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July 14, 2014

*Via European Banking Authority Portal*

European Banking Authority
European Insurance and Occupational Pensions Authority
European Securities and Markets Authority

Re: *Draft Regulatory Technical Standards on Risk-Mitigation Techniques for OTC-Derivative Contracts Not Cleared by a CCP*

Dear Sir or Madam:

ICI Global[1] appreciates the opportunity to provide comments on the consultation paper issued by the European Securities and Markets Authority, the European Banking Authority, and the European Insurance and Occupational Pensions Authority (collectively "European Supervisory Authorities" or "ESAs") on draft regulatory technical standards ("RTS") for margin requirements for non-centrally cleared OTC derivatives.[2] Under the European Market Infrastructure Regulation ("EMIR"), the ESAs are mandated to develop standards on specific aspects of the margin framework for non-centrally cleared OTC derivatives. To avoid regulatory arbitrage and to ensure a harmonized implementation of the margin requirements both at the EU level and globally, the ESAs seek in the draft RTS to ensure the international consistency of the margin framework for non-centrally cleared OTC derivatives.

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[1] ICI Global, an affiliate of the Investment Company Institute, is a global fund trade organization based in London; members include regulated US and non-US based funds publicly offered to investors in jurisdictions worldwide. ICI Global seeks to advance the common interests and to promote public understanding of global investment funds, their managers, and investors. Members of ICI Global manage total assets of $1.5 trillion in non-US funds. The Investment Company Institute is the national association of US investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $17.1 trillion and serve over 90 million shareholders.

[2] Consultation Paper on Draft Regulatory Technical Standards on Risk-Mitigation Techniques for OTC-Derivative Contracts Not Cleared by a CCP under Article 11(15) of Regulation (EU) No. 648/2012, April 14, 2014, *available at* http://www.esma.europa.eu/system/files/jc_cp_2014_03_cp_on_risk_mitigation_for_otc_derivatives.pdf ("Consultation Paper").

The final margin policy framework for non-centrally cleared derivatives developed by the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") is a significant achievement by the international regulators in coordinating an important aspect of derivatives reform agreed to by the G-20 countries.[3] We fully agree with the ESAs that it is critical that the principles and the requirements of the international framework are properly transposed into the RTS and applaud the ESAs' incorporation of many key elements of the BCBS/IOSCO Standards into the draft RTS.

We believe, however, that in two critical areas – collection of margin and application of the threshold for initial margin – the draft RTS are contrary to the intent of the international standards. We also believe certain modifications are necessary to the RTS to make them consistent with international standards and more workable for market participants.

Specifically, we make the following recommendations on the draft RTS:

- The RTS should require EU entities to post and collect initial and variation margin when transacting with non-EU counterparties as well as with EU counterparties. Requiring only the collection of margin by EU entities from non-EU counterparties would eviscerate the benefits of universal two-way margining as a method of reducing counterparty risk and the buildup of systemic risk.

- The RTS should not require counterparties to take a capital charge if they do not collect margin below the initial margin threshold. A requirement to take a capital charge in lieu of collecting margin below the threshold either would effectively eliminate the threshold because counterparties would not want to take a capital charge or would limit the availability of the threshold to entities that are subject to capital requirements.

- The RTS should require models developed by one counterparty for initial margin to be transparent to, and replicable by, the other counterparty. Full transparency would assist in verifying that margin is calculated appropriately and would allow the other counterparty to use the model to post and collect margin.

- The RTS should not impose a concentration limit for sovereign debt issued by certain countries that is both highly liquid and high quality. Indeed, we believe that the ESAs should

[3] Margin Requirements for Non-Centrally-Cleared Derivatives, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, September 2013, *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD423.pdf ("BCBS/IOSCO Standards").

be encouraging counterparties to use precisely this type of collateral to safeguard the derivatives markets.

- The RTS should adopt a phase-in period for the variation margin requirements similar to the phase-in for initial margin to provide adequate time for documentation between counterparties to reflect the numerous amendments that would be required to bring existing documentation into compliance with the RTS.

