

**MEMO# 32559**

June 26, 2020

# Update on FDIC and CFTC Amendments to Margin Requirements for Non-Cleared Swaps

[32559]

June 26, 2020 TO: ICI Members

ICI Global Members

Derivatives Markets Advisory Committee

ICI Global Trading & Markets Committee

LIBOR Transition Working Group SUBJECTS: Compliance

Derivatives

International/Global

Investment Advisers

Trading and Markets RE: Update on FDIC and CFTC Amendments to Margin Requirements for Non-Cleared Swaps

On June 25, several federal financial regulators—including the Federal Deposit Insurance Corporation (FDIC) and the Commodity Futures Trading Commission (CFTC)—approved actions related to initial margin requirements for non-cleared swaps with respect to covered swap entities (CSEs). These actions and the provisions of interest are summarized below.

## FDIC Amendments to Margin Requirements

The FDIC, along with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Farm Credit Administration, and Federal Housing Finance Agency (collectively, the “prudential regulators”) approved a joint final rule<sup>[1]</sup> that, among other things,

- establishes an additional “Phase 6” compliance date (September 21, 2021) for initial margin requirements for non-cleared swaps and clarifies the point in time at which trading documentation must be in place; and
- allows “legacy swaps” to retain their legacy status for margin requirement purposes if CSEs and counterparties amend those swaps to replace an interbank offered rate (IBOR) reference interest rate, such as LIBOR, or another discontinued rate.<sup>[2]</sup>

Further, the prudential regulators approved a separate interim final rule to defer Phase 5 and Phase 6 compliance with initial margin requirements for an additional year until September 1, 2021 and September 1, 2022, respectively.<sup>[3]</sup> The prudential regulators issued the rule to provide additional time for compliance due to the operational challenges

and risk management demands caused by the COVID-19 pandemic.<sup>[4]</sup> The interim final rule will be effective 61 days from publication in the Federal Register and comments are due 60 days after the date of publication.

## **CFTC Proposal to Defer Phase 6 Compliance with Margin Requirements**

The CFTC issued a proposed rule to defer Phase 6 compliance with initial margin requirements for an additional year to September 1, 2022.<sup>[5]</sup> Comments to the proposed rule are due 60 days after publication in the Federal Register.

The CFTC previously issued a separate interim final rule deferring Phase 5 compliance for an additional year until September 1, 2021.<sup>[6]</sup>

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### **endnotes**

<sup>[1]</sup> See Margin and Capital Requirements for Covered Swap Entities; Final Rule (June 25, 2020), *available* at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200625b2.pdf>. We previously provided a summary of the jointly proposed rule. See ICI Memorandum No. 31989, FDIC Proposes Amendments to Margin and Capital Requirements for Covered Swap Entities (Oct. 1, 2019), *available* at [https://www.ici.org/my\\_ici/memorandum/memo31989#\\_ftn1](https://www.ici.org/my_ici/memorandum/memo31989#_ftn1).

<sup>[2]</sup> The final rule would also allow for “follow-on” amendments where the swap may need to be amended more than once, e.g., contractual changes necessary to maintain the economics of the swap after a reference rate change. However, swaps would not be allowed to maintain their legacy status if such amendments extend the maturity or increase the total effective notional amount of the swap, except for conditional extensions and increases as necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

<sup>[3]</sup> See Margin and Capital Requirements for Covered Swap Entities; Interim Final Rule (June 25, 2020), *available* at <https://www.fdic.gov/news/board/2020/2020-06-25-notice-dis-b-ifr.pdf>.

<sup>[4]</sup> The deferrals are consistent with the Basel Committee on Banking Supervision and the International Organization of Securities Commissions’ (BCBS/IOSCO) recent revisions to the implementation schedule for margin requirements for non-centrally-cleared derivatives. See ICI Memorandum No. 32351, BCBS and IOSCO Announce Deferral of Final Implementation Phases of UMR (Apr. 3, 2020), *available* at [https://www.ici.org/my\\_ici/memorandum/memo32351](https://www.ici.org/my_ici/memorandum/memo32351). We previously joined a letter to BCBS and IOSCO requesting that they recommend deferring Phase 5 and 6 compliance. See ICI Memorandum No. 32323 (Mar. 26, 2020), *available* at [https://www.ici.org/my\\_ici/memorandum/memo32323](https://www.ici.org/my_ici/memorandum/memo32323).

[5] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Proposed Rule (June 25, 2020), *available at* <https://www.cftc.gov/media/4071/votingdraft062520d/download>.

[6] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Interim Final Rule (May 28, 2020), *available at* <https://www.cftc.gov/media/3916/votingdraft052820b/download>.

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