

Margin and Capital Requirements for Covered Swap Entities : Final Rule to Amend the Swap Margin Rule

To: Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Summary

On June 25, 2020, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency (collectively, the agencies) issued a final rule to amend their regulations regarding the minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (Swap Margin Rule). The OCC's Swap Margin Rule applies to certain national banks, federal savings associations, and federal branches and agencies of foreign banking organizations (collectively, banks).

The final rule is effective on August 31, 2020.

Note for Community Banks

The OCC expects the proposed rule to have minimal impact on community banks.

Highlights

The Swap Margin Rule was issued in 2015 with a phased compliance schedule ranging from 2016 to 2020. On November 8, 2019, the agencies proposed amendments to the existing rule and requested public comment. The agencies are finalizing the proposed amendments with certain revisions:

1. The rule exempts non-cleared swaps between a covered bank and its affiliates from the initial margin requirements up to 15 percent of the covered bank's tier 1 capital. A covered bank is required to monitor the amount of inter-affiliate initial margin that it would otherwise be required to collect under the swap margin rule. If the aggregate initial margin amount exceeds the 15 percent limit, a covered bank is required to collect initial margin from its affiliates on all new derivative contracts entered into after the 15 percent threshold is crossed.
2. Covered banks will continue to collect or post (as applicable) variation margin with their affiliates, to collateralize fully the banks' ongoing market risk exposure under each inter-affiliate swap.
3. The final rule extends the compliance date for counterparties to meet initial margin requirements of the Swap Margin Rule by one year, to September 1, 2021. This change applies to counterparties with an average daily aggregate notional amount of non-cleared swaps of less than \$50 billion and is consistent with the revisions to the implementation schedule of the international derivatives margin framework of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions. In a related rulemaking ([OCC Bulletin 2020-67](#)), the agencies have issued an interim final rule further extending the rule's compliance dates in light of the COVID-19 national emergency.

The final rule preserves the status of legacy swaps that are amended to

1. replace interest rate provisions relying on the London Interbank Offered Rate (LIBOR) and other interbank offered rates (IBOR) with an alternative reference rate. This change addresses the uncertainty under the Swap Margin Rule of how LIBOR- or IBOR-based swap contracts will operate if LIBOR is discontinued.
2. carry out routine life-cycle activities, such as technical amendments, notional reductions, or compression exercises for risk management.
3. reflect changes to technical, administrative, operational, or other non-economic terms of a swap contract.

In addition, the final rule makes certain non-substantive, clarifying amendments to the Swap Margin Rule's documentation requirements for the exchange of initial margin, which may not become applicable for smaller counterparty relationships until after the counterparty begins trading swaps with a covered bank and exhausts its initial margin threshold amount credit.

Finally, the final rule makes technical changes within the rule addressing amendments to legacy swaps that are made to comply with the qualified financial contract rules and address comments received in response to the agencies' publication of the interim final rule dealing with Brexit-related issues.

Further Information

Please contact Christopher McBride, Director for Market Risk, Treasury and Market Risk Policy, at (202) 649-6360, or Jamey Basham, Assistant Director, Chief Counsel's Office, at (202) 649-5490.

Jonathan V. Gould
Senior Deputy Comptroller and Chief Counsel

Related Link

1. [Margin and Capital Requirements for Covered Swap Entities: Final Rule](#) (PDF)