Background

Our members – US funds that are regulated under the Investment Company Act of 1940 ("ICA") and non-US regulated funds publicly offered to investors (collectively, "Regulated Funds") – use swaps and other derivatives in a variety of ways. Derivatives are a particularly useful portfolio management tool in that they offer Regulated Funds considerable flexibility in structuring their investment portfolios. Uses of swaps and other derivatives include, for example, hedging positions, equitizing cash that a Regulated Fund cannot immediately invest in direct equity holdings, managing a Regulated Fund's cash positions more generally, adjusting the duration of a Regulated Fund's portfolio, or managing a Regulated Fund's portfolio in accordance with the investment objectives stated in a Regulated Fund's prospectus. To employ non-centrally cleared derivatives in the best interests of fund shareholders, our members have a strong interest in ensuring that the derivatives markets are highly competitive and transparent.

ICI Global members, as market participants representing millions of shareholders, generally support the goal of providing greater oversight of the derivatives markets. Given that many derivatives transactions are conducted across multiple jurisdictions, we support efforts for real and meaningful coordination among regulators on how these regulations will be applied to market participants that engage in cross-border transactions. Therefore, we strongly supported the BCBS and IOSCO's efforts to implement consistent global standards for margin requirements for non-centrally cleared derivatives. We believe that, in transposing the BCBS/IOSCO Standards into European law, European regulations must accurately reflect the true intentions of those standards. Faithful transposition of the BCBS/IOSCO Standards into any national law is critical to avoiding duplicative or conflicting margin requirements on cross-border transactions, and we plan to engage with regulators to ensure that the BCBS/IOSCO Standards are adopted consistently around the world.

In that regard, we fully agree with the provisions of the draft RTS that incorporate key elements of the BCBS/IOSCO Standards. In particular, we support the determination by the ESAs to "maintain international consistency" and permit entities subject to the RTS to not collect initial margin on physically-settled foreign exchange ("FX") forwards and swaps or the principal in currency swaps. As we have noted to the BCBS and IOSCO, the risk profile for the FX forwards and swaps

market is markedly different from other derivatives markets and therefore warrants an exemption from the margin requirements.[4]

We also strongly support the recognition in the draft RTS that the initial margin threshold under which counterparties could agree not to exchange initial margin would apply for investment funds at the individual fund level. Specifically, the ESAs recognize that funds that are "managed by an investment advisor should be considered distinct entities and treated separately when applying the threshold."[5] Each fund or sub-fund in an umbrella structure (or series)[6] is a separate pool of securities with its own assets, liabilities, and shareholders. We agree that, to account appropriately for the potential counterparty risk associated with a particular derivatives transaction, the margin requirements should apply at the individual fund or sub-fund/series level.

We now turn to two areas in which we believe the Consultation Paper is contrary to the intent of the BCBS/IOSCO Standards and several areas in which we believe modifications to the draft RTS are necessary to make them more workable for market participants.

EU Entities Should be Required to Post Margin to Non-EU Entities

At first glance, the Consultation Paper appears to adopt the requirement in the BCBS/IOSCO Standards of universal two-way margining – a requirement that would involve the mandatory exchange of both initial and variation margin between parties to non-centrally cleared derivatives transactions. Although the Consultation Paper states that "both financial and non-financial counterparties will also be required to exchange two-way initial margin," it goes on to state that the draft RTS impose "an obligation on EU entities to collect margin . . . regardless of whether

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[4] Letter from Karrie McMillan, General Counsel, ICI, and Dan Waters, Managing Director, ICI Global, to Wayne Byres, Secretary General, Basel Committee on Banking Supervision, Bank for International Settlements, and David Wright, Secretary General, International Organization of Securities Commissions, dated March 14, 2013, *available at* http://www.ici.org/pdf/27111.pdf ("March 2013 ICI and ICI Global Comment Letter"); Letter from Karrie McMillan, General Counsel, ICI, and Dan Waters, Managing Director, ICI Global, to Wayne Byres, Secretary General, Basel Committee on Banking Supervision, Bank for International Settlements, and David Wright, Secretary General, International Organization of Securities Commissions, dated Sept. 27, 2012, *available at* http://www.ici.org/pdf/26529.pdf ("September 2012 ICI and ICI Global Letter").

[5] Consultation Paper, *supra* note 2, at 18.

[6] In the United States, in creating funds, a sponsor may establish each fund as a new, separately organized entity under state law or as a new "series company," which has the ability to create multiple sub-portfolios (*i.e.*, individual mutual funds) or series. Series funds are effectively independent for economic, accounting, and tax purposes but share the same governing documents and governing body.

they are facing EU or non-EU entities."[7] Moreover, the text of the draft RTS requires only the "collection of collateral"[8] but not posting of collateral.

