

Final cross-border margin rule issued

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On May 24 2016 the Commodity Futures Trading Commission (CFTC) issued a rule implementing a cross-border approach to its margin requirements for uncleared swaps. The CFTC's margin rule applies to CFTC-registered swap dealers and major swap participants for which there is no prudential regulator (collectively, covered swap entities), but these rules are closely aligned with the cross-border margin requirements already adopted by the prudential regulators. The final rule generally requires covered swap entities to comply with the CFTC's margin requirements for all uncleared swaps in cross-border transactions, with a limited exclusion for certain non-US covered swap entities.

In certain circumstances, the final rule allows covered swap entities to comply with comparable margin requirements in a foreign jurisdiction as an alternative means of complying with the CFTC's margin rule for uncleared swaps, to the extent that the CFTC determines that the foreign jurisdiction's requirements are comparable to its own (comparability determination). The final rule also includes special provisions to accommodate swap activities in jurisdictions that do not have a legal framework to support custodial arrangements or that do not have netting arrangements that comply with the CFTC's margin rule.

Finally, the rule establishes a process for requesting comparability determinations, including eligibility and submission requirements, as well as the standard of review that the CFTC would apply in assessing the comparability of a foreign jurisdiction's margin requirements.

The CFTC press release is available at www.cftc.gov/PressRoom/PressReleases/pr7370-16.

The CFTC final rule is available at www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister052416.pdf.

A fact sheet on the final rule is available at www.cftc.gov/idc/groups/public/@newsroom/documents/file/crossborder_factsheet052416.pdf.

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