

MEMO# 29587

December 22, 2015

CFTC Adopts Final Margin Requirements for Uncleared Swaps

[29587]

December 22, 2015

TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 91-15
REGISTERED FUND CPO ADVISORY COMMITTEE
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: CFTC ADOPTS FINAL MARGIN
REQUIREMENTS FOR UNCLEARED SWAPS

The Commodity Futures Trading Commission (“CFTC” or “Commission”) recently adopted final rules (“Final Rules”) that establish initial and variation margin requirements for swap dealers (“SDs”) and major swap participants (“MSPs”) that are not regulated by a prudential regulator (collectively, covered swap entities or “CSEs”). [\[1\]](#) The Final Rules follow the recent adoption by the U.S. prudential regulators of joint final margin and capital rules for uncleared swaps, and are substantially similar to those rules in most respects, except as highlighted below. [\[2\]](#) The Final Rules also are substantially similar in most respects to the final policy framework issued by the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) establishing minimum standards for margin requirements for non-centrally cleared derivatives. [\[3\]](#) While the Proposed Rules also addressed the cross-border application of the CFTC’s margin rules, the Final Rules do not address these issues. Rather, the CFTC states that it will address these issues in a separate rulemaking.

The CFTC has also adopted, and requested comment on, an interim final rule that will exempt certain uncleared swaps with specified counterparties from the Final Rules. The interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (“TRIPRA”), and provides relief from the margin requirements to certain types of non-financial entities and cooperative entities that qualify for an exception or exemption from the clearing requirements. [\[4\]](#)

The Final Rules, as relevant to registered funds, are summarized below.

Products Covered

The Final Rules apply to uncleared swaps that are executed after the applicable compliance date. Physically settled foreign exchange (“FX”) swaps and FX forwards, and the fixed, physically settled FX transactions associated with the exchange of principal in cross-currency swaps are not subject to the margin requirements. The Final Rules define

“uncleared swap” to also include swaps that are not cleared by a derivatives clearing organization (“DCO”), or by a DCO that the CFTC has exempted from registration by rule or exemptive order, but not by those DCOs excluded by no-action letter, as proposed.

Categories of Counterparties

According to the CFTC, because different types of counterparties can pose varying levels of risk, the nature of a CSE’s obligations differ under the Final Rules depending on the type of counterparty. The three categories of counterparties under the Final Rules are substantially similar to the Proposed Rules: (1)SDs and MSPs; (2) financial end users; and (3) non-financial end users. [\[5\]](#)

“Financial end user” includes any entity that (1) is not an SD or MSP and (2) is specified in the definition. The definition lists entities whose business is financial in nature, including, among others, an investment company registered under the Investment Company Act of 1940, an investment adviser registered under the Investment Advisers Act of 1940, a broker-dealer, a private fund, a commodity pool, a commodity pool operator, and a commodity trading advisor. [\[6\]](#) For foreign entities, the CSE is required to determine whether a foreign counterparty would fall within another prong of the financial end user definition if the foreign entity were organized under the laws of the United States or any state. [\[7\]](#)

The CFTC has made several changes to the definition of “financial end user” in the Final Rules, including the following. To conform to the Prudential Regulators’ definition, the CFTC added business development companies to the definition in its Final Rules. The CFTC also added three entities registered with the Commission to the list of financial end users (floor brokers, floor traders, and introducing brokers), as well as security-based swap dealers and major security-based swap participants. The CFTC further broadened section (xi) of the definition to include other types of entities and persons that primarily engage in trading, investing, or in facilitating the trading or investing in loans, securities, swaps, funds or other assets. It has excluded those Treasury affiliates acting as principal that the CFTC has excepted by rule, a provision that is not included in the Prudential Regulators’ Final Rules. In response to comments, the CFTC removed the provision that would have permitted the CFTC to designate additional entities as financial end users if it were to identify additional entities whose activities and risk profile would warrant inclusion.

Under the Final Rules, a CSE is required to exchange initial margin with a financial end user that has “material swaps exposure.” In response to comments by the ICI and others, and consistent with the Prudential Regulators’ Final Rules and the BCBS/IOSCO Final Margin Policy Framework, the CFTC raised the threshold for “material swaps exposure” from \$3 billion to \$8 billion. An entity has “material swaps exposure” if the entity and its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, FX forwards and FX swaps with all counterparties for June, July, and August of the previous year that exceeds \$8 billion. [\[8\]](#) The CFTC and Prudential Regulators did not exclude FX from this calculation, as ICI and other commenters requested.