We strongly believe that this aspect of the RTS is inconsistent with the international standards agreed to by the international regulators to require universal two-way margining between financial firms and systemically important non-financial entities. We acknowledge that the obligation to "collect" margin imposed on two EU counterparties would result in an "exchange" of collateral and would therefore achieve the objective of the BCBS/IOSCO Standards. In a cross-border transaction between an EU counterparty and a non-EU counterparty, the RTS, however, would only require the EU counterparty to collect collateral. In these cross-border transactions, the draft RTS, therefore, would not result in two-way margining because EU entities would not be required to post margin to their non-EU counterparties. We understand that the ESAs may have chosen to make this distinction because their focus is on the protection of EU entities rather than non-EU entities. This approach, however, significantly reduces the benefits of the margining regime for Europe as well as for other jurisdictions that have counterparties that engage in derivatives transactions with EU entities.

Two-way margin is an essential component of managing counterparty risk for derivatives transactions as well as for reducing systemic risk. The collection of two-way margin helps to protect the individual counterparties to a derivatives transaction. The purpose behind collecting margin is to cover exposures by ensuring that counterparties can meet their financial obligations. Two-way initial margin is the most effective risk reduction tool against residual counterparty credit risk. Two-way exchange of initial margin provides each counterparty protection against the future replacement cost in case of a counterparty default. Initial margin also helps to protect a party to a derivatives transaction from future credit risk posed by its counterparty. The daily collection of variation margin also serves to remove current exposure from the derivatives markets for all participants and to prevent exposures from accumulating.

We believe requiring EU entities to only "collect" margin rather than bilaterally exchange margin with non-EU entities leaves a significant volume of derivatives transactions outside the two-way margining regime, particularly given that the majority of derivatives transactions are conducted on a cross-border basis. Moreover, allowing EU dealers to only "collect" margin would allow the build-up of exposure by those that engage in substantial amount of derivatives transactions, which could threaten systemic stability. A counterparty to an EU dealer would, in the event of the dealer's insolvency, prefer recourse to margin posted to it rather than having to make a claim in an insolvency proceeding of the EU dealer. The ESAs clearly recognize the benefit of two-way margining by proposing in the Consultation Paper to require EU entities transacting between themselves to exchange margin.

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[7] Consultation Paper, *supra* note 2, at 7 (emphasis added).

[8] *Id.* at 22.

Although we recognize that some EU entities may be obligated to post margin to their non-EU counterparties by contract, we believe that not all non-EU market participants would have the bargaining power to require EU entities to post margin to them, particularly if the non-EU entities (such as Regulated Funds) are not required by their home country law to collect margin. In the United States, regulators may only impose margin requirements on swap dealers ("SDs") and major swap participants ("MSPs") because Section 4s(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") explicitly requires the adoption of rules establishing margin requirements for SDs and MSPs.[9] Regulated Funds may not be directly subject to margin requirements but would be required to comply with the margin requirements applicable to their counterparty, such as a US SD or an EU entity. Under the draft RTS, a US Regulated Fund transacting with an EU entity would be required to post margin to the EU entity but the EU entity would not be required to post to the US Regulated Fund. If US Regulated Funds are not required to collect margin from their counterparties under US law (because margin requirements are imposed only on SDs and MSPs), they may not have sufficient leverage to require their EU counterparties to post margin to them by contractual agreement.[10] We believe leaving a sizable portion of derivatives transactions outside the universal two-margining regime is inconsistent with the intent of the BCBS/IOSCO Standards and greatly diminishes the purposes of the margining regime. We, therefore, urge the ESAs to require EU entities to "post" as well as to "collect" margin for their uncleared derivatives transactions.

Counterparties Should Not be Required to Take a Capital Charge in Lieu of Initial Margin under Threshold

The Consultation Paper proposes a threshold level of €50 million under which initial margin would not have to be exchanged. When the amount of initial margin to be collected by a counterparty is below this threshold, the draft RTS would permit a counterparty to hold capital

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[9] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 77 FR 41109 (July 12, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16983.pdf; *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 FR 27621 (May 12, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-05-12/pdf/2011-10880.pdf; *Margin and Capital Requirements for Covered Swap Entities; Reopening of Comment Period*, 77 FR 60057 (Oct. 2, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/pdf/2012-24276.pdf; *Margin and Capital Requirements for Covered Swap Entities*, 76 FR 27563 (May 11, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/pdf/2011-10432.pdf.

