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TO:

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1682/RIN No. 7100-AF62
Via email: regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429
RIN 3064-AF08
Via email: comments@FDIC.gov

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 20219
Via email: regs.comments@occ.treas.gov

Barry F. Mardock
Acting Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
Via email: reg-comm@fca.gov

Alfred M. Pollard
General Counsel
Attention: Comments/ RIN 2590-AB03
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW, Washington, DC 20219
RIN 2590-AB03
Via email: RegComments@fhfa.gov

December 9, 2019

Re: Margin and Capital Requirements for Covered Swap Entities

Ladies and Gentlemen:

The Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association welcomes the opportunity to provide comments to the Board of Governors of the Federal Reserve (the "Board"), the Farm Credit Administration (the "FCA"), the Federal Deposit Insurance Corporation (the "FDIC"), the Federal Housing Finance Agency (the "FHFA") and the Office of the Comptroller of the Currency (the "OCC" and, together with the Board, FCA, FDIC and FHFA, the

"Prudential Regulators") on on their proposals regarding Margin and Capital Requirements for Covered Swap Entities (the "Proposal")[1] .

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 26 global foreign exchange ("FX") market participants,[2] collectively representing a significant portion of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

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The FX market is the world's largest financial market and the effective and efficient exchange of currencies underpins the international financial system. The FX market is also the basis of the global payments system, meaning the volume of transactions is very high and transactions are often executed by market participants across geographical borders. Globally coordinated regulation is therefore particularly important for the FX market and in our view benefits both regulators and market participants alike.

We are therefore very supportive of the Prudential Regulators taking an approach in the Proposal which fosters international harmonization, as well as harmonization with other U.S. regulators, with respect to margin requirements for swaps. This will help prevent fragmentation in the global markets and minimize the potential for regulatory arbitrage and competitive disparities.

1. Initial Margin ("IM") Requirements for Inter-affiliate Swaps

We support the Prudential Regulators' proposal to provide an exemption from IM requirements for inter-affiliate swaps. This will more closely align the Prudential Regulators' requirements with those of the Commodity Futures Trading Commission ("CFTC")[3] and other G20 regulators.

Inter-affiliate non-cleared OTC derivatives transactions are an important component of centralized risk management. Inter-affiliate transactions, which are often effected across borders, may facilitate more effective risk management, while aggregating trades across group companies and managing the risks on a portfolio basis can create scale efficiencies and netting benefits. Imposing margin on these

[1] Margin and Capital Requirements for Covered Swap Entities, Proposed rule and request for comment, 84 Fed. Reg. 59970 (Nov. 7, 2019) available at: https://www.govinfo.gov/content/pkg/FR-2019-11-07/pdf/2019-23541.pdf.

[2] Bank of America Merrill Lynch, Bank of New York Mellon, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds Bank, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, Royal Bank of Canada, Scotiabank, Societe Generale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

[3] *See* 17 C.F.R. § 23.159.

transactions could discourage affiliates from effectively and efficiently managing their risk exposures arising from non-centrally cleared OTC derivatives transactions.

To mitigate global fragmentation, we also encourage the Prudential Regulators to re-engage with their regulatory counterparts in Europe, the United Kingdom (subject to the outcome of Brexit) and Asia to consider making comparability and substituted compliance determinations similar to those made by the CFTC, with respect to margin requirements for uncleared swaps.

2. Compliance Period for IM Requirements

We support the addition of a sixth compliance phase for IM requirements, such that the compliance date for counterparties with average daily aggregate notional amounts ("AANA") from $50 billion to $750 billion would be September 1, 2020 and counterparties with AANA from $8 billion to $50 billion would have their compliance date extended to September 1, 2021.

This aligns with the international margin framework, as recently amended by the Basel Committee on Banking Supervision ("BCBS") and International Organization of Securities Commissions ("IOSCO")[4].

While the extension of the compliance period for counterparties with AANA from $8 billion to $50 billion will not solve all the challenges anticipated in the final phases, it does help from a practical and risk perspective as it reduces the potential for market disruption that could occur if all counterparties with AANA from $8 billion to $750 billion came into scope for IM requirements at the same time. It also gives both dealers and smaller market participants newly coming into scope of IM requirements a better opportunity to prioritize and manage their compliance efforts.

3. IM Trading Documentation

The Proposal would specify that IM trading documentation must be in place only at the time a covered swap entity is required to collect or post IM with respect to a counterparty. The Prudential Regulators should adopt this clarification. We also appreciate the confirmation provided in the Proposal that the custody agreement requirements in the current rules do not require these agreements to be in place before IM is required to be collected. This would align the Prudential Regulators' approach with the March 5, 2019 statement issued by BCBS and IOSCO[5] and the requirements of global regulators.

On a related point, we do note some concerns regarding the practicalities around the monitoring of margin exchange amounts for firms brought into scope for IM and readiness for IM exchange. In particular, we understand that asset managers handling separately managed accounts ("SMAs") will have great difficulty in anticipating the precise point in time at which their client crosses the $50 million IM threshold because they lack the requisite transparency to predict when the SMA client's aggregate

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[4] See BCBS and IOSCO, *Margin requirements for non-centrally cleared derivatives* (Jul. 2019).

[5] *See* BCBS/IOSCO statement on the final implementation phases of the *Margin Requirements for non-centrally cleared derivatives* (Mar. 5, 2019).

IM (across all of its asset managers) with a swap dealer and its affiliates is at or near the IM exchange threshold. We hope that the Prudential Regulators can consider this and engage with the industry as necessary and appropriate to ensure mitigation of any risks that could be implicated by these challenges for trading activity of in-scope firms.

4. Amendments to Legacy Swaps to Replace Certain Interest Rate Provisions

Lastly, we also request that the Prudential Regulators consider whether to extend the relief contemplated by the Proposal in respect of counterparties amending their swaps referencing LIBOR or other key interest rate benchmarks (which we support) to cover implementation of fallbacks in all derivatives, as opposed to only interest rate derivatives.[6]

The risk of cessation applies to all indices, including those based on foreign exchange, equities, commodities and credit, in addition to interest rates. Without the type of relief provided by the Proposal, market participants are unlikely to address a risk of cessation in legacy derivatives based on other, non-interest rate, benchmarks, including those referenced in foreign exchange. In certain jurisdictions, counterparties are required to address these risks.[7] At a global level, IOSCO recognized the importance of robust fallback provisions for all benchmarks in its January 2018 "Statement on Matters to Consider in the Use of Financial Benchmarks".[8]

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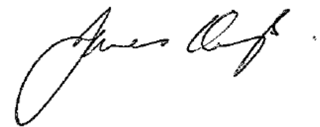
We greatly appreciate the opportunity to share our support for these elements of the Proposal. Please do not hesitate to contact Victoria Cumings on +1 212 313 1141, email vcumings@gfma.org should you have any questions or wish to discuss the above.

Yours sincerely,



James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

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[6] Relatedly, for reference, see the December 5, 2019 public publication by the European Supervisory Authorities ("ESAs") of "The introduction of fallbacks in OTC derivative contracts and the requirement to exchange collateral" (page 2 refers to the ESAs being mindful of the current efforts that counterparties continue to undertake in order to introduce such fall-backs in their legacy OTC derivative contracts across "all asset classes.").

[7] See Article 28(2) of the EU Benchmarks Regulation.

[8] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD589.pdf.