

CFTC Re-Proposes Uncleared Swap Margin Rules

October 15, 2014

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Summary

On September 17, 2014, the CFTC re-proposed rules for uncleared swap margin requirements.¹ The CFTC's re-proposal is largely consistent with a **re-proposal** on margin, capital and segregation requirements that was jointly issued on September 3, 2014 by the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Farm Credit Administration and the Federal Housing Financing Authority (the "**Prudential Regulators**") and with the Basel Committee on Banking Supervision's and the International Organization of Securities Commissions' ("**BCBS/IOSCO**") **2013 final policy framework**. A summary comparison of the CFTC's re-proposal, the Prudential Regulators' re-proposal and the BCBS/IOSCO final policy framework is included in Appendix A.

The CFTC's re-proposal would apply to CFTC-registered swap dealers and major swap participants ("**swap entities**") that are not U.S. or foreign banks ("**covered swap entities**"). This includes, for example, non-bank subsidiaries of bank holding companies. The re-proposal:

- provides for a compliance deadline of December 1, 2015 for variation margin and a phased compliance schedule for initial margin, running from December 1, 2015 to December 1, 2019, with compliance timing for initial margin dependent on the uncleared swaps exposure of a covered swap entity's affiliated group and each counterparty's affiliated group for the June through August period of each year;
- does not require initial or variation margin for a covered swap entity's uncleared swaps with non-financial end users;
- details collateral eligible to be used to satisfy the margin requirements and related "haircuts," largely mirroring the list proposed by the Prudential Regulators;
- does not provide an exemption for uncleared swaps between affiliates;
- includes an advance notice of proposed rulemaking on the cross-border application of the re-proposed margin rules, suggesting three alternative approaches and requesting comment on each; and

¹ [Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 59898 \(Oct. 3, 2014\)](#).

Financial End User (Abridged)

Any counterparty that is not a swap entity and that is (among others):

- a U.S. or foreign bank; a credit union; a trust or fiduciary company; a bank holding company or savings and loan holding company; or an industrial loan company;
- a nonbank SIFI;
- Fannie Mae; Freddie Mac or any of the Federal Home Loan Banks;
- a market intermediary or service provider, including a broker/dealer, investment adviser, CPO, CTA, or FCM;
- an investment fund, including a private fund, as defined under section 202(a) of the Investment Advisers Act; an investment vehicle operating in reliance on section 3(c)(5)(C) or Rule 3a-7 of the 1940 Act; a commodity pool; or an ERISA employee benefit plan;
- an insurance company;
- a lender or other financial services firm that is state-licensed or registered;
- an entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets; or
- a non-U.S. entity that would be a “financial entity” if it were organized under the laws of the United States or any State.

Financial end user *does not include*: a federal sovereign; a multilateral development bank; the Bank for International Settlements; a captive finance company; or a hedging affiliate.

[The full definition is available here.](#)

- does not apply to swaps entered into before the effective date, but a counterparty may elect to subject pre-effective date swaps to the margin requirements to achieve netting with post-effective date swaps.

Comments to the re-proposal and the advance notice of proposed rulemaking are due by December 2, 2014.

Initial Margin and Variation Margin

Products Covered

Initial and variation margin requirements under the CFTC’s re-proposal generally only apply to “uncleared swaps”² entered into on or after the applicable compliance date. Pursuant to the 2012 determination by the Secretary of the Treasury, deliverable foreign exchange forwards and foreign exchange swaps are not considered swaps under the Dodd-Frank Act for some purposes, including the uncleared swap margin requirements.³ The CFTC also proposes to exclude the fixed, physically-settled foreign exchange transactions associated with the exchange of principal in cross-currency swaps from the scope of the proposed margin requirements.

