American Bankers Association

Building Success. Together.

Ananda Radhakrishnan
Vice President
Center for Bank Derivatives Policy
P 202-663-5037
anandar@aba.com

April 23, 2018

Legislative and Regulatory Affairs Division
Office of the Comptroller of Currency
400 7th Street SW, Suite 3E-218,
Washington, DC 20219
Docket ID OCC-2018-0003

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1596 and RIN 7100 AE-96

Robert E. Feldman, Executive Secretary
Attention: Comments/RIN 3064-AE70
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration,
1501 Farm Credit Drive,
McLean, VA 22102-5090

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency, 8th Floor
400 7th Street SW
Washington, DC 20219

Via Email to regs.comments@occ.treas.gov; regs.comments@federalreserve.gov; Comments@FDIC.gov; reg-comm@fca.gov; RegComments@fhfa.gov

RE: Margin and Capital Requirements for Covered Swap Entities – Proposed Rule

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Agencies' Proposed Rule[2] which would amend their respective Swap Margin Rules.[3] Specifically, the Agencies are proposing (a) to amend the definition of "Eligible Master Netting Agreement" in the Swap Margin Rule so that it remains harmonized with the amended definition of "Qualifying Master Netting Agreement" in the Federal banking Agencies' regulatory capital and liquidity rules; and (b) that any legacy non-cleared swap or security-based swap that is not subject to the margin requirements of the Swap Margin

[1] The American Bankers Association 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 more than $9 trillion in loans.

[2] Notice of proposed rulemaking and request for comment, 83 Fed. Reg. 7413 (February 21, 2018)

[3] Margin and Capital Requirements for Covered Swap Entities, Final Rule, 80 Fed. Reg. 74840 (November 30, 2015)

Rule would not become subject to the provisions of the Swap Margin Rule if the non-cleared swap or non-cleared security-based swap is amended solely to comply with the Federal banking agencies' Qualified Financial Contract Rules (the QFC Rules).

ABA Supports the Proposed Rule

As the Agencies state, the proposed rulemaking is intended to ameliorate an unintended consequence of the QFC Rules which would be contrary to the policy decisions expressed in the Swap Margin Rule to permit initial margin to be calculated on a net basis for covered swaps subject to netting agreements. Though we do not believe that every rule affected by amendments to other rules must be changed, we are very appreciative of the Agencies' efforts to provide certainty to a covered swap entity and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in the light of the QFC Rules.

The Agencies should amend the affiliate transaction provisions of the Swap Margin Rule so that it is in alignment with the affiliate transaction provisions of the un-cleared swaps margin rule of the Commodity Futures Trading Commission (CFTC)

Although not the subject of the Proposed Rule, ABA recommends the Agencies further amend the Swap Margin Rule so that the affiliate transaction provisions are in alignment with the relevant provisions in the CFTC's regulations governing margin for un-cleared swaps. Such an amendment would recognize the risk-reducing benefits of swaps between affiliates as has been discussed in previous comments letters to the Agencies from ABA and other trade associations.[4] This position is also consistent with Section 320 of the Commodity End-User Relief Act,[5] which was passed by the Unites States House of Representatives on a bipartisan basis and referred to the United States Senate.

Under the Swap Margin Rule, a covered swap entity[6] must collect initial margin from affiliate counterparties in un-cleared swaps and security based swaps. If the affiliate also happens to be a covered swap entity or a swap entity[7], then this will result in a "collect-and-post regime for initial margin among affiliated swap entities.[8] This has resulted in the

[4] See letter dated November 24, 2014 from ABA, American Bankers Association Bankers Association (ABASA), and The Clearing House (TCH) which may be accessed at https://www.aba.com/Advocacy/commentletters/Documents/11-24-14JointTradesLetteronReproposedMarginandCapitalRequirementsforCoveredSwapEntities.pdf, and letter dated June 1, 2015 from ABA, ABASA, TCH and SIFMA which may be accessed at https://www.aba.com/Advocacy/commentletters/Documents/6-1-15JointTradesLetterreUnclearedSwapsMargin.pdf

[5] H.R. 238, 115th Cong. (2017)

[6] A covered swap entity (CSE) is (a) a swap dealer or major swap participant registered with the CFTC; (b) a security-based swap dealer or major security-based swap participant registered with the Securities and Exchange Commission; and (c) which are prudentially regulated by one of the agencies. *See* 80 Fed. Reg. 74840 at 74840-74841.

[7] A swap entity is one of the entities described in footnote 4 above that is not prudentially regulated by one of the agencies.

[8] *See* 80 Fed. Reg. 74840 at 74887.

segregation of large amounts of high quality liquid collateral which could be used by firms in their investing and lending businesses. Such costs discourage inter-affiliate risk management and reduces liquidity in the market by limiting certain activities and potentially increasing costs to customers.

These specific affiliate transaction provisions of the Swap Margin Rule are also misaligned with the relevant provision of the CFTC's swaps margin regulations. Under CFTC Regulation 23.159,[9] a CSE is not required to collect initial margin from a domestic affiliate provided that the CSE meets the following conditions: (i) the swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the affiliate.[10] With respect to swaps undertaken with foreign affiliates, the CSE is required to collect initial margin from such foreign affiliates that are financial end users[11] and which are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end users.[12] Otherwise CSEs are not required to collect initial margin from, or to post initial margin to, affiliates that are CSEs or financial end users.

Inter-affiliate swaps are necessary for banking organizations to maintain a centralized risk management function. Inter-affiliate trades do not increase the amount of risk being taken by a firm. Rather, they allow the firm to manage risk more effectively and in compliance with relevant regulations. Inter-affiliate transactions enable customers to recognize the netting benefits of engaging in transactions with a single entity of their choice. Inter-affiliate swaps permit a banking organization to match offsetting risk exposures existing within the group before hedging the net risk with either third parties or by entering into swaps that can be cleared by central counterparty (CCP) clearing houses. Because the risk is netted and consolidated, these risk-transfer trades allow the firm to operate with less counterparty and operational risk than it would if it faced multiple counterparties through multiple affiliates. Inter-affiliate swaps also permit a banking organization to use its most expert trading and risk management personnel to manage any residual directional market risks. In these circumstances, inter-affiliate swaps allow banking organizations to meet client demand and funding needs while appropriately allocating the resulting risks to the affiliate with the personnel, infrastructure, and expertise to manage them centrally and effectively.

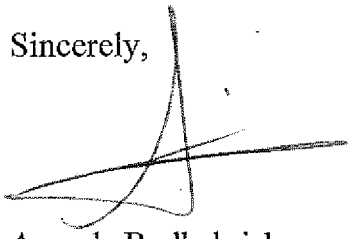
Inter-affiliate initial margin does not facilitate a more orderly or successful single-point-of-entry (SPOE) resolution strategy[13], which is particularly noteworthy given that SPOE is likely to be U.S. financial regulators' preferred approach to resolution of large, complex U.S. banking organizations under either a Title I bankruptcy or a Title II Orderly

[9] 17 C.F.R. § 23.159.
[10] *See* 17 C.F.R. § 23.159(a)(1).
[11] A "financial end user" is defined in § ___.2 of the Swap Margin Rule.
[12] *See* 17 C.F.R. § 23.159(c).
[13] *See* "Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy" Notice; Request for Comments, Federal Deposit Insurance Corporation, 78 Fed. Reg. 76614 (December 18, 2013).

Liquidation Authority resolution. SPOE resolution contemplates the failure of the parent holding company coupled with the continued operation and solvency of all material subsidiaries, and thus does not contemplate the immediate close out of internal risk management trades between such subsidiaries. Therefore, two-way inter-affiliate initial margin between surviving affiliates would likely be largely irrelevant in an SPOE resolution scenario. In this regard, the viability and efficacy of an SPOE resolution regime is in no way dependent on a requirement for two-way inter-affiliate initial margin.

Thank you for the opportunity to respond to the Agencies' request for comments. Please do not hesitate to contact me at 202-663-5037 or anandar@aba.com if you have any questions.

Sincerely,



Ananda Radhakrishnan
Vice President Center for Bank Derivatives Policy