In response to comments of ICI and others, however, the CFTC revised its definition of “margin affiliate,” which applies in determining material swaps exposure, as well as other key aspects of the Final Rules discussed below, including calculation of the initial margin threshold amount, and determining the applicable compliance date. The CFTC replaced its definition in the Proposed Rules with a definition based on financial accounting concepts in order to determine whether an entity has control over another entity. [\[9\]](#) The Commission notes that, under the revised definition, investment funds that share an investment adviser

or investment manager generally would not be affiliates. [\[10\]](#) The Commission explains that the Prudential Regulators adopted a similar definition of affiliate but, unlike the Commission, reserved in their definition the right to include any other entity as an affiliate or subsidiary based on a conclusion that either company provides significant support to, or is materially subject to, the risks or losses of, the other company. [\[11\]](#)

“Non-financial end user” is defined as a counterparty that is not an SD, an MSP, or a financial end user. [\[12\]](#) The Final Rules, like the Proposed Rules, do not require CSEs to exchange margin with non-financial end users. The CFTC’s Final Rules differ from the Prudential Regulators’ Final Rules in that they do not require a CSE to collect initial margin from an affiliate, subject to certain conditions, although, like the Prudential Regulators’ Final Rules, they require posting and collection of variation margin with affiliates that are swap entities or financial end users. [\[13\]](#)

Collecting and Posting of Margin

A CSE must calculate its minimum initial margin requirement in one of two ways: (a) based on a standardized margin schedule that allows for netting and offsetting of exposures; [\[14\]](#) or (b) based on an internal margin model that satisfies certain specified conditions. [\[15\]](#) The CFTC’s Final Rules regarding the standardized margin schedule and requirements for internal margin models are substantially similar to the Prudential Regulators’ Final Rules with one key difference – the CFTC’s Final Rules permit a registered futures association (“RFA”) to approve internal models. [\[16\]](#) Currently, the National Futures Association is the only RFA.

Initial Margin

The Final Rules, like the Prudential Regulators’ Final Rules, do not require a CSE to collect or post initial margin if the aggregate un-margined exposure either to or from its counterparty remains below \$50 million, which is lower than the \$65 million threshold set forth in the Proposed Rules. The reduced amount is attributable to significant changes in the euro-U.S. dollar exchange rates on which the initial \$65 million threshold was based. The \$50 million initial margin threshold is applied on a consolidated entity level across all non-exempted, uncleared swaps between a CSE and its affiliates and the counterparty and the counterparty’s affiliates to preclude swap entities from creating legal entities to evade margin requirements. Moreover, this \$50 million initial margin threshold is a minimum requirement and does not prevent parties from contracting with each other to exchange margin when exposures to one another are less than \$50 million. In determining the initial margin collection amount and threshold, the CFTC specifically noted that separate sleeves within a fund (e.g., sleeves managed by different sub-advisers) that are generally managed under documentation that limits the asset manager’s ability to incur liability for those portions cannot be treated separately, as all the swaps of the fund are transacted on behalf of a single legal principal. [\[17\]](#)

As under the Proposed Rules, the Final Rules would require bilateral margining. A CSE is required under the Final Rules to exchange initial margin with a financial end user that has material swaps exposure on a daily basis, beginning on or before the business day after execution of a swap with that counterparty, in an amount at least as large as calculated by a model-based method or the standardized table-based method, less any permitted initial margin threshold amount. [\[18\]](#) CSEs must collect and post initial margin each business day based on the initial margin amount calculated for that portfolio by the CSE on the previous business day. [\[19\]](#)

Variation Margin

The Final Rules also require a CSE to collect variation margin from, and to pay variation margin to, a counterparty that is a swap entity or a financial end user (regardless of whether they have material swaps exposure), beginning on or before the business day after execution for each swap with that counterparty. The amount of variation margin to be collected or posted (as appropriate) equals the cumulative mark-to-market change in value to a CSE of an uncleared swap, as measured from the date it is entered into (or, in the case of an uncleared swap that has a positive or negative value to a CSE on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the CSE of an uncleared swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such uncleared swap. Consistent with comments of ICI and others, the Final Rules clarify that the change in values typically would be based on mid-market prices if agreed to by the parties. The CSE must collect this amount if the amount is positive and post this amount if the amount is negative. [\[20\]](#)

The rules require variation margin to be posted or collected on a transaction date plus one or “T+1” timeframe and requires variation margin to be posted or collected no less than once daily beginning on the business day following the day of execution.