Counterparty Classification and Material Swaps Exposure

The application of the CFTC’s re-proposed margin rules depends on whether a covered swap entity’s counterparty to an uncleared swap is (i) a swap dealer or major swap participant; (ii) a financial end user with material swaps exposure; (iii) a financial end user without material swaps exposure; or (iv) a non-financial end user.⁴

Definition of Financial End User

The CFTC’s re-proposal defines “financial end user” in substantially the same way as the Prudential Regulators’. An abridged definition of “financial end user” is contained in the sidebar. The definition includes a prong that would require a covered swap entity to determine whether a foreign counterparty would fall within another prong of the “financial entity” definition if it were organized under the laws of the United States or any

² “Uncleared swaps” would exclude any swap that is cleared by a registered derivatives clearing organization and swaps that have been accepted for clearing by a clearinghouse that has received relief from the CFTC permitting it to clear swaps for U.S. persons without being registered with the CFTC as a derivatives clearing organization.

³ As discussed below, however, under the re-proposal, deliverable foreign exchange forwards and foreign exchange swaps must be included in calculating an entity’s material swaps exposure and for purposes of the phase-in compliance dates.

⁴ In the release and proposed rule text, the CFTC seems to use the terms “financial end user” and “financial entity” interchangeably. Financial entity is defined in section 2(h)(7)(C) of the Commodity Exchange Act and is used for various purposes in existing CFTC rules under Title VII of the Dodd-Frank Act. In some cases in the re-proposal, the CFTC uses “financial entity” where it appears from the context that the CFTC may have intended to use “financial end user.” We have followed the language of the CFTC release, but where we believe the CFTC intended to refer to a financial end user rather than a financial entity, we include “financial entity” in quotation marks.

Eligible Master Netting Agreement (Abridged)

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, including upon an event of receivership, 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, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act or under any similar insolvency law applicable to U.S. GSEs; and
- (3) does not contain a walkaway clause.

A covered swap entity that relies on an Eligible Master Netting Agreement for margin calculation purposes must:

- (1) conduct sufficient legal review to confirm the agreement satisfies the above requirements and that in the event of a legal challenge, including one arising from an event of default, insolvency, liquidation or other similar proceeding, the agreement would be found legal and binding under relevant law; and
- (2) establish and maintain written procedures to monitor for changes in relevant law and to ensure the agreement continues to satisfy these requirements.

State. Unlike the Prudential Regulators’ re-proposal, the CFTC specifically seeks comment on whether it is appropriate to allow covered swap entities to rely upon a foreign counterparty’s certification as to whether it is a financial end user. The CFTC’s re-proposal permits the CFTC to designate additional entities as financial end users if it identifies additional entities whose activities and risk profile would warrant inclusion.

Treatment of Affiliates and Interaffiliate Swaps

The CFTC’s re-proposal, like the Prudential Regulators’ re-proposal, does not provide an exemption from the margin requirements for uncleared swap transactions between affiliates. Therefore, a covered swap entity would need to identify the counterparty type of each affiliate with which it transacts and, as discussed below, apply the margin requirements to transactions with those affiliates, as applicable.

Definition of Material Swaps Exposure

The CFTC’s re-proposal defines “material swaps exposure,” measured for an entity’s consolidated group, as the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps *with all counterparties* for June, July and August of the previous calendar year that exceeds \$3 billion, where such amount is calculated only for business days. This definition is the same as the Prudential Regulators’ re-proposed definition.

Initial and Variation Margin Requirements

Similar to the Prudential Regulators’ re-proposal, the CFTC’s re-proposal requires covered swap entities to collect initial margin for uncleared swaps from any counterparty that is a swap dealer, major swap participant or financial end user with material swaps exposure in an amount equal to or greater than a calculated initial margin amount. Under the re-proposal, a covered swap entity must post initial margin to financial end users with material swaps exposure. Where a covered swap entity transacts uncleared swaps with another swap entity, the swap entity counterparty’s obligation to collect initial margin will also result in bilateral posting and collecting of initial margin, as a practical matter. A covered swap entity must collect and post initial margin, as appropriate, on or before the business day after execution of an uncleared swap and must continue to hold or post initial margin, as calculated each business day, for an uncleared swap until the swap is terminated or expires.

