3 and their portfolios.*
2. *Exempt non-dealers from any SIMM approval (and/or pre-approval) under EU and Japanese UMR*

In addition, the Associations request that global regulators clarify that regulatory IM-compliant documentation need not be required until a counterparty's regulatory IM calculation exceeds a certain sub-threshold.

The rationale and evidence for these requests are set out in further detail below.

[10] For the purposes of this letter, when referring to EUR and/or USD thresholds, it should also be read to include the equivalent thresholds in the currency of other UMR

Recommendations

September 1, 2018 marked the compliance date for Phase 3 of UMR, and it is important to take stock of the progress so far. As documented in the ISDA Margin Survey, Phase 1 firms had collected USD 130.6 billion in IM at year-end 2017.[11] Of this amount, 43.5% is discretionary IM posted by firms not captured by Phase 1. Additionally, global regulatory variation margin (VM) requirements came into effect on March 1, 2017 (the VM Big Bang). As of year-end 2017, over USD 1.5 trillion in VM was exchanged between Phase 1 firms, making the system more robust and resilient against any firm's failure.

In its margin framework, BCBS/IOSCO expressed a willingness to review the current regime if a credible quantitative data analysis shows that changes are appropriate.[12] Furthermore, in its 2017 report on the capital markets, the U.S. Treasury Department recognized that some recalibration of current margin requirements may be appropriate.[13] Under the current requirements, we anticipate implementation challenges that exceed those experienced during the VM Big Bang, which required coordinated regulatory relief to avoid market disruption.[14]

With this in mind, and guided by the results of the Quantitative Analysis, regulators should consider how to appropriately tailor requirements to mitigate the significant challenges facing market participants for the final phases of IM implementation. Given the global nature of UMR, regulators should coordinate their efforts to the greatest extent possible. The recommendations provided below will serve to prevent negative impacts to market liquidity and limitations on the ability for all market participants to access these important hedging products, in a manner which does not prevent achieving key regulatory and policy objectives.

---

[11] See ISDA Margin Survey Full Year 2017; available at: https://www.isda.org/a/oQmEE/ISDA-Margin-Survey-Full-Year-2017.pdf.

[12] See "Key Principle 8" of the BCBS-IOSCO final policy framework on margin requirements for non-centrally cleared derivatives, "*[t]he requirements described in this paper should be phased in so that the systemic risk reductions and incentive benefits are appropriately balanced against the liquidity, operational and transition costs associated with implementing the requirements. In addition, the requirements should be regularly reviewed to evaluate their efficacy, soundness and relationship to other existing and related regulatory initiatives, and to ensure harmonisation across jurisdictions.*" available at: https://www.bis.org/bcbs/publ/d317.pdf.

[13] See pages 127-129 of the U.S. Department of the Treasury, "*A Financial System That Created Economic Opportunities: Capital Markets*"; available at: https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.

[14] See Press Release from BCBS-IOSCO amending original implementation timeline recommendations (available at: https://www.bis.org/press/p150318a.htm).

A. Recalibrate IM Requirements to More Appropriately Address Systemic Risk

1. Raise the Gross Notional Threshold for Phase 5 to EUR/USD 100 Billion, or the equivalent in the currency of other UMR

The Quantitative Analysis indicates that the current EUR/USD 8 billion gross notional threshold is too low, as a significant portion of the counterparties and relationships brought into scope under such a threshold are not likely to be required to exchange IM, and those that do will make up a small percentage of the amount of the total industry ISDA Standard Initial Margin Model or the ISDA SIMM™ (SIMM) IM amounts.[15] As such, these Phase 5 firms pose little or no systemic risk, but will nonetheless face significant operational and compliance burdens associated with UMR requirements – despite the fact there are no countervailing benefits supporting the systemic-risk-mitigating policy objectives, as such counterparties captured contribute minimally, if at all, towards such risks.