Minimum Transfer Amounts

No collection or posting of margin is required unless and until the combined amount of initial and variation margin that must be collected or posted but not yet exchanged exceeds \$500,000. [\[21\]](#) The Agencies believe that this minimum transfer amount will alleviate the operational burdens associated with making de minimis margin transfers and that the amount applies to both initial and variation margin on a combined basis.

A CSE is permitted to calculate initial margin or variation margin on an aggregate net basis across uncleared swap transactions with a counterparty that are executed under an Eligible Master Netting Agreement (“EMNA”). [\[22\]](#) The internal model approach for computing initial margin, however, only permits portfolio offsets for swaps within the same asset class (i.e., commodities, credit, equity or foreign exchange/interest rate) that are governed under the same asset class. Consistent with comments of ICI and others, as well as the Prudential Regulators’ Final Rules, the CFTC Final Rules permit parties to document in a single EMNA two separate netting sets, one for uncleared swaps that are subject to the final rules and one for swaps that are not subject to the margin requirements. A netting portfolio that contains only uncleared swaps entered into before the applicable compliance date is not subject to the requirements of the rules. Any netting portfolio that contains any uncleared swap entered into after the applicable compliance date, however, will subject the entire netting portfolio to the requirements of the rules. Thus, the separate netting portfolios allow a CSE to avoid subjecting its pre-compliance date swaps to the margin requirements, while still maintaining both its pre- and post-compliance date swaps under a single EMNA. Similarly, separate netting portfolios can be established for swaps entered into before and after a financial end user’s change into a higher risk status, thus the pre-status change swaps would not be subject to the stricter margin requirements.

Eligible Collateral

The Final Rules limit the types of collateral that are eligible to be used for initial and variation margin. The Final Rules on eligible collateral have been expanded from the Proposed Rules, and are substantially similar to the Prudential Regulators’ Final Rules.

Under the Final Rules, eligible collateral for initial margin includes cash (denominated in any “major currency” [\[23\]](#) or the currency of settlement [\[24\]](#)), debt securities that are issued or guaranteed by the U.S. or another agency, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, multilateral development banks, certain debt securities of government sponsored enterprises, certain foreign government debt securities, certain corporate debt securities, certain listed equities, shares in certain pooled investment vehicles, [\[25\]](#) and gold.

Eligible collateral for variation margin depends on the counterparty the CSE is facing. For swaps between a CSE and another swap entity, eligible collateral is limited to only immediately available cash funds denominated in U.S. dollars, another major currency or the currency of settlement. In response to comments of ICI and others, the Final Rules, like the Prudential Regulators’ Final Rules, permit a CSE facing a financial end user to exchange variation margin using any of the collateral permitted for initial margin collateral rather than only cash as proposed.

To avoid “wrong-way” risk, the Final Rules, like the Proposed Rules, exclude securities issued by a bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, or any company that would be one of the foregoing if it is organized under the U.S. or a state, or an affiliate of one of the foregoing. The rules do not allow a CSE to fulfill the minimum margin requirements with assets that are not on the eligible collateral list.

Non-cash collateral is subject to a “haircut” or discount. [\[26\]](#) In addition, the rules impose an eight percent cross-currency haircut on eligible collateral denominated in a currency other than the currency of settlement, except that variation margin in immediately available cash funds in any major currency would not subject to a haircut. [\[27\]](#) If the value of collateral decreases or the quality of the collateral has deteriorated so that it no longer qualifies as eligible collateral, the CSE must collect or post additional collateral of sufficient value and quality to ensure that all minimum margin requirements are satisfied daily.

The rules also permits CSEs to collect or post initial or variation margin that is not required pursuant to the rule in any form of collateral.

