

Regulators Propose Swap Margin and Capital Rules

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On April 12, 2011, the U.S. banking regulators proposed rules regarding the capital and margin requirements applicable to uncleared swaps. In general, the proposed rules would not impose new capital requirements on bank swap entities. However, the proposed rules would require bank swap entities to collect initial and variation margin from counterparties, including, in some cases, end users. In addition, the proposed rules establish collateral eligibility and segregation requirements and methodologies for calculating initial and variation margin requirements. The proposed rules have an expansive approach to extraterritoriality, providing only a slender exception for certain wholly offshore transactions.

On the same day, the CFTC proposed rules governing margin requirements for uncleared swaps entered into by non-bank swap entities subject to its jurisdiction. Based upon the Fact Sheet and Q&As that were released by the CFTC, the CFTC's proposal appears to be similar, but not identical, to the banking regulators' proposal. The SEC has not yet released a proposal for capital or margin requirements for security-based swap entities.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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