From a review of the data, the Associations have identified a more risk-appropriate threshold to reduce the overall number of small participants brought into scope for IM, while minimizing the overall reduction in IM exchanged. According to the Quantitative Analysis:

- The vast majority of the more than 1,100 counterparties brought into scope in Phase 5 will fall close to the lower bounds of the EUR/USD 8 billion threshold.
- An estimated 83% (992) of Phase 5 counterparties, and 75% (7,220) of Phase 5 relationships fall below the EUR/USD 100 billion level.
- As most of these parties would not exceed a USD 50 million IM exchange threshold, these relationships would on average attract only USD 29.9 million of IM using a regulatory schedule (grid-based) calculation methodology, and USD 10.5 million under a SIMM calculation.[16]

An increase in the Phase 5 gross notional threshold from EUR/USD 8 billion to 100 billion would yield a significant reduction in the overall industry compliance burden, with only a small amount of IM not being captured compared to the broader industry amount. For example, if the Phase 5 gross notional threshold was increased to EUR/USD 100 billion, the average SIMM IM amount per counterparty (for all of their relationships) that would not be posted is estimated to be USD 76.4 million.[17] In contrast, based on the most recent quarterly monitoring cycle of the SIMM model, 25 Phase 1 and 2 firms are collecting USD 126.9

[15] See Tables 1, 13 and 15 of Quantitative Analysis.

[16] See Table 18 of the Quantitative Analysis.

[17] See Table 18 of the Quantitative Analysis.

billion regulatory IM – an average of USD 5 billion per firm.[18] Thus, the amount of IM not captured by raising the threshold, compared to total regulatory IM amounts, is relatively small.

The amount of IM estimated to be posted by parties in the EUR/USD 8 billion to 100 billion bracket of Phase 5 counterparties during the first two years of their regulatory IM obligation (based on a SIMM calculation) is USD 75.7 billion IM - 13.5% of the projected total callable industry SIMM IM amounts.[19] Consequently, increasing the threshold would decrease by 83% the number of counterparties that would need to prepare for compliance, without affecting regulatory efforts to minimize systemic risks given the low amount of IM these counterparties and relationships would otherwise need to exchange, and the minimal amount of risk posed by such counterparties' trading activities. Thus, the Associations request regulators increase the Phase 5 gross notional threshold from EUR/USD 8 billion to 100 billion.

2. *Remove physically settled foreign exchange swaps and forwards from aggregate average notional amount calculations for Phase 5*

Under the current UMR, the calculation of aggregate average notional amount (AANA) thresholds requires inclusion of notional amounts of physically settled foreign exchange (FX) swaps and forwards, notwithstanding that these products are not subject to IM exchange requirements. These products do not require the exchange of IM because they are short dated, liquid and present low long-term risk. This same rationale should be valid for excluding such products from the AANA calculation.

The Quantitative Analysis indicates that 19% (227) of Phase 5 counterparties and 14% (1,363) of Phase 5 relationships will fall into scope of regulatory IM requirements ***only*** because of the inclusion of FX swaps and forwards in the AANA calculation.[20] The Quantitative Analysis further shows that the 19% of Phase 5 counterparties brought into scope ***solely*** because of their excluded FX swaps and forwards activity, would only account for 2.5% of the total grid-based IM posted by all Phase 5 firms in the first two years of their regulatory IM obligations.[21] A significant number of counterparties will therefore be brought

---

[18] The ISDA SIMM Quarterly Monitoring Report for July 2018 was provided directly to global regulators.

[19] USD 75.7 billion is 13.5% of an estimated USD 564.3 billion total callable industry SIMM IM amount. See Table 18 and Appendix C (Page 34) of the Quantitative Analysis.

[20] See Tables 9 and 10 of the Quantitative Analysis.

[21] See Table 22 of the Quantitative Analysis. Table 22 also shows the cumulative impact of both excluding FX swaps and forwards and raising the threshold to EUR/USD 100 billion would result in a reduction of 1,026 counterparties (with an average total SIMM IM of USD 81.7 billion) and 7,652 relationships (with an average total SIMM IM of USD 10.9 billion) being brought into scope.

into scope of the UMR only due to the inclusion of physically settled FX swaps and forwards in their AANA calculation, despite the fact that these products are not subject to the UMR, and with little resulting increase in the amount of IM that would be captured as a result. For these reasons, Phase 5 counterparties should not be required to include physically settled FX swaps and forwards in AANA calculations.

