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Transmittal – See OCC 2020-11

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Margin Requirements for Non-Cleared Swaps and Non-Cleared Security-Based Swaps: Final Rule

Summary

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency (collectively, agencies) are publishing this final rule to establish minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (swap entities) subject to agency supervision. The OCC's final rule applies to national banks, federal savings associations, and subsidiaries thereof.

This final rule implements sections 731 and 764 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank). Sections 731 and 764 require the agencies to jointly adopt rules to establish capital requirements, as well as initial and variation margin requirements, for swap entities on all non-cleared swaps and non-cleared security-based swaps to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared. The federal banking agencies determined that the Dodd–Frank Act permits them to rely on the existing regulatory capital requirements for derivatives for the entities under their respective jurisdictions. Therefore, this final rule does not impose any new regulatory capital requirements on national banks or federal savings associations.

The margin requirements mandated by Dodd–Frank address a number of weaknesses in the regulation and structure of the swap markets that were revealed during the recent financial crisis. The requirements are intended to reduce risk, increase transparency, and promote market integrity. Additionally, the final rule should help to promote global consistency because it generally follows the final framework for margin requirements for non-cleared derivatives that the Basel Committee on Banking Supervision and the International Organization of Securities Commissions adopted in September 2013.

Note for Community Banks

The OCC does not anticipate that community banks will engage in the volume of swap activity necessary to cross the thresholds under the rule that trigger the collection or posting of margin. Therefore, the OCC expects the final rule to have minimal impact on community banks.

To

Chief Executive Officers of All National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties

Highlights

This final rule establishes minimum requirements for the exchange of initial and variation margin between covered swap entities and their counterparties with respect to non-cleared swaps and non-cleared security-based swaps.

The requirements apply to transactions entered into after the applicable compliance dates. The amount of margin that will be required will vary based on the relative risk of the counterparty and of the particular non-cleared swap or non-cleared security-based swap.

The effective date for the final rule is April 1, 2016. However, the phase-in of the minimum margin requirements will not begin until September 1, 2016.

Under the final rule, the largest swap counterparties (those with more than \$3 trillion in outstanding swap activity) must comply with both the initial and variation margin requirements by September 1, 2016. All other swap counterparties must comply with the variation margin requirements by March 1, 2017.

For the initial margin requirements, entities with more than \$2.25 trillion in outstanding swap exposure must comply by September 1, 2017; entities with more than \$1.75 trillion in outstanding swap exposure must comply by September 1, 2018; and entities with more than \$0.75 trillion in outstanding swap exposure must comply by September 1, 2019. All other covered swap entities must comply with the rule by September 1, 2020. Once an entity becomes subject to the final rule, it will remain subject to the final rule, even if its outstanding swap exposure changes.

Notably, on January 12, 2015, Congress enacted the Terrorism Risk Insurance Program Reauthorization Act of 2015, which amends sections 731 and 764 of Dodd–Frank to exempt certain transactions with commercial end users and other small counterparties from the agencies' capital and margin requirements. The 2015 amendment specifically requires the agencies to publish the statutory exemptions in an interim final rule and to seek public comment. Therefore, concurrently with this final rule, the agencies are publishing an interim final rule with request for comment to implement the statutory exemptions from the minimum margin requirements for non-cleared swaps and non-cleared security-based swaps.

Background

On May 11, 2011, the agencies published a proposal to implement the minimum margin requirements required by Dodd–Frank. Subsequently, on September 2, 2013, the Basel Committee on Banking Supervision, jointly with the Board of the International Organization of Securities Commissions, finalized an international agreement on margin rules for non-cleared swaps that differed from the agencies' 2011 proposal in several material respects. In response to comments received on the 2011 proposal, as well as the publication of the international margin framework, the agencies decided to make substantial revisions to their proposal and to publish a second notice of proposed rulemaking in 2014.

This final rule is substantially similar to the 2014 proposal, with a few changes made in response to commenter concerns, recent changes in U.S. law, and revisions to the international framework.

Staff of the five agencies consulted with staffs of the Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission to develop the final rule.

Further Information

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Related Links

- ["Margin and Capital Requirements for Covered Swap Entities: Final Rule" \(PDF\)](#)
- ["Margin and Capital Requirements for Covered Swap Entities: Interim Final Rule" \(PDF\)](#)

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