

MEMO# 30598

February 24, 2017

CFTC Division Issues No-Action Letter for Minimum Transfer Amounts of Margin for Uncleared Swaps

[30598] TO: ICI Members

Derivatives Markets Advisory Committee

ICI Global Trading & Markets Committee

Registered Fund CPO Advisory Committee

Securities Operations Advisory Committee SUBJECTS: Derivatives RE: CFTC Division Issues No-Action Letter for Minimum Transfer Amounts of Margin for Uncleared Swaps

The Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight ("DSIO") recently issued a no-action letter allowing CFTC-regulated swap dealers entering into swaps with certain "separately managed accounts" ("SMAs") owned by the same legal entity to treat each account as a separate counterparty when applying the minimum transfer amount ("MTA").^[1] The letter also permits registered funds with multiple managers managing separate "sleeves" of the fund to treat each sleeve separately as an SMA and to avoid having to exchange margin until the margin of the sleeve reaches an MTA up to \$50,000.

Background

The CFTC adopted final margin rules generally requiring swap dealers and certain other swap entities to post and collect initial and variation margin for uncleared swaps transactions.^[2] As part of the margin rules, swap dealers are permitted (but, not required) to apply an MTA of up to \$500,000 to transfers of initial and variation margin to "alleviate the operational burdens associated with making *de minimis* margin transfers."^[3] For funds with more than one sleeve, each managed by a separate sub-adviser, the MTA would be imposed at the fund (or, legal entity) level.

Applying the MTA at the fund level, however, presents practical challenges for funds. Fund managers cannot calculate MTA and cannot move collateral collectively across sleeves because the assets for each sleeve are held, transferred, and returned separately at the sleeve level. Swap dealers also typically enter into swaps with the asset manager of each sleeve, and each sleeve typically will have its own documentation with the swap dealer. As a result, margin movements for initial margin or variation margin cannot be netted across all the sleeves of a particular fund.

No-Action Relief

The letter provides no-action relief to swap dealers that do not comply with the MTA requirements with respect to one or more swaps with a legal entity (e.g., a registered fund) that is the owner of more than one SMA (e.g., a “sleeve”), subject to the following conditions:^[4]

1. An asset manager on behalf of the legal entity’s SMA enters into such swaps with the swap dealer pursuant to authority granted under an investment management agreement;
2. The swaps of such SMA are subject to a master netting agreement that does not permit netting of initial or variation margin obligations across the legal entity’s SMAs that have swaps outstanding with the swap dealer; and
3. The swap dealer applies an MTA no greater than \$50,000 to the SMA’s initial and variation margin collection and posting obligations required pursuant to CFTC regulations.

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endnotes

^[1] See CFTC Letter No. 17-12 (Feb. 13, 2017), *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-12.pdf>. The relief applies only to swap dealers and major swap participants for which there is not a prudential regulator.

^[2] For a summary of the CFTC’s uncleared margin rules, please see ICI Memorandum No. 29587 (Dec. 22, 2015), *available at* https://www.ici.org/my_ici/memorandum/memo29587. See also Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016) (“Final Rules”), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-01-06/pdf/2015-32320.pdf>.

^[3] See Final Rules at 653. See also 17 CFR §§23.152(b)(3) and 23.153(c).

^[4] As with all no-action letters, DSIO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief at its discretion.