

MEMO# 32020

October 22, 2019

CFTC Proposes Amendments to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

[32020]

October 22, 2019 TO: Derivatives Markets Advisory Committee

ICI Global Trading & Markets Committee

Securities Operations Advisory Committee RE: CFTC Proposes Amendments to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

The CFTC recently proposed two sets of amendments to its rules regarding margin requirements for uncleared swaps for swap dealers (SDs) and major swap participants (MSPs) for which there is no prudential regulator (together, “covered swap entities” or CSEs).[\[1\]](#) The proposed rules, which are subject to a 60-day comment period following publication in the *Federal Register*,[\[2\]](#) would (i) amend the rules’ compliance schedule consistent with July revisions by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) to the global framework on margin requirements for non-centrally cleared derivatives; and (ii) codify CFTC staff no-action relief providing that SDs are not subject to the CFTC’s margin rules when entering into uncleared swaps with the European Stability Mechanism (ESM). The CFTC’s proposed amendments are described briefly below.

Background

In July, BCBS and IOSCO revised the global framework on margin requirements for non-centrally cleared derivatives to delay the final implementation date by one year.[\[3\]](#) This would result in covered entities with an aggregate average notional amount (AANA) of uncleared swaps greater than €8 billion being subject to initial margin requirements on September 1, 2021, rather than September 1, 2020. To facilitate this extension, BCBS and IOSCO added an additional implementation phase whereby as of September 1, 2020 covered entities with an AANA of uncleared swaps greater than €50 billion will be subject to initial margin requirements. Earlier this month, the FDIC and other US prudential regulators proposed amendments to their rules on margin and capital requirements for covered swap entities, consistent with BCBS/IOSCO’s recent revisions.[\[4\]](#)

Proposed Amendments to Compliance Dates

Consistent with the revisions by BCBS/IOSCO to the global framework on margin requirements for non-centrally cleared derivatives, the CFTC proposes to extend the compliance schedule for initial margin under its rules to September 1, 2021. The CFTC proposes to do this by amending its margin rules to add a sixth phase of compliance for initial margin, so that CSEs and covered counterparties with an AANA ranging from \$50 billion up to \$750 billion would be required to comply by September 1, 2020, and all other remaining CSEs and covered counterparties, including financial end-user counterparties exceeding a material swap exposure threshold of \$8 billion in AANA, would be required to comply by September 1, 2021. The CFTC's Office of Chief Economist estimated that total AANA for entities that would be subject to the one-year extension is only about three percent of the total AANA across all of the compliance phases.^[5]

Proposed Amendments to Exclude the ESM from the CFTC's Margin Rules

Currently, the CFTC's margin rules exclude swap transactions between CSEs and counterparties that are sovereign entities, multilateral development banks, the Bank for International Settlements, and several other specified categories of entities.^[6] In 2017, the CFTC staff issued a no-action letter that provides relief from the CFTC's margin rules for CFTC-registered swap dealers entering into uncleared swaps with the ESM.^[7] The CFTC proposes to amend the margin rules to codify the staff relief. The CFTC notes that, contemporaneously with the issuance of the proposed amendments, the CFTC staff issued a revised no-action letter to phase out the relief provided under CFTC Letter 17-34.^[8] The revised no-action letter provides relief until the earlier of: (i) April 14, 2020, or (ii) the effective date of final CFTC action on the proposed amendments.

Related CFTC Staff Relief

Consistent with BCBS/IOSCO statements, the CFTC staff in July issued guidance confirming that the CFTC's margin rules do not require documentation governing the posting, collection and custody of initial margin until the initial margin threshold amount exceeds \$50 million.^[9] In June, the CFTC staff issued no-action relief from the CFTC margin rules for certain amendments to legacy swaps.^[10]

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endnotes

^[1] See *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 84 Fed.Reg. 56392 (Oct. 22, 2019), available at <https://www.cftc.gov/sites/default/files/2019/10/2019-22955a.pdf> (comments due Dec. 23, 2019) and <https://cftc.gov/PressRoom/PressReleases/8054-19>. For a summary of the CFTC's margin rules, please see ICI Memorandum No. 29587 (Dec. 22, 2015), available at https://www.ici.org/my_ici/memorandum/memo29587.

^[2] At this time, ICI does not anticipate filing a comment letter. If you have comments or concerns, however, please let us know as soon as possible.

[3] See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD635.pdf>.

[4] For a summary of the prudential regulators' proposed amendments, *please see* ICI Memorandum No. 31989 (Oct. 1, 2019), *available at* https://www.ici.org/my_ici/memorandum/memo31989.

[5] See Richard Haynes, Madison Lau, and Bruce Tuckman, *Initial Margin Phase 5* (Oct. 24, 2018), *available at* https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.

[6] See 17 CFR 23.151.

[7] See CFTC Letter No. 17-34 (July 23, 2017), *available at* <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-34.pdf>.

[8] See CFTC Letter No. 19-22 (Oct. 16, 2019), *available at* <https://cftc.gov/csl/19-22/download>.

[9] See CFTC Letter No. 19-16 (July 9, 2019), *available at* <https://cftc.gov/csl/19-16/download>.

[10] See CFTC Letter No. 19-13 (June 6, 2019), *available at* <https://cftc.gov/csl/19-13/download>.