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Federal agencies jointly issue final rules on swap margin requirements

November 18 2015 | Contributed by Shearman & Sterling LLP

On October 30 2015 the Farm Credit Administration, the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency, the Federal Reserve Board and the Office of the Comptroller of the Currency (OCC) jointly issued a final rule(1) establishing margin requirements for uncleared swaps.(2) The FDIC and OCC previously approved the final rule on October 22 2015. The rule will apply to swap dealers, security-based swap dealers, major swap participants and major security-based swap participants supervised by the aforementioned agencies and registered with the US Commodity Futures Trading Commission or the Securities and Exchange Commission.

Sections 731 and 764 of the Dodd-Frank Act require the agencies to establish capital and margin requirements for registered swap dealers, major swap participants, security-based swap dealers and major security-based swap participants in order to address the risks to such entities and the financial system from non-cleared derivatives. Specifically, the final rule requires that initial and variation margin be exchanged between covered swap entities and certain counterparties in connection with non-cleared swaps and security-based swaps. The rule also specifies:

- how margin is to be calculated;
- what types of margin are eligible; and
- how margin is to be held.

In addition, the agencies approved an interim final companion rule(3) to the joint final rule which establishes swap margin requirements. As required under a 2015 statute, the interim final rule exempts from the new margin requirements certain non-cleared swaps and non-cleared security-based swaps with certain counterparties that qualify for an exemption from clearing under the Dodd-Frank Act (including certain commercial end users engaged in hedging activity). The final rule contains other exceptions, including for financial institutions with $10 billion or less in total assets that specifically use swaps for hedging.

Both the final rule and interim final rule will be effective April 1 2016. The final rule will be phased in from September 1 2016 to September 1 2020.(4)(5)

For further information on this topic please contact Donna M Parisi, Geoffrey B Goldman or Azam H Aziz at Shearman & Sterling LLP by telephone (+1 212 848 4000) or email (dparisi@shearman.com, geoffrey.goldman@shearman.com or aaziz@shearman.com). The Shearman & Sterling website can be accessed at www.shearman.com.

Endnotes

(1) The final rule is available at www.federalreserve.gov/newsevents/press/bcreg/bcreg20151030b1.pdf.

(2) The OCC press release is available at www.occ.treas.gov/news-issuances/news-releases/2015/nr-occ-2015-142.html.

(3) The interim final rule is available at www.federalreserve.gov/newsevents/press/bcreg/bcreg20151030b2.pdf.

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(4) The statement by FDIC Chair Martin J Gruenberg is available at www.fdic.gov/news/news/speeches/spoct2215a.html.

(5) The statement by FDIC Vice Chair Thomas M Hoenig is available at www.fdic.gov/news/news/speeches/spoct2215.html.
