

MEMO# 28512

November 6, 2014

CFTC Staff Issues Interpretation Regarding Notification of Right to Segregate Margin for Uncleared Swaps

[28512]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 75-14 RE: CFTC STAFF ISSUES
INTERPRETATION REGARDING NOTIFICATION OF RIGHT TO SEGREGATE MARGIN FOR
UNCLEARED SWAPS

On October 31, 2014, the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“CFTC”) issued an interpretation of Regulations 23.701 and 23.704, which impose certain notification and reporting obligations on swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to margin posted by their counterparties in uncleared swap transactions. [\[1\]](#)

The Division provides the following clarifications.

First, the Division takes the view that an SD or MSP must provide annual notification to each counterparty to an uncleared swap transaction of such counterparty’s right to elect to require segregation of initial margin in any calendar year in which the SD or MSP enters into a new uncleared swap transaction with the counterparty. The annual notification requirement would be applicable regardless of whether a counterparty has previously chosen segregation of its initial margin.

Second, the annual notification and quarterly reporting requirements are not applicable if no initial margin is required to be posted by a counterparty or collected by an SD or MSP either by contract or regulation.

Third, an SD or MSP is not prohibited from relying on negative consent to comply with its obligation to obtain from its counterparty a confirmation of the counterparty’s receipt of the annual notice provided by the SD or MSP and the counterparty’s election to require or not require segregation. With respect to annual notifications, SDs and MSPs may rely on negative consent (provided appropriate notification and absent a counterparty response) but the negative consent presumption should be toward the continuation of segregation in cases where a counterparty previously elected such an option.

Jennifer S. Choi
Senior Associate Counsel Securities Regulation

endnotes

[1] See CFTC Letter No. 14-132 (Oct. 31, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-132.pdf>. For a summary of the final rules on segregation of margin for uncleared swaps, see ICI Memorandum No. 27690 (Nov. 8, 2013), available at http://www.ici.org/my_ici/memorandum/memo27690.

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