[10] We continue to advocate strongly to US regulators for two-way margining. *See, e.g* Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated February 4, 2013, *available at* http://www.ici.org/pdf/26967.pdf; Letter from Karrie McMillan, General Counsel, ICI, to David A. Stawick, Secretary, CFTC, dated September 13, 2012, *available at* http://www.ici.org/pdf/26500.pdf.

against its counterparty exposure in lieu of collecting initial margin. We have two main concerns with this aspect of the draft RTS.[11]

First, we believe that requiring entities to take a capital charge will eliminate the threshold as a practical matter. In our experience, banks and dealers are generally unwilling to take a capital charge and, as a result, they will elect to collect margin rather than suffer a capital charge. According to the Consultation Paper, the threshold is intended to ensure that the "exchange of initial margin does not need to take place if a counterparty has no significant exposure to another counterparty."[12] If the purpose of the threshold is to alleviate the need to exchange margin for exposures that are considered "*de minimis,*" we do not see any reason to impose a capital charge in respect of the threshold amount. We urge the ESAs to eliminate the capital charge and to implement the €50 million threshold as intended by the BCBS/IOSCO Standards as discussed below. We believe eliminating this aspect of the draft RTS would not jeopardize the objectives of the new margining regime.

Second, the capital charge requirement would preclude entities like Regulated Funds and others that are not required to hold capital from using the initial margin threshold. Moreover, the capital charge requirement would place these types of entities at a competitive disadvantage compared to those financial counterparties that have the option of holding capital in lieu of collecting initial margin from their counterparties. For example, it is unlikely that EU entities that are subject to capital requirements would be willing to be assessed a capital charge in lieu of collecting margin but post margin to entities that are not subject to capital requirements. Therefore, as a practical matter, EU counterparties that are able to hold capital would use the threshold only with counterparties that also have the ability to hold capital so that neither party would need to post initial margin. Accordingly, the effect of the capital charge (at best) is to limit the use of thresholds between entities that are subject to capital requirements.

We are dismayed that the draft RTS would effectively limit the use of the initial margin thresholds to certain market participants – a result to which we had strenuously objected during the initial consultation by the BCBS and IOSCO.[13] Specifically, we recommended that the BCBS and IOSCO carefully consider the thresholds that would apply to various types of market participants to avoid creating an inappropriately unlevel playing field in this area. We urged the BCBS and IOSCO

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[11] Financial counterparties, such as banks, are already required to hold capital against counterparty credit risk exposures under Capital Requirements Directive IV. This requirement applies to those financial counterparties regardless of whether initial margin is exchanged (albeit initial margin may count as credit risk mitigation for the purposes of the capital calculation). Thus, it is unclear what the reference to capital in the draft RTS adds to the existing regulatory regime, especially given that no particular level of capital or means of calculating a capital charge has been specified.

[12] Consultation Paper, *supra* note 2, at 8.

[13] September 2012 ICI and ICI Global Letter, *supra* note 4, at 5-7.

not to limit use of thresholds to transactions between entities that are prudentially regulated and subject to minimum regulatory capital requirements or to permit the application of a higher threshold only when both counterparties are "prudentially-regulated." The BCBS and IOSCO agreed with our view, and the BCBS/IOSCO Standards permit the use of a threshold of €50 million for all types of counterparties rather than limit the use of thresholds to prudentially-regulated entities. The requirement in the draft RTS to hold capital up to the threshold level would appear to undermine the determination made in the BCBS/IOSCO Standards to permit the use of the threshold by all types of counterparties (including those that are not subject to capital requirements).

We, therefore, strongly recommend that the ESAs implement the threshold of €50 million as intended by the BCBS-IOSCO Standards. The €50 million threshold as it appears in the BCBS-IOSCO Standards would operate as a blanket threshold beneath which initial margin would not need to be exchanged, regardless of whether the counterparties retain capital against their exposure. Conforming the European regulatory regime to the BCBS-IOSCO Standards will help to ensure international convergence and to avoid regulatory arbitrage. Given that the BCBS-IOSCO Standards were supported by a quantitative impact study assessing the potential liquidity impact associated with mandatory margining requirements, following the BCBS-IOSCO approach also would help to ensure that the new EU collateral exchange regime does not have an excessive impact on collateral availability across Europe.