A covered swap entity must collect variation margin from, or pay variation margin to, a counterparty that is a swap entity or a financial end user (regardless of whether the counterparty has a material swaps exposure) on or before the business day after execution of an uncleared swap and must continue to collect or pay variation margin each business day. Where a covered swap entity executes more than one uncleared swap with a counterparty under an eligible master netting agreement, as defined in the sidebar, the covered swap entity may calculate and comply with the variation margin requirements on an aggregate basis with respect to all uncleared swaps governed by that agreement.

Pre- and Post-Effective Date Swaps and Netting

Under the CFTC’s re-proposal, initial and variation margin is generally only for uncleared swaps entered into on or after the applicable compliance date. However, if an eligible master netting agreement covers uncleared swaps entered into prior to the applicable compliance date, and uncleared swaps entered into on or after the compliance date, all of these swaps are required to be included in the aggregate for purposes of calculating and complying with the initial and variation margin requirements.

Treatment of Non-Financial End Users

Although the CFTC’s re-proposal does not require covered swap entities to exchange margin with non-financial end users, covered swap entities and “non-financial entities” are permitted to set initial and variation margin requirements and associated thresholds in their discretion and as agreed by the parties, though the documentation for swaps with such counterparties must specify whether margin must be exchanged. For risk management purposes, the CFTC’s re-proposal requires each covered swap entity to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial end users that have material swaps exposure to the swap entity.

Standardized Initial Margin Schedule

| Asset Class | Initial Margin Requirement (% of Notional Exposure) |
|----------------------------------|---|
| Credit: 0-2 years | 2 |
| Credit: 2-5 years | 5 |
| Credit: 5+ years | 10 |
| Commodity | 15 |
| Equity | 15 |
| Foreign Exchange | 6 |
| Cross-Currency: Swaps: 0-2 years | 1 |
| Cross-Currency: Swaps: 2-5 years | 2 |
| Cross-Currency: Swaps: 5+ years | 4 |
| Interest Rate: 0-2 years | 1 |
| Interest Rate: 2-5 years | 2 |
| Interest Rate: 5+ years | 4 |
| Other | 15 |

Calculating Initial Margin

Like the Prudential Regulators’ re-proposal, the CFTC’s re-proposal permits covered swap entities to calculate initial margin by using either a risk-based model or standardized table method (provided in the sidebar).

The standardized tables provided in both the CFTC’s and Prudential Regulators’ re-proposals are identical and both permit the calculation and use of a net-to-gross ratio adjustment for offsetting exposures, diversification and other hedging benefits across transactions in disparate asset classes within a single eligible master netting agreement.

With respect to the risk-based model, the required elements of the model, periodic review, control, oversight and validation mechanisms, documentation and escalation procedures are essentially the same in both proposals. A covered swap entity must obtain written approval from its regulator to use a model and upon any changes to the model or to the products for which it is used. The model must set initial margin equal to the potential future exposure of the swap entity consistent with a one-tailed 99% confidence level over a 10-day close-out period. Models may provide for netting of uncleared swaps under an eligible master netting agreement within, but not across, defined broad swap categories.

Where covered swap entities are affiliates of entities whose margin models are subject to review by one of the Prudential Regulators, the CFTC expects to coordinate with the Prudential Regulators to avoid duplicative efforts and to provide expedited approval of models that have received approval from the Prudential Regulators. Similarly, the CFTC proposes to use this approach where margin models have received approval from the SEC, NFA or a foreign regulator. The CFTC requests comment on whether provisional approval of margin models upon the filing of an application pending review would be appropriate given the CFTC’s limited resources.