Collateral Segregation

Any initial margin (up to the amount required by the rules) that a CSE collects or posts with respect to an uncleared swap must be held at one or more custodians that are not affiliated with either the CSE, the counterparty or their margin affiliates (each, a “third-party custodian”). Therefore, under the Final Rules, a registered fund would not be able to engage in an uncleared swap transaction with an affiliate of its independent custodian if it has to post margin under the Final Rules. [\[28\]](#) Although ICI had requested that third-party custodian protections extend to excess initial margin, and that the CFTC require CSEs to provide the option of third-party segregation to those non-CSE counterparties that are subject to third-party custody requirements with respect to their variation margin, such as registered funds, the CFTC did not include these protections in the Final Rules.

The custodial agreement must prohibit the custodian from transferring the initial margin or other property, except that any cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase other forms of eligible collateral. Notwithstanding the prohibition on transfer, a posting party may substitute or direct any reinvestment of collateral if the posting party substitutes only funds or other property that are eligible collateral and the amount net of applicable discounts continues to

be sufficient to meet the initial margin requirements.

Under the Final Rules, any funds or property held by a third-party custodian in excess of the amounts required to be collected or posted are not subject to the restrictions on substitution or reinvestment or held by an independent custodian. The Final Rules do not require any variation margin collected or posted to be held by a third-party custodian or subject such collateral to restrictions on transfer.

In addition, because cash funds generally are treated as a general deposit by a bank in exchange for a contractual debt obligation and such obligations raise heightened risks, the CFTC, like the Prudential Regulators, permitted cash funds that are placed with a custodian bank in return for a general deposit obligation to serve as initial margin collateral only in specified circumstances. Specifically, the Final Rules require the posting party to direct the custodian to re-invest the deposited funds into eligible non-cash collateral of some type, or the posting party must deliver non-cash collateral to substitute for the deposited funds (with appropriate haircuts).

Documentation of Margin Matters

Under the Final Rules, a CSE must execute trading documentation with each counterparty that is a swap entity or a financial end user. The documentation must provide the CSE the contractual right and obligation to collect and post initial and variation margin in such amounts, and in such forms, and under such circumstances as required by the Final Rules. The documentation also must specify the methods, procedures, rules, inputs, and data sources for determining the value of each uncleared swap for purposes of calculating variation margin and the procedures by which any disputes concerning the valuation of uncleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved. Finally, the documentation also must describe the methods, procedures, rules, inputs, and data sources used to calculate initial margin for uncleared swaps entered into between the CSE and the counterparty. The CFTC had proposed certain documentation requirements for non-financial end users but declined to adopt documentation requirements for non-financial end users in the Final Rules.

Compliance Dates

The compliance dates are consistent with the dates adopted by the Prudential Regulators and the delay in implementation of the BCBS/IOSCO Final Margin Policy Framework. [\[29\]](#) The margin requirements apply to uncleared swaps entered into on or after the applicable compliance dates, which include swaps entered into prior to the compliance date but that are amended, novated, or create new derivatives as a result of portfolio compression of legacy derivatives. Once a CSE and its counterparty must comply with the margin requirements for uncleared swaps, the CSE and its counterparty will remain subject to the margin requirements from that point forward unless there is a change in the status of the counterparty. If a CSE's counterparty becomes subject to stricter margin requirements, then the CSE shall comply with the stricter margin requirements for any uncleared swap entered into with the counterparty after the status change. If a CSE's counterparty becomes subject to less strict margin requirements, then the CSE may comply with the less strict margin requirements for any swap entered into with that counterparty after the status change, as well as for any uncleared swap entered into after the compliance date and before the status change.

Initial Margin

For purposes of initial margin, the compliance dates range from September 1, 2016 to

September 1, 2020 depending on the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, FX forwards and FX swaps (collectively, covered swaps) of the CSE and its counterparty (accounting for their respective affiliates):

Compliance Date

Initial Margin Requirements in which both the CSE and counterparty (including their affiliates) have an average daily aggregate notional amount of covered swaps for March, April and May of the compliance date year that exceeds:

September 1, 2016

\$3 trillion

September 1, 2017

\$2.25 trillion

September 1, 2018

\$1.5 trillion

September 1, 2019

\$0.75 trillion

September 1, 2020

Initial margin for any other CSE with respect to covered swaps with any other counterparty

Variation Margin

For purposes of variation margin, the compliance dates are September 1, 2016 and March 1, 2017. These compliance dates depend on the average daily aggregate notional amount of covered swaps of the CSE combined with its affiliates and each of its counterparties (combined with that counterparty's affiliates) for each business day in March, April and May of the compliance date year.

Compliance Date

Variation Margin Requirements in which both the CSE and each its counterparty (including their affiliates) have an average daily aggregate notional amount of covered swaps for March, April and May of the compliance date year that exceeds:

September 1, 2016

\$3 trillion

March 1, 2017

Variation margin for any other CSE with respect to covered swaps with any other

counterparty that is a swap entity or financial end user.

Sarah A. Bessin
Associate General Counsel

endnotes

[1] *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, available at: <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister121615.pdf> (“Adopting Release”). For a summary of the proposed rules (“Proposed Rules”), see ICI Global Memorandum No. 28416 (Sept. 30, 2014), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo28416>.

[2] For a summary of the recent rules adopted by the prudential regulators (“Prudential Regulators’ Final Rules”), please see ICI memorandum No. 29484 (Nov. 12, 2015), available at https://www.ici.org/my_ici/memorandum/memo29484.

[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.bis.org/publ/bcbs261.pdf> (“BCBS/IOSCO Final Margin Policy Framework”).

[4] Comments on the interim final rule are due 30 days after publication of the Final Rules in the *Federal Register*.

[5] The Prudential Regulators’ Final Rules distinguish among four types of swap counterparties: (1) counterparties that are themselves swap entities; (2) counterparties that are financial end users with a material swaps exposure; (3) counterparties that are financial end users without a material swaps exposure; and (4) other counterparties. The obligations of an SD/MSP, however, are substantially similar under both proposals.

[6] See §23.151.

[7] In response to comments, the CFTC notes in the Adopting Release that CSEs may rely on good faith representations from their counterparties as to whether they are financial end users under the Final Rules. Adopting Release, *supra* note 1, at 26.

[8] But note that the threshold under the BCBS/IOSCO Final Margin Policy Framework, which is €8 billion, is calculated on a different basis: on the aggregate month-end average notional amount of non-centrally cleared derivatives for June, July and August of the year. While ICI and others encouraged the CFTC and the Prudential Regulators to conform to the BCBS/IOSCO calculation method, they did not do so.

[9] Under the Final Rules, a company is a “margin affiliate” of another company if: (1) either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards, (2) both companies are consolidated with a third

company on a financial statement prepared in accordance with such principles or standards, or (3) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) would have occurred if such principles or standards had applied. §23.151.

[10] Adopting Release, *supra* note 1, at n.81. Although the CFTC acknowledges the definition may create an affiliation between a fund and its adviser, for purposes of the Final Rules, during the fund's seeding period, which the CFTC believes is appropriate. *Id.* at 44.

[11] *Id.* at 43.

[12] See §23.151.

[13] See §23.159. A CSE is not required to collect initial margin from a margin affiliate if: (i) the swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the margin affiliate as required by all applicable margin rules [§§ 23.150-23.161]. The rule further provides, however, that a CSE shall post initial margin to any margin affiliate that is a swap entity subject to the Prudential Regulators' Final Rules in the same amount that the swap entity is required to collect pursuant to the Prudential Regulators' Final Rules. The CFTC Final Rules provide that, with certain exceptions, however, a CSE must collect initial margin from foreign margin affiliates that meet certain criteria.

[14] See §23.154(c).

[15] See §23.154(b).

[16] *Id.*

[17] ICI and other commenters had requested that the initial margin threshold be applied separately to separate sleeves of a fund.

[18] For purposes of determining the day of execution of a swap, the Final Rules set forth three special accommodations for swaps between parties located in different time zones:

1. If at the time the parties enter into the swap, it is a different calendar day at the location of each party, the day of execution is the latter of the two calendar days;
2. If an uncleared swap is entered into between 4:00 p.m. and midnight in the location of a party, then such uncleared swap shall be deemed to have been entered into on the immediately succeeding day that is a business day for each party; and
3. If the day of execution determined under the foregoing rules is not a business day for both parties, the day of execution shall be deemed to be the immediately succeeding day that is a business day for both parties.