B. Remove Burdens to Use of Globally Approved IM Models, including ISDA SIMM

Even with an increase of the gross notional threshold to EUR/USD 100 billion and the removal of physically settled FX swaps and forwards from the AANA calculation, regulators must consider additional measures that will reduce the compliance and operational burdens for the considerable number of remaining in-scope counterparties, including impediments to the use of quantitative models to calculate regulatory IM. Given the global nature of the derivatives market, impediments created by the requirements of individual jurisdictions will impose impacts that will be far reaching, and must not be viewed in isolation. Thus, regulators should address concerns in a coordinated manner to avoid creating an unlevel playing field which inhibits the use of risk-sensitive approaches to IM calculation, and unnecessarily increasing the cost of margin and the price of uncleared derivatives, and impairing risk management.[22]

1. *Exempt Phase 4-5 non-dealer counterparties from prudential-style governance of IM models designed for bank capital standards. Model governance requirements for broadly accepted, regulator approved internal IM models such as SIMM should be limited to entities brought in scope by Phases 1, 2 and 3, and their portfolios.*

Under UMR, all in-scope firms face considerable burdens when using an internal IM model. The requirements under these rules, which we refer to as "prudential-style governance," are based on mechanics already utilized by banks to comply with capital requirements and include: internal initial validation for conceptual soundness; regulatory approval; model documentation (including limitations and assumptions); ongoing monitoring and back testing; and independent auditing of all of the above.[23]

---

[22] See Page 19 of the White Paper for more detailed discussion of model implementation challenges.

[23] This prudential-style governance approach requires users to establish the conceptual soundness of the models used, as well as demonstrate suitable implementation within certain processes and proper data inputs (i.e., risk factor inputs). Users must also demonstrate proper internal governance for model usage, covering areas such as dispute management, model performance tracking and remediation where IM levels fall short of regulatory standards (i.e., one-tailed 99% risk coverage using a 10-day risk horizon). Firms achieve compliance through extensive internal policies and procedures that give rise to very significant amount of work for compliance, model validation, risk management and internal audit staff.

The use of the ISDA SIMM has been widely approved and accepted by global regulators and has to date been the primary margin methodology used for UMR implementation. SIMM implementation standards are well known to regulators and markets participants alike, and SIMM model performance monitoring on actual portfolios takes place on a global basis. Management and development of the SIMM is governed through a well-established framework, which involves consultation and reporting to regulators.[24] SIMM governance standards cover both firm- and industry-level requirements, which include monitoring, addressing SIMM changes and ensuring they are consistent on a global scale.

These guidelines require that firms using IM models:

- Identify any margin shortfalls through historical portfolio-level profit and loss analysis;
- Bilaterally agree to add-on margin to remediate shortfalls; and
- Report margin portfolio shortfall issues to ISDA and regulators

Under U.S. rules, these prudential-style model-related requirements generally apply only to swap dealers.[25] Under the EU and Japanese UMR, however, the requirements directly apply to all in-scope counterparties. For the non-dealers brought into scope in Phases 4-5, being required to comply with these requirements may prove impossible, as they will need to develop and manage expensive monitoring and margin remediation capabilities from scratch. These obstacles and obligations present a significant impediment to the expanded use of internal models – including the ISDA SIMM.

As a result, many of these Phase 4-5 counterparties may opt to use grid-based methodologies, despite the fact that such calculations are less risk-sensitive and will be more expensive for diversified portfolios. The Quantitative Analysis shows that, on average, grid-based IM amounts for Phase 5 portfolios two years into the UMR will be more than *twice* as expensive as those using internal models such as the SIMM (a 2.1 ratio). When the grid-based and SIMM figures are compared after the application of an IM exchange threshold of USD 50 million, the ratio rises even higher, to 2.8.

In addition, margin methodology governance structures (e.g., the ISDA SIMM Governance Forum) and regulators may face difficulties in managing monitoring programs and ensuring industry-wide governance quality for large numbers of newly in-scope

---

[24] See ISDA SIMM Governance Framework: https://www.isda.org/a/7FiDE/isda-simm-governance-framework-19-september-2017-public.pdf.

