

CFTC's and U.S. Prudential Regulators' Margin and Segregation Rules for Uncleared Swaps Definition of "Eligible Master Netting Agreement"

Eligible master netting agreement means a written, legally enforceable agreement that:

- (1) creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;
- (2) provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, 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 (12 U.S.C. 1811 et seq.), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), 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; and
- (3) does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

A covered swap entity that relies on the agreement for purposes of calculating margin under the applicable rules must:

- (1) conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:
 - (i) the agreement meets the requirements of paragraph (2) of the definition of eligible master netting agreement, above; and
 - (ii) in the event of a legal challenge (including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and
- (2) establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of eligible master netting agreement.