The CFTC's re-proposal, like the Prudential Regulators' re-proposal, permits a covered swap entity to reduce the amount of initial margin by a threshold amount established by the covered swap entity, but which may be no greater than \$65 million. This initial margin threshold amount must be applied on a consolidated basis, thus the amount subtracted from the required initial margin for any one counterparty may not include any portion of the threshold already applied to other uncleared swaps with that counterparty or any of its affiliates. As noted in our [memo on the Prudential Regulators' re-proposal](#), this proposed approach presents potential practical difficulties, particularly when allocating the threshold amount among affiliates and tracking those allocations accurately on a daily basis.

Where a covered swap entity enters into an uncleared swap with a counterparty that is either another covered swap entity or a swap dealer or major swap participant subject to regulation by a Prudential Regulator, each party would bear the responsibility for calculating the amount that it would collect under its respective methodologies.

Calculating Variation Margin and Related Controls

The CFTC's re-proposal requires a covered swap entity to calculate variation margin each business day for itself and for each counterparty that is a swap dealer, major swap participant or financial end user. The covered swap entity must use a methodology and inputs when calculating variation margin that to the maximum extent practical rely on recently executed transactions, valuations provided by independent third parties or other objective criteria.

Unlike the Prudential Regulators' re-proposal, the CFTC's re-proposal requires control mechanisms for the calculation of variation margin. Covered swap entities must:

- create and maintain documentation setting forth its calculation methodology with sufficient specificity to allow the counterparty, the CFTC and any applicable Prudential Regulator to calculate a reasonable approximation of the margin requirement independently; and
- evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.

Additionally, the CFTC's re-proposal requires a covered swap entity to have in place alternative methods for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap and may at any time require a covered swap entity to provide further data or analysis concerning the methodology or a data source used to value a swap for variation margin purposes.

Minimum Transfer Amount and Satisfaction of Margin Requirements

Like the Prudential Regulators' re-proposal, the CFTC states in the proposing release that its re-proposal only requires a covered swap entity to transfer an initial margin or variation margin amount of \$650,000 or

greater, though it is unclear from the rule text how the minimum transfer amount is to be implemented as it relates to variation margin.

Additionally, a covered swap entity will not be deemed to have violated its obligations under the rules if a counterparty refuses or otherwise fails to provide or accept required initial or variation margin and the covered swap entity has made the necessary efforts to collect or post required margin or commenced termination of the uncleared swap.

Initial Margin Eligible Collateral and Haircuts

| Asset Class | Haircut (% of market value) |
|--|-----------------------------|
| Cash in same currency as swap obligation | 0.0 |
| Eligible government and related debt: residual maturity less than 1 year | 0.5 |
| Eligible government and related debt: residual maturity 1-5 years | 2.0 |
| Eligible government and related debt: residual maturity greater than 5 years | 4.0 |
| Eligible corporate debt: residual maturity less than 1 year | 1.0 |
| Eligible corporate debt: residual maturity 1-5 years | 4.0 |
| Eligible corporate debt: residual maturity greater than 5 years | 8.0 |
| S&P 500 or related index equities | 15.0 |
| S&P 1500 Composite or related index equities | 25.0 |
| Gold | 15.0 |
| Additional (additive) haircut when the currency of the swap obligation differs from that of the collateral | 8.0 |

Eligible Collateral

The list of eligible collateral (provided in the sidebar for initial margin) in the CFTC’s re-proposal is substantially the same as the Prudential Regulators’ re-proposal. Like the Prudential Regulators’ re-proposal, the CFTC’s re-proposal requires covered swap entities to monitor the market value and eligibility of all collateral collected and held to satisfy initial margin requirements and collect any additional collateral necessary to bring itself into compliance.

Custodial Arrangement and Notification of Right to Segregation

Similar to the Prudential Regulators’ re-proposal, the CFTC’s re-proposal requires *any* initial margin posted by a covered swap entity, and initial margin that is *required to be collected* by a covered swap entity to be held by an independent third-party custodian.

The requirements for the custodial agreement in the CFTC’s re-proposal are identical to those of the Prudential Regulators’ re-proposal, requiring the agreement to limit rehypothecation and similar transactions and to meet legal enforceability standards. Both the CFTC’s and the Prudential Regulators’ re-proposals would restrict rehypothecation more than the BCBS/IOSCO final policy framework.

Moreover, like the Prudential Regulators’ re-proposal, the CFTC’s re-proposal also permits limited substitution or the direction of reinvestment of posted collateral, subject to certain conditions.

In addition to the requirements governing the custodial arrangement, the CFTC’s re-proposal makes certain conforming changes to the CFTC segregation rules that were finalized in November 2013.

Margin Trading Documentation

Consistent with the CFTC’s existing swap trading relationship documentation requirements under CFTC Rule 23.504(b)(3), the CFTC’s re-proposal requires covered swap entities to enter into certain documentation with all uncleared swap counterparties. In contrast, the Prudential Regulators’ re-proposal does not require any specific documentation with non-financial end users.

Documentation must provide the covered swap entity with the contractual right and obligation to exchange initial margin and variation margin as required under the re-proposed rules, except that, for uncleared swaps with non-financial end users, the documentation must specify whether initial or

variation margin will be exchanged. Where initial or variation margin will be exchanged, the documentation must include the additional details outlined in the sidebar.

Margin Documentation Details

The margin documentation must specify:

- the methodology and data sources to be used to value uncleared swaps and collateral and to calculate initial margin;
- the methodology and data sources to be used to value positions and to calculate variation margin;
- the procedures by which any disputes concerning the valuation of uncleared swaps or the valuation of assets posted as initial margin or paid as variation margin may be resolved;
- any thresholds below which initial margin need not be posted by the covered swap entity and/or the counterparty; and
- any thresholds below which variation margin need not be paid by the covered swap entity and/or the counterparty.

Phase-In Compliance Dates

The CFTC’s re-proposal provides for the same phase-in compliance dates as the Prudential Regulators’ re-proposal. However, due to potential differences in the scope of the CFTC’s and Prudential Regulators’ re-proposals (i.e., the CFTC’s different definition of “cleared swap” for the purposes of its re-proposal), the two proposals could result in different outcomes in some cases.

Covered swap entities must comply with the variation margin requirements by December 1, 2015. The compliance date on which initial margin requirements would apply depends on the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps for the covered swap entity and its affiliates (collectively, the “**covered swap entity group**”) and the particular counterparty and its affiliates (collectively, the “**counterparty group**”). The applicable compliance date will be triggered where the covered swap entity group and counterparty group each exceed the specified threshold.

| Initial Margin Phased-In Compliance Schedule | |
|--|---|
| Compliance Date | Initial Margin Trigger Level* |
| December 1, 2015 | June – August 2015: \$4 trillion |
| December 1, 2016 | June – August 2016: \$3 trillion |
| December 1, 2017 | June – August 2017: \$2 trillion |
| December 1, 2018 | June – August 2018: \$1 trillion |
| December 1, 2019 | For any other covered swap entities with respect to uncleared swaps entered into with any other counterparties that do not fall into any of the above categories. |

* “Initial Margin Trigger Level” for each row above means both the covered swap entity group and the counterparty group each have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps that exceeds the amount specified.

The thresholds for phase-in compliance for both the CFTC’s and Prudential Regulators’ re-proposals are generally similar to those set forth in the BCBS/IOSCO final policy framework; although the framework includes a final threshold amount of €3 billion for the December 1, 2019 compliance date rather than subjecting all other swap entities to the margin requirements.

Extraterritorial Application

Unlike the Prudential Regulators’ re-proposal, the CFTC’s re-proposal does not include a concrete proposal for how margin requirements would apply

extraterritorially. Instead the CFTC's re-proposal includes an advance notice of proposed rulemaking that offers three potential alternative approaches for industry comment, including (i) application of the rules according to the Prudential Regulators' re-proposal;⁵ (ii) application of the uncleared swap margin rules according to the "transaction-level requirements" in the CFTC's July 2013 cross-border guidance and (iii) application of the uncleared swap margin rules in a form similar to the "entity-level requirements" in the CFTC's July 2013 cross-border guidance.⁶

⁵ For a discussion of the Prudential Regulators' proposed cross-border approach, which is not completely described in the CFTC's re-proposal, please see our September 2014 memorandum here: [Prudential Regulators' re-proposed margin rules](#).

⁶ For a discussion of the CFTC's cross-border guidance, and its application of "entity-level requirements" and "transaction-level requirements" in cross-border situations, please see our July 2013 memorandum here: [CFTC's cross-border guidance](#).

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Appendix A – Summary Comparison of Margin Proposals for Uncleared Derivatives

| | CFTC Re-Proposal | Prudential Regulator Re-Proposal | BCBS / IOSCO Final Policy Framework |
|--|--|--|--|
| Covered Entities | <ul style="list-style-type: none"> All swap dealers ("SDs") and major swap participants ("MSPs") that are not prudentially regulated (collectively "CFTC Covered Swap Entities") | <ul style="list-style-type: none"> All swap dealers ("SDs"), security-based swap dealers ("SBSDs"), major swap participants ("MSPs") and major security-based swap participants ("MSBSPs") that are prudentially regulated (collectively "PR Covered Swap Entities") | <ul style="list-style-type: none"> All financial firms and non-financial firms that are systemically important, as those terms are defined by national regulators |
| Margin Requirements by Counterparty | <ul style="list-style-type: none"> CFTC Covered Swap Entities must collect and post initial margin for transactions with a financial end user with material swaps exposure, a swap dealer or major swap participant CFTC Covered Swap Entities must collect and pay variation margin for transactions with financial end users⁵ CFTC Covered Swap Entities must collect initial and variation margin for transactions with "non-financial entities" as agreed upon between the parties⁶ | <ul style="list-style-type: none"> PR Covered Swap Entities must collect and post initial margin for transactions with a SD, MSP, SBSBD or MSBSP or with a financial end user with material swaps exposure PR Covered Swap Entities must collect and pay variation margin for transactions with financial end users PR Covered Swap Entities must collect initial and variation margin for transactions with other counterparties as the PR Covered Swap Entity determines appropriate to address the credit risk posed by the counterparty and the risks of such swaps or security-based swaps | <ul style="list-style-type: none"> Financial firms and systemically important non-financial firms must exchange initial and variation margin |
| Products Covered | <ul style="list-style-type: none"> Uncleared swaps⁷ (excluding the fixed physically-settled FX component of cross-currency swaps) FX swaps and FX forwards | <ul style="list-style-type: none"> Uncleared swaps (excluding the fixed physically-settled FX component of cross-currency swaps) and uncleared security-based swaps FX swaps and FX forwards | <ul style="list-style-type: none"> All uncleared OTC derivatives, but only variation margin for physically settled FX forwards and swaps |

⁵ There are slight differences in the definition of "financial end user" in the Prudential Regulators' re-proposal and the CFTC's re-proposal.

⁶ See footnote 4.

⁷ For the purposes of its proposed margin rules, the CFTC proposes to include in the definition of "cleared swap" – thereby excluding from the scope of transactions subject to these proposed margin rules – certain swaps that have been accepted for clearing by an entity that has received no-action letter relief or exemptive relief from the CFTC permitting it to clear such swaps for U.S. persons without being registered as a CFTC-regulated derivatives clearing organization.

| | CFTC Re-Proposal | Prudential Regulator Re-Proposal | BCBS / IOSCO Final Policy Framework |
|---|---|---|--|
| | are not subject to margin requirements pursuant to the Treasury Secretary's determination | are not subject to margin requirements pursuant to the Treasury Secretary's determination | |
| Unilateral or Bilateral Margin | <ul style="list-style-type: none"> ▪ Bilateral – both parties post margin to each other | <ul style="list-style-type: none"> ▪ Bilateral – both parties post margin to each other | <ul style="list-style-type: none"> ▪ Bilateral – both parties post margin to each other |
| Initial Margin Calculation Methodology | <ul style="list-style-type: none"> ▪ Models, which must account for liquidation time horizon (99% confidence interval over a 10-day horizon); or ▪ Standardized table (allows for recognition of risk offsets through the use of a net-to-gross ratio in certain cases where portfolio of uncleared swaps is subject to same eligible master netting agreement) ▪ If models are available, choice of whether to use a model or standard calculation is made by the CFTC Covered Swap Entity ▪ CFTC Re-Proposal does not discuss limitations on the choice between models and the standardized table | <ul style="list-style-type: none"> ▪ Models, which must account for liquidation time horizon (99% confidence interval over a 10-day horizon); or ▪ Standardized table (allows for recognition of risk offsets through the use of a net-to-gross ratio in certain cases where portfolio of uncleared swaps is subject to same eligible master netting agreement) ▪ If models are available, choice of whether to use a model or standard calculation is made by the PR Covered Swap Entity ▪ PR Covered Swap Entity must make consistent choices between a model and the standardized schedule over time for all transactions within the same well-defined asset class (no "cherry picking") | <ul style="list-style-type: none"> ▪ Models, which must account for liquidation time horizon (99% confidence interval over a 10-day horizon); or ▪ Standardized margin schedule (with limited provisions for netting) ▪ Participants must make consistent choices between a model and the standardized schedule over time for all transactions within the same well-defined asset class (no "cherry picking") |
| Variation Margin Calculation Methodology | <ul style="list-style-type: none"> ▪ Use a methodology and inputs that to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria ▪ CFTC Covered Swap Entities must: <ul style="list-style-type: none"> ▪ have alternative methods in place for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap ▪ create and maintain | <ul style="list-style-type: none"> ▪ No discussion of specific methodology for calculating variation margin | <ul style="list-style-type: none"> ▪ No discussion of specific methodology for calculating variation margin |

| | CFTC Re-Proposal | Prudential Regulator Re-Proposal | BCBS / IOSCO Final Policy Framework |
|---------------------------------------|---|---|---|
| | <p>documentation setting forth the variation methodology with sufficient specificity to allow the counterparty, CFTC and any applicable Prudential Regulator to calculate a reasonable approximation of the margin requirement independently</p> <ul style="list-style-type: none"> ▪ evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate | | |
| Eligible Models | <ul style="list-style-type: none"> ▪ Models must be approved by the CFTC | <ul style="list-style-type: none"> ▪ Models must be approved by the applicable regulator | <ul style="list-style-type: none"> ▪ Models must be approved by the relevant supervisory authority ▪ Third-party models must be approved for use within each jurisdiction and by each institution seeking to use the model |
| Portfolio Margining in a Model | <ul style="list-style-type: none"> ▪ Allowed within, but not across, the seven broad risk categories (agricultural commodities, energy commodities, metal commodities, other commodities, credit, equity and FX/interest rates), so long as the relevant uncleared swaps are executed under the same eligible master netting agreement | <ul style="list-style-type: none"> ▪ Same as CFTC Re-Proposal | <ul style="list-style-type: none"> ▪ May account for diversification, hedging and risk offsets within but not across well-defined asset classes (currency and interest rate derivatives may be portfolio margined together as part of a single asset class) ▪ May consider all of the derivatives that are approved for model use that are subject to a single, legally enforceable netting agreement ▪ Incorporation of diversification, hedging and risk offsets will require approval by the relevant supervisory authority |

| | CFTC Re-Proposal | Prudential Regulator Re-Proposal | BCBS / IOSCO Final Policy Framework |
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| Thresholds | <ul style="list-style-type: none"> ▪ No thresholds for variation margin ▪ Minimum transfer amount of \$650,000⁸ ▪ \$65 million threshold for initial margin between any two consolidated groups | <ul style="list-style-type: none"> ▪ Same as CFTC Re-Proposal | <ul style="list-style-type: none"> ▪ No thresholds for variation margin ▪ €50 million threshold for initial margin between any two consolidated groups |
| Eligible Collateral | <ul style="list-style-type: none"> ▪ For variation margin, only cash denominated in U.S. dollars or the currency in which payment obligations are required to be settled under the swap ▪ For initial margin: <ul style="list-style-type: none"> ▪ USD, major currency or currency in which payment obligations under the swap are required to be settled; ▪ U.S. Treasury securities; ▪ other U.S. government agency securities; ▪ U.S. government-sponsored enterprise debt securities subject to certain conditions; ▪ European Central Bank or certain sovereign entities' securities; ▪ any security issued or fully guaranteed by the Bank for International Settlements, IMF or a multilateral development bank; ▪ certain other securities; and ▪ gold ▪ For initial margin, securities issued by the following may not be used: <ul style="list-style-type: none"> ▪ a counterparty or an affiliate of the counterparty pledging | <ul style="list-style-type: none"> ▪ Substantially the same as CFTC Re-Proposal | <ul style="list-style-type: none"> ▪ Should be highly liquid and able to hold value in periods of financial stress. Includes, but is not limited to: <ul style="list-style-type: none"> ▪ cash; ▪ high-quality government and central bank securities; ▪ high-quality corporate bonds; ▪ high-quality covered bonds; ▪ equities included in major stock indices; and ▪ gold ▪ Haircuts apply |

⁸ It is unclear from the text of the CFTC re-proposal as to how the minimum transfer amount is to be implemented as it relates to variation margin.

| | CFTC Re-Proposal | Prudential Regulator Re-Proposal | BCBS / IOSCO Final Policy Framework |
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| | <p>the collateral;</p> <ul style="list-style-type: none"> ▪ a bank holding company, a savings and loan holding company, a non-U.S. bank, a depository institution, a market intermediary, or an equivalent foreign institution; or ▪ a U.S. government-sponsored enterprise after the termination of U.S. government capital support or direct financial assistance, unless the security meets certain additional criteria ▪ Haircuts apply to initial margin only | | |
| Interaffiliate Swaps | <ul style="list-style-type: none"> ▪ No exemption | <ul style="list-style-type: none"> ▪ No exemption | <ul style="list-style-type: none"> ▪ Decision left to national supervisors |
| Margin Requirements for Swaps Entered into Before Margin Rules are Effective | <ul style="list-style-type: none"> ▪ Generally, apply only to swaps entered into on or after the rules become effective ▪ Swaps entered into prior to the effective date that are covered by an eligible master netting agreement that covers swaps entered into on or after the effective date must comply with the requirements, if the CFTC Covered Swap Entity calculates margin on an aggregate basis for the agreement | <ul style="list-style-type: none"> ▪ Same as CFTC Re-Proposal | <ul style="list-style-type: none"> ▪ Apply only to new swaps entered into after the rules become effective under the applicable phase-in periods |
| Collection Rules Effectiveness Date | <ul style="list-style-type: none"> ▪ Variation margin requirements effective on December 1, 2015 ▪ Initial margin requirements subject to phase-in from December 1, 2015 to December 1, 2019 | <ul style="list-style-type: none"> ▪ Same as CFTC Re-Proposal | <ul style="list-style-type: none"> ▪ Variation margin requirements effective on December 1, 2015 ▪ Initial margin requirements subject to phase-in from December 1, 2015 to December 1, 2019 |