[25] Such requirements will also generally apply to MSPs under U.S. rules. Similarly, under the Canadian Office of the Superintendent of Financial Institutions margin rules, the model governance rules only apply to Federally Regulated Financial Institutions (FRFIs).

participants and their portfolios. Based on industry estimates, the maximum number of portfolios that could be properly monitored under current processes is 2,500. Submissions by more than the 26 largest dealers - each of which requires considerable data analysis and production, which must also then be aggregated and further analyzed - would be unmanageable. SIMM users (currently, Phase 1 and 2 dealers) produce SIMM risk coverage statistics quarterly, which ISDA centrally collects in a standardized monitoring process.[26] ISDA then analyzes the industry-wide SIMM performance monitoring results, and shares results with global regulators. ISDA, regulators and the industry use the quarterly SIMM performance monitoring reports to identify any global SIMM enhancement needs. SIMM enhancements are coordinated, ensuring that one SIMM version applies globally, rather than having various counterparties or jurisdictions make bespoke changes to SIMM.

Furthermore, specific criteria must be met for SIMM enhancements to be enacted. First, the issues necessitating enhancements must be widespread among market participants. Second, the issue must cause material impact to the SIMM-calculated amount. Lastly, the issue must stand to persist if left unaddressed (i.e., not the result of a one-off market event). Importantly, regulators are actively involved in the management and reporting processes. The industry and regulators share an interest in maintaining a single model: users are provided methodology clarity and consistency across jurisdictions and counterparties, while regulators have a single methodology to track, understand and approve.

The monitoring data provided by the Phase 1 and 2 entities on their portfolios, all equipped with the necessary experience and resources to contribute to monitoring exercise, provide regulators with sufficient information and transparency that the IM is appropriate to cover relevant risks. By requiring Phase 4-5 non-swap dealer entities to be included, overall data quality may deteriorate due to limited resources and disparate capabilities – and with little added benefit given the data already provided by Phase 1-2 entities. For these reasons, where non-dealers are relying on a broadly used model that has already been reviewed or approved by regulatory or supervisory authorities (i.e., the SIMM) to calculate their regulatory IM (either directly, or by a third party on their behalf), applying prudential-style IM model governance requirements should not be necessary. Thus, where applicable, regulators should exempt Phase 4-5 non-dealer counterparties from monitoring requirements.

Exempting Phase 4-5 non-dealer counterparties from the prudential-style requirements described above would create a path to allow dealers (or other third parties) to calculate margin on their behalf, but require further guidance from global regulators to make feasible:

[26] Phase 3 entities have just recently come into scope and as such are not currently submitting SIMM monitoring data to ISDA.

- Dealers may be better placed than NISCs to effect IM calculations, which would include: identifying appropriate netting sets, calculating and mapping margin model inputs; data standards; and monitoring requirements.[27] Many dealers already calculate the IM they must collect, as well as the amount they expect to post to counterparties in order to validate their counterparties' IM calls. It is plausible that dealers could use existing infrastructure to calculate the regulatory IM their clients should call. It is expected that non-dealers that prefer not to implement themselves or via a third party will request that their dealers to act as the calculation agent.

- However, as discussed in the White Paper, there are significant legal, operational, compliance and regulatory issues dealers must consider before agreeing to assume regulatory IM calculations on behalf of non-dealer counterparties. Dealers may face regulatory risk (both direct and indirect) if calculating on behalf of clients. Such risks may include those associated with conflicts of interest and the transfer of regulatory liability from the counterparty to the dealer. For a dealer facing hundreds of NISCs across multiple jurisdictions, meeting such regulatory obligations for its counterparties is not achievable.

For the reasons above, we request that, where applicable, regulators exempt Phase 4-5 non-dealer counterparties from prudential-style governance of IM models.

2. *Exempt non-dealers from any SIMM approval (and/or pre-approval) under EU and Japanese UMR*[28]

We urge regulators to consider the above recommendations towards addressing the critical UMR challenges raised. If Phase 4-5 counterparties are not relieved of the extensive model requirements, then alternatively the current and/or proposed explicit approval (and/or pre-approval) mechanics in the EU and Japan must be reviewed. Model approval entails material preparation for covered market participants, requiring significant expertise, time and resources – especially for Phase 4-5 counterparties with limited experience with the process and constrained resources.[29] This is over and above those required for the internal model governance highlighted in the above section.

[27] NISCs may also face difficulties connecting to a middleware provider to streamline margin reconciliation/validation operations, where needed.

[28] As these requirements apply only to dealers under U.S. UMR, further clarification is unnecessary in this regard.