Additional Modifications to RTS Are Needed

*Initial Margin*

The RTS prescribe the methods that counterparties may use to calculate initial margin requirements: the standardized method and initial margin models. The draft RTS would require the models to comply with certain quantitative requirements and to be subject to an initial validation, periodical back-tests, and regular audit processes. The RTS also would require all key assumptions of the model, its limitations, and operational details to be documented appropriately.

The Consultation Paper contemplates that the draft RTS would permit initial margin models to either be developed by one or both of the counterparties or by a third-party agent.[14] We fully support this approach of permitting the use of models that have been developed by various entities that meet the criteria of the RTS. We request that if a proprietary model of a counterparty is being used, however, that the counterparty be required to provide full transparency of that model to its counterparty both to ensure that margin is being calculated appropriately and to permit the

[14] The counterparties would be required to notify the relevant competent authorities regarding the use of an initial margin model and be prepared to provide the relevant documentation. The documentation must be sufficient to ensure that any knowledgeable third party would be able to understand the design and operational details of the initial margin model.

counterparty to use the model. Not all entities will have the capacity to develop their own model and may choose to rely on a model that a counterparty has developed. In such a case, it is critical to ensure the integrity of the model by providing the other party with full transparency of the model, including the assumptions, limitations, and operational details.[15]

In addition, we note that the draft RTS would require the total amount of initial margin to be recalculated and collected at least when a new contract is executed, an existing contract expires, an existing contract triggers a payment, an existing contract is reclassified in terms of asset category, the initial margin model is recalibrated, or no initial margin recalculation has been performed in the last 10 days. We request that the recalculations and collections be required no more frequently than once a business day when multiple contracts are executed throughout the day or events occur for multiple contracts throughout the business day. We do not believe intraday calculations and collections are necessary, and they can increase operational risk. We also note that this frequency is consistent with the approach that has been taken with respect to the re-evaluation of collateral, which need only occur daily.[16]

*Collateral*

The RTS include a broad set of asset classes (*e.g.,* cash, gold, government securities, corporate bonds, specific securitizations, equities, UCITs) as eligible collateral but all collateral has to meet additional eligibility criteria such as low credit, market and FX risks. We support the proposal to permit a broad list of eligible collateral to allow counterparties to a derivatives transaction the flexibility to agree upon the appropriate collateral that may be posted for a particular transaction. A broad set of eligible collateral also has the advantage of minimizing the potential liquidity impact of the margin requirements.

For Regulated Funds, restricting collateral to a narrow range of permitted assets may force these funds to hold lower-yielding securities at an increased cost to fund shareholders and/or to hold assets that do not correspond to the fund's investment objectives. Moreover, forcing Regulated Funds to post a limited range of assets for collateral could result in funds being compared unfavorably to a benchmark. For example, an equity fund generally would not hold government securities other than for collateral purposes and holding such securities may result in the performance of such funds lagging behind their relevant benchmarks. Moreover, a restrictive collateral requirement may cause a Regulated Fund, for collateral purposes, to hold more cash than necessary or appropriate for its investment objectives and strategies. We, therefore, support the provisions of the draft RTS that

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[15] We recommend that the counterparty that creates the model be responsible for back-testing and auditing models. The party using the model should be required to initially validate and to complete limited due diligence periodically.

[16] Article 2 LEC, 1(a).

provide Regulated Funds and their counterparties the flexibility to negotiate the types of assets that each counterparty can post as collateral within the set of eligible collateral.

The draft RTS also include measures to prevent wrong-way risk on collateral and diversification requirements. The RTS generally would not allow own-issued securities as eligible collateral. The RTS include diversification requirements by restricting the amount that could be held as collateral for various asset classes. In particular, under the draft RTS, sovereign debt of a particular country may not account for more than 50% of the collateral collected for each counterparty. We recommend the removal of the 50% limit with respect to sovereign debt of certain jurisdictions that are commonly used by market participants because of their high quality and liquidity. We believe limiting the amount of collateral a counterparty can collect in these types of sovereign debt could increase risk to the counterparty rather than reduce risk. We suggest that the RTS include an exemption from the concentration limits for these types of sovereign debt. For example, an exemption could be provided for G-7 or G-20 countries or countries that satisfy the following criteria: (1) OECD Country Risk Classification of 0; (2) no ongoing International Monetary Fund or other multinational financial assistance program; and (3) marketable debt securities greater than 1% of total global marketable debt securities.

