

RESCINDED

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Swap Margin Rule: Joint Statement Regarding Treatment of Certain Legacy Swaps Affected by Brexit and the Swap Margin Rule

To

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

Summary

The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System today issued a joint statement to address the ability of a covered swap entity subject to the OCC's or Federal Reserve Board's jurisdiction, respectively, to service the covered swap entity's cross-border clients. The OCC and the Federal Reserve Board are issuing this statement in light of the approaching end of the transition period

during which the laws of the European Union have continued to apply in the United Kingdom after the United Kingdom's withdrawal (commonly referred to as Brexit) from the European Union. The OCC's swap margin rule applies to certain national banks, federal savings associations, and federal branches and agencies of foreign banking organizations (collectively, banks).

Note for Community Banks

The OCC expects the joint statement to have no impact on community banks.

Highlights

- The joint statement indicates that OCC and Federal Reserve Board staff would not recommend that their respective agencies take action under the agencies' swap margin rules against a covered swap entity with respect to a non-cleared swap entered into before an entity's applicable compliance date (referred to as a legacy swap) that is amended to transfer the legacy swap from the United Kingdom to the European Union or to the United States.
- The joint statement includes specific conditions limiting the scope of this no-action relief. The no-action relief applies until January 1, 2022, or one year after the expiration of European Union passporting rights—whichever is later—unless amended, extended, or superseded in writing before that time.

Background

The OCC's swap margin rule (12 CFR 45) was issued in 2015 with a phased compliance schedule stretching from 2016 to 2020. The rule's requirements generally apply only to a non-cleared swap entered into on or after the

applicable compliance date. A legacy swap is grandfathered and is generally not subject to the margin requirements in the rule. A legacy swap may become subject to the rule if it is later amended or novated on or after the applicable compliance date.

The European Union continues to recognize United Kingdom participation in the European Union single market on an interim basis during the transition period, which is scheduled to expire on December 31, 2020 (absent an extension). The United Kingdom and the European Union have not yet addressed the continuation of passporting rights for United Kingdom entities to provide financial services in the European Union at the expiration of the transition period.

There are financial services firms in the United Kingdom that conduct swap-dealing activities subject to the OCC's or the Federal Reserve Board's swap margin rule. The absence of an agreement between the United Kingdom and the European Union that addresses passporting rights would result in United Kingdom entities losing the ability to continue servicing their European Union clients when the transition period expires. Consequently, numerous financial services firms in the United Kingdom may begin amending their swaps to transfer their existing swap portfolios that face counterparties located in the European Union to a related establishment located within the European Union or the United States.

Further Information

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Related Link

- [“Statement Regarding Treatment of Certain Legacy Swaps Affected by Brexit and the Swap Margin Rule”](#)
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