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Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

June 28, 2023

Dear Mr. Christopher Kirkpatrick:

This letter is a response to the notice of proposed rulemaking from the Commodity Futures Trading Commission (CFTC) regarding Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants (the “Proposal”). The RIN for this proposal and my submission is RIN 3038–AF21.

I am a professor of business law at Seton Hall Law School, and, among other things, previously practiced derivatives law in regulatory and transactional capacities at Sullivan & Cromwell LLP and Sidley Austin LLP. My scholarship focuses on derivatives and other financial markets. I write in my personal capacity, and the views expressed in this letter represent only my personal views. The views expressed in this letter are not the views of Seton Hall University, Seton Hall Law School, or anyone else associated with Seton Hall.

I write to respectfully urge you to clarify important risk management rules for the derivatives market as well as those that follow the market. As detailed further in this comment letter, my feedback relates to the distinct margin requirements applicable across various scenarios. Margin is a core risk management requirement that relates to micro- and macro-prudential risk (including systemic risk) as well as customer protection and the efficiency of regulated markets. However, the multiplicity of regimes and applicable rules make it difficult to navigate and comment on contemporary margin requirements.

Specifically, I respectfully request that the CFTC, as part of this current rulemaking, provide a chart or other simple summary explaining to what extent and subject to what conditions portfolio-based margining is available across the following products and scenarios:

1. Domestic futures and options executed through a designated contract market (DCM) with respect to margin posted (x) by one or more customers to their FCM, and (y) by an FCM to a derivatives clearing organization (DCO);
2. Foreign futures and options on products that could be listed on a DCM (as opposed to security-based futures and options) in the same two circumstances (x) and (y);

3. Cleared swaps margin posted (x) by one or more customers to their FCM, and (y) by an FCM to a derivatives clearing organization (DCO);
4. Uncleared swap margin posted to a swap dealer (or custodian retained for the swaps);
5. SEC regulated products (e.g., exchange traded futures and options that are based on a security or a narrow index, security-based swaps both on a cleared and uncleared basis) across the same scenarios.

As part of this requested guidance, please differentiate between (a) initial and variation margin, and (b) netting across positions of a specific customer and netting across positions (i) a futures commission merchant (FCM) maintains across clearing service customers, and (ii) a swap dealer (or security-based swap dealer) maintains across counterparties, and (c) product categories. Please include margin requirements from the CFTC, Securities and Exchange Commission, and banking regulators (as well as the self-regulatory organizations each of the agencies oversees).

The requested guidance would assist market participants as well as academics and others monitoring the market and its regulation in understanding risks and opportunities. It would also help the involved agencies identify where there was potential for regulatory arbitrage, inconsistencies, distortion or other unintended consequences. As identified in the Proposal, portfolio margining is a critical tool for balancing risk management with efficiency considerations. However, the scope of portfolio margining available to market participants across venues, product categories and other dimensions is a thicket that is difficult to penetrate. The requested guidance would also be helpful to junior agency and SRO employees with roles in regulating, supervising or enforcing in these markets as well as legal and compliance professionals serving at intermediaries.

In conclusion, I applaud your work and appreciate the ongoing elaboration of risk management requirements as applicable to separate accounts and other scenarios. I would be glad to hear from you at ilya.beylin@shu.edu to discuss these and related matters further whether via setting up a call or through correspondence.

Sincerely,

A handwritten signature in black ink that reads "Ilya Beylin". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Professor Ilya Beylin