[19] The CFTC recognized that the Final Rules require initial margin to be collected and posted so quickly that CSEs and their counterparties may be required to take steps such as pre-positioning eligible margin collateral securities at the custodian and using readily-transferrable forms of eligible collateral, such as cash, to place additional margin quickly with the custodian from time to time, but did not change the proposed timing for initial margin collection because it believes the additional delay would reduce the overall effectiveness of the margin requirements.

[20] The CFTC notes that its Final Rules on variation margin are consistent with those of the Prudential Regulators, but more detailed in one respect. The Commission's Final Rules require that variation margin calculations use methods, procedures, rules, and inputs that, to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria. The CFTC notes that its standard is consistent with recently-issued international standards. See Adopting Release, *supra* note 1, at text accompanying n.251

[21] The minimum transfer amount only affects the timing of the margin collection and not the amount of margin that must be collected. For example, if the margin amount due from (or to) the counterparty were to increase from \$500,000 to \$800,000, the CSE would be required to collect the entire \$800,000 (subject to application of any applicable initial margin threshold amount).

[22] An EMNA is any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default under certain conditions. These conditions include a requirement with respect to the CSE's right to terminate the contract and liquidate collateral, and certain standards with respect to the legal review of the agreement to ensure it meets the criteria in the definition. As under the Proposed Rules, the legal review must be sufficient so that the CSE has a well-founded basis to conclude that, among other things, the contract would be found legal, valid, binding, and enforceable under the law of the relevant jurisdiction. If a CSE cannot conclude after sufficient legal review on a well-founded basis that a netting agreement meets the definition of an EMNA, the final rules require the CSE to collect the gross margin amount required but may still apply the netting provisions of the rule in determining the amount of margin to be posted to the counterparty. While the CFTC did not change this legal standard in response to comments of ICI and others, it did modify the stay provision in the proposed definition to provide that ". . . (2) . . . any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than: (i) In receivership, conservatorship or resolution under the Federal Deposit Insurance Act [], Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [], the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended [], or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph 2(i) in order to facilitate the orderly resolution of the defaulting counterparty; or (ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph 2(i) of this definition . . . " This language is intended to reflect stays that may be imposed by the Prudential Regulators or by contract (e.g., the ISDA stay protocol).

[23] The rules define "major currency" as the: (i) U.S. dollar; (ii) Canadian dollar; (iii) euro; (iv) U.K. pound; (v) Japanese yen; (vi) Swiss franc; (vii) New Zealand dollar; (viii) Australian dollar; (ix) Swedish kronor; (x) Danish kroner; (xi) Norwegian krone; or (xii) any other currency as defined by the CFTC.

[24] The "currency of settlement" means the currency in which a party has agreed to discharge payment obligations related to an uncleared swap or a group of uncleared swaps subject to a master netting agreement at the regularly occurring dates on which such payments are due in the ordinary course.

[25] For a pooled investment vehicle, such as a money market fund, to be eligible under the Final Rules, it must hold only securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, and

cash funds denominated in U.S. dollars or securities that are denominated in a common currency and issued by, or fully guaranteed as to the timely payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under applicable regulatory capital rules, and cash denominated in the same currency. These pooled investment vehicles must issue redeemable securities representing the holder's proportional interest in the fund's net assets, issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the holder makes its investment or redemption request to the fund. In addition, the assets of the fund may not be transferred or re-hypothecated through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or similar arrangements.

[26] See §23.156(a)(3).

[27] The CFTC eliminated this haircut because the cash funds are liquid at the point of counterparty default, and there are robust markets in the major currencies that allow conversion or hedging to the currency of settlement or termination at relatively low cost.

[28] ICI and others had argued that it was unnecessary and inconsistent with other CFTC rules to require the third-party custodian to be unaffiliated with the CSE. ICI explained it is not unusual for registered funds to enter into covered swaps with an affiliate of the fund's custodian. The CFTC did not discuss these arguments.

[29] *Margin requirements for non-centrally cleared derivatives*, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, March 2015, available at <http://www.bis.org/bcbs/publ/d317.pdf>.