[29] At the same time, regulators will face challenges in relation to the significant time and resources that will be required to review and approve internal models for the high number of counterparties coming into scope in Phase 5.

Even where NISCs seek to utilize the SIMM – a model that is broadly used and governed under an industry-wide and cross-regulatory framework and has already been accepted by relevant regulators for use by Phases 1-3 counterparties – each NISC will need to secure its own conceptual soundness approval. Each NISC will thus need to engage in arduous approval processes and related exercises for the SIMM, despite these efforts being largely duplicative to those performed either by ISDA or other NISCs and market participants.[30] This may push these entities to utilize costlier, less risk-sensitive grid-based methodologies.

C. Clarification on Documentation Required for Counterparties under USD 50 Million IM Threshold[31]

1. Clarify that regulatory IM-compliant documentation need not be required until a counterparty's regulatory IM calculation exceeds a certain sub-threshold.

In some jurisdictions the applicable UMR may require (or may be perceived to require) IM documentation to be completed in order to trade, even when such a threshold has not been crossed and there is no current requirement to exchange IM.[32] The Quantitative Analysis shows that the vast majority of counterparty relationships will never need to exchange any regulatory IM because their positions will never generate IM amounts that exceed applicable IM exchange thresholds. According to the Quantitative Analysis, the majority of Phase 5 relationships will not breach a USD 50 million IM exchange threshold even two years into regulatory IM requirements. Nearly 69% (6,601) of such relationships will not breach this IM exchange threshold under a grid-based calculation, which rises to 78% (7,492) of relationships utilizing a SIMM calculation.[33]

If, as is expected, most NISCs never breach the IM exchange threshold, market participants may have expended critical bandwidth and resources to negotiate documentation and other required preparations that will lie dormant – bandwidth and resources that could be more appropriately used to prepare for the smaller number of larger counterparties that *will* need to exchange IM. Given this, regulators could decrease the burden on all market

---

[30] As previously described, ISDA carries out quarterly and annual monitoring and back-testing exercises to ensure that SIMM functions properly across the vast majority of portfolios. ISDA also sets remediation standards in the event outlier portfolios do not function well under SIMM.

[31] Or the applicable IM threshold cap under other UMR.

[32] Under U.S. UMR, for example, a counterparty pair subject to the rules may agree to an IM exchange threshold up to USD 50 million, and if agreed, the counterparties need not exchange IM until the threshold is passed. Non-U.S./EU swap regimes have roughly equivalent thresholds.

[33] See Table 15 of Quantitative Analysis

participants by clearly communicating to dealers and their counterparties alike that documentation is only needed when IM is required to be exchanged.

The daily monitoring of IM levels should form part of the overall policies and procedures that prevent breaching the IM exchange threshold before the necessary documentation is in place. This can be achieved in several ways, including establishing sub-thresholds which could provide a "buffer" under the IM exchange threshold. If and when such a sub-threshold is breached, dealers would reject any incremental trade, unless risk- and margin-reducing, until documentation was in place. Further, guidance (such as ensuring documentation is complete within a prescribed period following the IM exchange threshold breach) would help dealers and counterparties operate in a way that will maintain a functioning derivatives market while ensuring required documentation is put in place in a timely manner.

It should be noted, however, that even if regulators make it clear that documentation is not required prior to reaching the applicable IM exchange threshold, further guidance may be needed as certain factors could cause counterparties to accidentally exceed the IM exchange threshold due to the very nature of the margin calculations. While dealers would monitor IM levels to avoid breaching the IM exchange threshold, throughout the day, a one-day jump in margin is a possible, though likely to be a rare occurrence. Such a jump could be due to factors such as: dealers typically monitoring IM on an end-of -day basis; a counterparty unwind of a trade that may increase IM; risk factor value changes impacting overall portfolio risk; or other circumstances that could cause IM to rise without any additional transactions.

D. Cross Border, Timing and Other Considerations

Any modifications to the existing UMR should be consistent across jurisdictions. Inconsistent rules or applications across jurisdictions will cause additional confusion, complexity and implementation delays. Many portfolios span jurisdictions, not only across national or regional boundaries (e.g., U.S. and EU) but within them (U.S. Prudential Regulators and the Commodity Futures Trading Commission), and counterparties need to have a clear and consistent sense of rule applications for their portfolios.

Furthermore, any modifications to the existing UMR must be implemented as soon as possible, as their implications (e.g., calculation and monitoring of terms, product set changes, regulatory burdens, custodial account rules) will need to be reflected in various ways, including documentation and negotiations; custodial account setup; and infrastructure currently being developed by in-scope and Phase 4 and 5 firms, custodians and middleware providers. As described in the White Paper, a significant lead time of at least 12-18 months will be required for market participants to adequately prepare.

Conclusion

The Associations support regulatory reform efforts and margin requirements for derivatives. The final phases of the UMR implementation, however, pose a substantial challenge for market participants, with diminishing policy benefits. As previously noted, without regulatory action, there are likely to be insurmountable hurdles, leaving some firms unable to meet the September 2020 deadline and limiting their access to the derivatives market. We look forward to an ongoing dialogue to find and implement solutions to the challenges raised in this letter. Please do not hesitate to contact the undersigned.

Sincerely,

Scott O'Malia
Chief Executive Officer
ISDA

Kenneth E. Bentsen, Jr.
President & CEO
SIFMA

Ananda Radhakrishnan
VP, Center for Bank Derivatives Policy
American Bankers Association

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

Briget Polichene
Chief Executive Officer
Institute of International Bankers

CC:

Australian Prudential Regulatory Authority	Australia
Australian Securities and Investments Commission	Australia
Authorité des Marchés Financiers	France
Autorité de Contrôle Prudentiel et de Résolution (ACPR)	France
Autoriteit Financiele Markten	Netherlands
Bangko Sentral ng Pilipinas	Philippines
Bank Indonesia	Indonesia
Bank Negara Malaysia	Malaysia
Bank of England	United Kingdom
Bank of Italy	Italy
Bank of Japan	Japan
Bank of Korea	Republic of Korea
Bank of Mexico	Mexico
Bank of Spain	Spain
Bank of Thailand	Thailand
Board of Governors of the Federal Reserve System	United States
Canadian Securities Administrators	Canada
Central Bank of Argentina	Argentina
Central Bank of Brazil	Brazil
China Banking Regulatory Commission	China
Commissione Nazionale per le Società e la Borsa	Italy
De Nederlandsche Bank	Netherlands
Deutsche Bundesbank	Germany
European Banking Authority	European Union
European Central Bank	European Union
European Commission	European Union
European Insurance & Occupational Pensions Authority	European Union
European Parliament	European Union
European Securities and Markets Authority	European Union
Farm Credit Administration	United States
Federal Deposit Insurance Corporation	United States
Federal Financial Supervisory Authority (BaFin)	Germany
Federal Housing Finance Agency	United States
Financial Conduct Authority	United Kingdom
Financial Sector Conduct Authority	South Africa
Financial Services Commission	Republic of Korea
Her Majesty's Treasury	United Kingdom
Hong Kong Monetary Authority	Hong Kong
Japan Financial Services Agency	Japan
Korea Financial Supervisory Service	Republic of Korea
Monetary Authority of Singapore	Singapore

National Futures Association	United States
Office of the Comptroller of the Currency	United States
Office of the Superintendent of Financial Institutions	Canada
Prudential Regulatory Authority	United Kingdom
Reserve Bank of Australia	Australia
Reserve Bank of India	India
Reserve Bank of New Zealand	New Zealand
Securities and Exchange Board of India	India
Securities and Futures Commission of Hong Kong	Hong Kong
Securities Commission Malaysia	Malaysia
Swiss Financial Market Supervisory Authority (FINMA)	Switzerland
The People's Bank of China	China
The Prudential Authority	South Africa
Trésor Public	France
U.S. Commodity Futures Trading Commission	United States
U.S. Department of the Treasury	United States
U.S. Securities and Exchange Commission	United States

APPENDIX: About the Associations

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 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 website: www.isda.org. Follow us on Twitter @ISDA.

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 nearly 1 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.

The **ABA** is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend nearly $10 trillion in loans.

The **GFXD** was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global foreign exchange (FX) market participants collectively representing around 80% of the FX inter-dealer market. The GFXD and its members are committed to ensuring a robust, open and fair FX marketplace and welcome the opportunity for continued dialogue with global bodies and regulators.

IIB is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions. Further information is available at www.iib.org.