*Minimum Transfer Amount*

The RTS also propose a minimum transfer threshold whereby an exchange of collateral would be only necessary if the change in the margin requirements exceeds €500,000. For market participants that do not normally deal in Euros (including Regulated Funds that are not denominated in Euros), denominating the threshold level in Euros will cause operational difficulties. We request that entities for which Euros is not the entity's common or transacting currency be permitted to rely on an average exchange rate between Euros and its common currency calculated on a periodic (*e.g.,* monthly or yearly) basis with the resulting amount rounded to the nearest 100,000.

*Segregation Provisions*

The draft RTS would require segregation requirements to be in place to ensure that collateral is available if a counterparty defaults.[17] We fully support requirements to segregate a counterparty's collateral from proprietary assets and the provision to allow the posting counterparty the option of segregating its collateral from the assets of other posting counterparties (*i.e.,* individual segregation). In addition, operational and legal arrangements must be in place to ensure that the collateral is bankruptcy remote. With respect to the legal requirements, counterparties would be required to obtain satisfactory legal opinions in all relevant jurisdictions on whether the segregation arrangement meets the requirements of the RTS.

[17] The collecting counterparty must always provide the posting counterparty with the option to segregate its collateral from the assets of other posting counterparties.

We understand that obtaining a multi-jurisdictional legal opinion as required by the draft RTS would be difficult and extremely expensive. Instead, we believe requiring counterparties to ensure that the segregation arrangements meet the conditions of the RTS by appropriate means should be sufficient.

*Phase-in of Requirements*

The RTS propose that the requirements would enter into force on December 1, 2015, and the requirements for initial margin would be phased-in each year over a four-year period. Market participants belonging to a group that has an aggregate month-end average notional amount of non-centrally cleared derivatives exceeding €3 trillion would be subject to the requirements starting December 1, 2015. From December 1, 2019, any counterparty belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives exceeds €8 billion would be subject to the requirements. To avoid any retroactive effect of the RTS, margin requirements would apply to new contracts not cleared by a central counterparty ("CCP") entered into after the relevant phase-in dates. Exchanges of variation margin and initial margin on contracts not cleared by a CCP entered into before these dates would be subject to existing bilateral agreements. We fully support the phase-in schedule with respect to initial margin requirements, which we note is consistent with the BCBS/IOSCO Standards.

It appears from the Consultation Paper that compliance with the new variation margin requirements would begin on December 1, 2015 for all market participants. If the RTS include additional eligibility criteria for collateral as well as new diversification requirements, the existing collateral documentation between counterparties will have to be amended to reflect these new requirements. There will be an extraordinary number of agreements that will have to be renegotiated and executed before December 1, 2015, which would likely not be an adequate period of time for market participants to amend all the necessary agreements and adapt supporting collateral systems. We also are concerned that a short time period may result in Registered Funds and other counterparties being pressured to sign agreements with unfavorable terms to complete the process before the compliance deadline. We, therefore, recommend that the RTS adopt the same phase-in period for variation margin requirements that the RTS include for initial margin (with compliance starting first with the largest derivative market participants). If the ESAs, however, decide not to include a tiered phase-in period, we urge the ESAs to provide a minimum of 18 additional months (*i.e.,* July 1, 2017) for market participants to comply with the new variation margin requirements.

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We appreciate the opportunity to respond to the Consultation Paper. If you have any questions on our comment letter, please feel free to contact the undersigned, Susan Olson at +1-202-326-5813, Sarah Bessin at +1-202-326-5835, or Jennifer Choi at +1-202-326-5876.

Sincerely,

/s/

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cc: The Honorable Timothy G. Massad
The Honorable Mark P. Wetjen
The Honorable Scott D. O' Malia
The Honorable Sharon Bowen
The Honorable J. Christopher Giancarlo

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The Honorable Daniel M. Gallagher
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar