SIFMA C&L Annual Seminar

Legal and Compliance Considerations for CFTC Swap Dealers

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- This presentation was prepared solely by Colin D. Lloyd and does not reflect input by other panel participants. It reflects developments as of January 17, 2020.

Chief Compliance Officer ("**CCO**") Annual Compliance Report Guidance

CCO Annual Compliance Report ("**CCO Annual Report**"): Overview

— On December 4, 2019, the Division of Swap Dealer and Intermediary Oversight ("**DSIO**") of the Commodity Futures Trading Commission ("**CFTC**") issued CFTC Staff Letter 19-24,[1] which provides guidance to swap dealers ("**SDs**"), futures commission merchants ("**FCMs**"), and major swap participants ("**MSPs**", and together with SDs and FCMs, "**Registrants**") regarding the preparation and submission of CCO Annual Reports as required by CFTC Regulations § 3.3.

— DSIO issued Staff Letter 19-24 to provide further guidance to Registrants after conducting a review of CCO Annual Reports submitted for the 2018 fiscal year, most of which were submitted after the effective date of amendments to regulations related to CCO Annual Reports.[2]

— DSIO stated that it recognized that CCOs may not fully be able to consider its guidance for 2019 CCO Annual Reports, but expects that CCOs will account for the guidance when preparing their 2020 CCO Annual Reports.[3]

Staff Letter 19-24 addresses six areas of the CCO Annual Report:

1) Areas for improvement (CFTC Regulations § 3.3(e)(3))
2) Financial, managerial, operational, and staffing resources (CFTC Regulations § 3.3(e)(4))
3) Material non-compliance issues (CFTC Regulations § 3.3(e)(5))
4) Furnishing the CCO Annual Report (CFTC Regulations § 3.3(f)(1))
5) Certification Requirement (CFTC Regulations § 3.3(f)(3))
6) Other miscellaneous items (Volcker Rule, Coverage Period, Material Changes to Policies and Procedures)

Areas for Improvement (CFTC Regulations § 3.3(e)(3))

- CFTC Regulations § 3.3(e)(3) requires that each CCO Annual Report contain a description of "[a]reas for improvement, and recommended potential or prospective changes or improvements" to each Registrant's compliance program and resources devoted to compliance.
- DSIO interprets this regulation to require that Registrants (i) identify and discuss the area(s) needing improvement, including the basis for each recommended area of improvement, and (ii) discuss the CCO's recommended changes to address each area for improvement, including proposed improvements and the time frame for their implementation.
- The discussion should also cross-reference the regulations that each area for improvement and recommended changes would address.

Deficiencies in 2018 CCO Annual Reports

- Registrants did not include their areas for improvement discussion as a stand-alone section
- Registrants failed to include a discussion of why an identified area needed improvement
- Registrants did not discuss the current status of identified areas for improvement (e.g., whether a compliance failure was ongoing and/or any remediation plan)
- Registrants failed to cite the CFTC regulations associated with their areas for improvement
- Registrants failed to provide sufficient context or explanatory information regarding an area for improvement
- Registrants did not discuss non-material compliance issues in their areas for improvement discussion
- Registrants discussed potential or prospective changes or improvements to their compliance programs and resources devoted to compliance in the areas for improvement section

DSIO Guidance

- A Registrant should identify the underlying regulatory requirement associated with a cited area for improvement
- A Registrant should provide a full discussion of the various areas or initiatives the CCO has identified that are intended to help facilitate the Registrant's compliance, including, but not limited to, policies and procedures
- Discussions of potential or prospective changes or improvements should be in a stand-alone section
- Non-material compliance issues should be included as areas for improvement
- A Registrant should include a discussion of any recommendation or change to the compliance program that necessitates a change in resource allocation

Financial, Managerial, Operational, and Staffing Resources (CFTC Regulations § 3.3(e)(4))

— CFTC Regulations § 3.3(e)(4) requires CCO Annual Reports to include a discussion of the financial, managerial, operational, and staffing resources set aside for compliance with the Commodity Exchange Act ("**CEA**") and CFTC regulations.

— Staff Letter 19-24 notes that this requirement was associated with the most common deficiency that DSIO staff identified in its review of CCO Annual reports.

Deficiencies in 2018 CCO Annual Reports

— CCO Annual Reports did not include Registrant-level information, as opposed to parent or consolidated level

— Registrants aggregated compliance costs not related to complying with the CEA and CFTC regulations with compliance costs for complying with the CEA and CFTC regulations

DSIO Guidance

— The relevant information must be provided at the Registrant-level, in addition to any information at the parent level

— Registrants should disaggregate compliance costs beyond those associated with complying with the CEA and CFTC regulations

— If a Registrant is unable to provide exact budget and staffing information related to compliance with the CEA and CFTC regulations, it should make an effort to reasonably estimate the portion of the aggregated numerical information dedicated to such compliance and provide a basis for any estimate

— With respect to compliance-oriented software, the Registrant should include a description of (1) the software, which includes the name of the software, (2) how the software is used by personnel, and (3) how the software fits into the entity's overall regulatory compliance program

Material Non-Compliance Issues (CFTC Regulations § 3.3(e)(5))

— CFTC Regulations § 3.3(e)(5) requires Registrants to disclose any material non-compliance issues in their CCO Annual Reports.

— Prior DSIO guidance noted that the discussion should include a description of each material non-compliance issue, whether identified through internal self-assessment or review by an external entity, such as a self-regulatory organization ("**SRO**").

Deficiencies in 2018 CCO Annual Reports	**DSIO Guidance**
— Multiple or consecutive CCO Annual Reports that only discuss material non-compliance issues that were identified by external entities	— While Registrants may include findings of reviews by external entities, CCO Annual Reports should also include any findings from self-evaluations — As stated in prior guidance, Registrants should include the standard of materiality used to self-identify material non-compliance issues

Furnishing the CCO Annual Report (CFTC Regulations § 3.3(f)(1))

- CFTC Regulations § 3.3(f)(1) requires that the CCO must (i) provide the CCO Annual Report to the Board of Directors or senior officer of the Registrant and (ii) furnish the CCO Annual Report to the audit committee, or equivalent body, of the Registrant.
- The Registrant must maintain a written record of the transmittal of the report.

Deficiencies in 2018 CCO Annual Reports

- Registrants did not discuss both furnishment requirements

DSIO Guidance

- If the audit committee (or equivalent body) requirement is not applicable to a Registrant, the Registrant should include a statement to that effect in its CCO Annual Report

Certification Requirement (CFTC Regulation § 3.3(f)(3))

— CFTC Regulations § 3.3(f)(3) requires that a Registrant's CCO or chief executive officer certify that "to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete in all material respects."

Deficiencies in 2018 CCO Annual Reports

— Registrants modified the certification language contained in CFTC Regulations § 3.3(f)(3)

DSIO Guidance

— A certification statement that varies from the exact language in CFTC Regulations § 3.3(f)(3) fails to satisfy § 3.3(f)(3)'s certification requirement

Other Miscellaneous Items

Volcker Rule	Coverage Period	Material Changes to Compliance Policies and Procedures
The DSIO clarified that if the Volcker Rule applies to a Registrant, a discussion of subpart D of part 75 of the CFTC's regulations (regarding the compliance program requirement with respect to the Volcker Rule) and applicable subpart D requirements, as well as any applicable amendments to the Volcker Rule, should be included among the suite of compliance obligations addressed in the CCO Annual Report.	Registrants should include specific dates of coverage in the CCO Annual Report (*e.g.*, from January 1st to December 31st of the relevant year, if such dates cover the Registrant's most recently completed fiscal year).	To comply with CFTC Regulations § 3.3(f)(3) (the certification requirement), Registrants should identify any material changes to its policies and procedures, using the same standard of materiality that's used for purposes of the CCO Annual Report.

CFTC Cross-Border Proposal

CFTC Cross-Border Proposal: Introduction

— On December 18, 2019, the CFTC, in a 3 to 2 vote, proposed rules (the "**Proposed Cross-Border Rules**")[4] that would, if finalized, supersede the CFTC's current policy with respect to the cross-border application of swaps regulations under CEA Section 2(i), as set forth in the guidance published by the CFTC in July 2013 (the "**2013 Guidance**").[5]

— Some key elements of the Proposed Cross-Border Rules include:

- **Key Definitions**. The Proposed Cross-Border Rules would introduce the concept of "significant risk subsidiary" ("**SRS**"), revise the definitions for "U.S. person" and "guarantee" from the 2013 Guidance to harmonize with related CFTC and Securities and Exchange Commission ("**SEC**") rules, and introduce revised definitions for a "foreign branch," "swap conducted through a foreign branch," "U.S. branch," and "swap conducted through a U.S. branch."
- **Registration Thresholds**. Subject to a few deviations (e.g. for SRSs), the Proposed Cross-Border Rules would largely codify the 2013 Guidance with respect to the calculation of relevant thresholds to determine whether a person must register as an SD or MSP with the CFTC.
- **ANE Transactions**. The Proposed Cross-Border Rules would not apply swaps-related requirements, other than anti-fraud and anti-manipulation rules, to transactions between non-U.S. counterparties that are arranged, negotiated or executed by U.S.-located personnel or agents ("**ANE Transactions**"), so long as neither non-U.S. counterparty is an SRS or guaranteed by a U.S. person ("**Guaranteed Entity**").
- **Categorization of Swap Dealer Requirements**. The Proposed Cross-Border Rules would re-categorize certain of the entity-level and transaction-level requirements from the 2013 Guidance into Group A, B, or C requirements, each with corresponding eligibility for exceptions and/or substituted compliance.
- **Recordkeeping**. Under the Proposed Cross-Border Rules, SDs and MSPs would be required to create a sufficiently detailed record of their compliance with the Proposed Cross-Border Rules, and retain those records in accordance with § 23.203.

CFTC Cross-Border Proposal: Background

— Section 2(i) provides that the CEA's swaps-related provisions shall not apply to activities outside the U.S. unless those activities (1) have a direct and significant connection with activities in, or effect on, U.S. commerce or (2) contravene CFTC anti-evasion rules.

— Interpreting Section 2(i), the 2013 Guidance

- defines a U.S. person, a foreign branch of a U.S. bank ("**foreign branch**"), a guaranteed affiliate, and a conduit affiliate, and addresses how these definitions affect the application of the CFTC's swaps regulations;
- addresses how SD and MSP registration requirements apply to swaps entered into by each category;
- divides most of the relevant swaps regulations into "Entity-Level Requirements" or "Transaction-Level Requirements" and addresses how those requirements apply to swaps entered into by each category; and
- addresses when the CFTC permits substituted compliance with comparable foreign regulation and how it determines comparability.

— The CFTC has since frequently supplemented and sought to revisit the 2013 Guidance, including:

- Staff guidance published in November 2013 ("**Advisory 13-69**")[6] and a series of related no-action letters that address ANE Transactions;[7]
- Rules that supersede the 2013 Guidance with respect to the cross-border application of margin requirements for uncleared swaps of SDs and MSPs that do not have a prudential regulator ("**Cross-Border Margin Rules**");[8]
- A rule proposal issued in late 2016 under former Chairman Timothy Massad (the "**2016 Cross-Border Proposal**");[9]
- A white paper published by former Chairman J. Christopher Giancarlo in 2018.[10]

Key Definitions

"U.S. Persons"

➢ The proposed definition of U.S. person would be consistent with parallel SEC rules for security-based swaps ("**SBS**"), and be limited to:

- A natural person resident in the United States;
- A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;
- An account (whether discretionary or non-discretionary) of a U.S. person; or
- An estate of a decedent who was a resident of the United States at the time of death.

➢ The proposed definition would eliminate certain prongs of the U.S. Person definition from the 2013 Guidance, including for a collective investment vehicle that is majority owned by U.S. persons and a legal entity owned by a U.S. person who bears unlimited liability for the legal entity.

- The CFTC would permit reliance on U.S. person representations made with respect to the Cross-Border Margin Rules until December 31, 2025.

"Guarantee"

➢ The proposed definition of guarantee would be limited to an arrangement, pursuant to which one party to a swap has rights of recourse against a guarantor with respect to its counterparty's obligations under the swap, consistent with the Cross-Border Margin Rules and parallel SEC rules. The proposed definition would exclude other formal arrangements that support the non-U.S. person's ability to pay or perform its swap obligations (e.g., keepwells and liquidity puts and indemnity agreements) that are included in the guarantee definition from the 2013 Guidance.

Key Definitions (Continued)

"SRS"

➢ The proposed SRS definition would replace the "conduit affiliate" definition from the 2013 Guidance. It would be based on the concept of foreign consolidated subsidiaries ("**FCS**") from the Cross-Border Margin Rules, but would exclude:

- consolidated subsidiaries that are not significant to their U.S. parents;
- subsidiaries of groups that are not significant to the U.S. financial systems; and
- subsidiaries subject to prudential regulation.

"Swap Conducted Through a Foreign Branch"

➢ The proposed definition of swap conducted through a foreign branch would eliminate the 2013 Guidance's requirement that the employees negotiating and agreeing to the terms of the swap be located in a foreign branch.

- However, the CFTC stated in the preamble that to satisfy the "normal course of business" prong, it would expect swaps booked in the foreign branch to be primarily entered into by personnel located in a foreign branch, though this requirement would not prevent personnel of the U.S. bank located in the U.S. from participating in the negotiation or execution of such swap.
  - By contrast, the Proposed Cross-Border Rules' test for whether a swap is conducted through a U.S. branch does not include a "normal course of business" prong and instead seems to focus on booking location alone.
- The Proposed Cross-Border Rules' definition of foreign branch is mostly consistent with the SEC's definition.

Key Definitions (Continued)

"U.S. Branch"

➢ Under the Proposed Cross-Border Rules, "U.S. branch" is defined as a branch or agency of a non-U.S. banking organization where such branch or agency: (1) is located in the United States; (2) maintains accounts independently of the home office and other U.S. branches, with the profit or loss accrued at each branch determined as a separate item for each U.S. branch; and (3) engages in the business of banking and is subject to substantive banking regulation in the state or district where located.

➢ The term "swap conducted through a U.S. branch" would mean a swap entered into by a U.S. branch where: (1) the U.S. branch is the office through which the non-U.S. person makes and receives payments and deliveries under the swap pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the non-U.S. person is such U.S. branch; or (2) the swap is reflected in the local accounts of the U.S. branch.

- The CFTC intends to use these definitions to identify swap activity that should be considered to take place in the United States and, thus, remain subject to certain CFTC swaps requirements.
- The test for whether a swap is conducted through a U.S. branch does not include a "normal course of business" prong like the parallel test for whether a swap is conducted through a foreign branch. Instead, the U.S. branch test seems mostly to focus on booking location.
- Adoption of this definition under the Proposed Cross-Border Rules would result in application of certain transaction-level requirements to transactions between non-U.S. persons and a U.S. branches of a foreign banks.

Registration Thresholds

— **<u>SD *de minimis* thresholds</u>**: Under existing CFTC rules, a person is not required to register as an SD unless its swap dealing activity involving counterparties, together with the dealing activity of its affiliates under common control, exceeds certain *de minimis* thresholds during the preceding 12 months. Under the Proposed Cross-Border Rules, the *de minimis* thresholds' cross-border application would partially depend on whether the potential registrant is a U.S. person, a Guaranteed Entity, an SRS or a Non-U.S. person other than a Guaranteed Entity or an SRS ("**Other Non-U.S. Person**").

— **<u>MSP thresholds</u>**: Under existing CFTC rules, a person is not required to register as an MSP unless its swap positions exceed one of several thresholds. Under the Proposed Cross-Border Rules, whether a potential registrant would include a particular swap in its MSP calculation would depend in part on whether the potential registrant is a U.S. person, a Guaranteed Entity, an SRS or an Other Non-U.S. Person.

— The rules for cross-border application of SD de minimis threshold and MSP threshold are summarized by the table below.

Potential SD ↓ / Counterparty →		U.S. Person	Non-U.S. Person		
			Guaranteed Entity	SRS	Other Non-U.S. Person
U.S. Person		Include	Include	Include	Include
Non-U.S. Person	Guaranteed Entity	Include	Include	Include	Include
	SRS	Include	Include	Include	Include
	Other Non-U.S. Person[1]	Include[2]	Include[3]	Exclude	Exclude

[1] Would not include swaps entered into anonymously on a designated contract market, a registered or exempted swap execution facility, or a registered foreign board of trade ("Anonymous Cleared Swaps")
[2] Unless the swap is conducted through a foreign branch of a registered SD.
[3] Unless the Guaranteed Entity is registered as an SD, or, for purposes of the SD de minimis threshold only, unless the guarantor is a non-financial entity.

Additionally, for purposes of the MSP thresholds only, all swap positions that are subject to recourse should be attributed to the guarantor, whether it is a U.S. person or a non-U.S. person, unless the guarantor, the Guaranteed Entity, and its counterparty are Other Non-U.S. Persons.

Registration Thresholds: Key Issues

— The Proposed Cross-Border Rules would eliminate an existing exception from counting for an Other Non-U.S. Person for transactions with a guaranteed or conduit affiliate that is not an SD and itself engages in *de minimis* swap dealing activity and which is affiliated with an SD.

— The Proposed Cross-Border Rules would eliminate an exception from the 2013 Guidance from the attribution requirement pertaining to MSP thresholds for entities subject to non-U.S. capital standards that are comparable to, and as comprehensive as, the capital regulations and oversight by the CFTC, SEC or a U.S. prudential regulator (i.e., Basel compliant capital standards and oversight by a G20 prudential supervisor).

— The exception for Anonymous Cleared Swaps requires the clearing organization and trading venue to be registered or exempt from registration with the CFTC even though such an organization or venue generally would not trigger registration with the CFTC in the first place if it only admitted Guaranteed Entities and Other Non-U.S. Persons.

ANE Transactions

- Consistent with the 2013 Guidance, the Proposed Cross-Border Rules would not apply swaps-related requirements, other than anti-fraud and anti-manipulation rules, to ANE Transactions, so long as neither non-U.S. counterparty is an SRS or Guaranteed Entity.
- The Proposed Cross-Border Rules would supersede Advisory 13-69 with respect to those requirements covered by the Proposed Cross-Border Rules. However, certain other requirements – mandatory clearing, mandatory trade execution, and real-time public reporting – would remain subject to Advisory 13-69 and related no-action relief pending further CFTC action (unless the CFTC were to withdraw Advisory 13-69 in its entirety at the same time it finalized the Proposed Cross-Border Rules).

Categorization of SD Requirements

— The Proposed Cross-Border Rules would categorize certain of the Entity-Level and Transaction-Level Requirements from the 2013 Guidance into Group A, B, or C requirements, each with corresponding eligibility for exceptions and/or substituted compliance. The CFTC indicated that it intends to separately address the cross-border application of the Title VII requirements addressed in the 2013 Guidance that are not categorized as Group A, B or C requirements in the Proposed Cross-Border Rules (mandatory clearing, mandatory trade execution, real-time public reporting, swap data reporting, and large trader reporting requirements). For substituted compliance, the CFTC is proposing an outcome-based comparability determination process similar to the 2013 Guidance, and the CFTC indicated that current determinations would not be affected by finalization of the Proposed Cross-Border Rules.

Group	Requirements	Corresponding 2013 Guidance Categorization	Substituted Compliance
A	• Chief compliance officer • Risk management • Swap data recordkeeping • Antitrust considerations	Certain Category 1 and 2 Entity-Level requirements + antitrust considerations	Available
B	• Swap trading relationship documentation • Portfolio reconciliation and compression • Trade confirmation • Daily trading records	Certain Category A Transaction-Level requirements related to risk mitigation and recordkeeping	Available
C	• External business conduct requirements	Category B Transaction-Level requirements	Not Available

— Group A requirements would apply entity-wide for all swaps, regardless of the U.S. or non-U.S. status of the counterparty.

Categorization of SD Requirements (Continued)

— Cross-Border Application of the Group B Requirements in Consideration of Related Exceptions and Substituted Compliance:

Swap Entity ↓ / Counterparty →		U.S. Person		Non-U.S. Person		
		Non-Foreign Branch	Foreign Branch	U.S. Branch	Guaranteed Entity or SRS	Other Non-U.S. Persons
U.S. Swap Entity	Non-Foreign Branch	Yes	Yes	Yes	Yes	Yes
	Foreign Branch	Yes[1]	Yes[1] Sub. Comp. Available	Yes[1]	Yes[1] Sub. Comp. Available	Yes[1, 2] Sub. Comp. Available
Non-U.S. Swap Entity	U.S. Branch	Yes	Yes	Yes	Yes	Yes
	Guaranteed Entity or SRS	Yes[1]	Yes[1] Sub. Comp. Available	Yes[1]	Yes[1] Sub. Comp. Available	Yes[1] Sub. Comp. Available
	Other Non-U.S. Persons	Yes[1]	Yes[1] Sub. Comp. Available	Yes[1]	Yes[1] Sub. Comp. Available	No

[1] Under the Proposed Cross-Border Rules, the Exchange-Traded Exception would be available from certain group B and C requirements for certain anonymous, exchange-traded, and cleared foreign-based swaps between the listed parties.
[2] Under the Proposed Cross-Border Rules the Foreign Branch Exception would be available from the group B requirements for a foreign branch's foreign-based swaps with a foreign counterparty that is an Other Non-U.S. Person.

— The Proposed Cross-Border Rules would expand the application of transaction-level requirements to Guaranteed Entities and SRSs.

— Under the Foreign Branch Exception, Group B requirements would not apply to a foreign branch of a U.S. Swap Entity with respect to a foreign-based swap with an Other Non-U.S. Person, subject to the following conditions: (1) the exception would not be available with respect to any Group B requirement for which substituted compliance is available for the relevant swap; and (2) in any calendar quarter, the aggregate gross notional amount of swaps conducted by a Swap Entity in reliance on the exception may not exceed five percent of the aggregate gross notional amount of all its swaps in that calendar quarter.

— The Foreign Branch Exception is designed to replace the emerging markets exception from the 2013 Guidance and would provide a more flexible approach, however, the existing emerging markets exception would still be relevant with respect to those Transaction-Level Requirements not included in Group B or C.

Categorization of SD Requirements (Continued)

— Cross-Border Application of the Group C Requirements in Consideration of Related Exceptions:

Swap Entity ↓ / Counterparty →		U.S. Person		Non-U.S. Person		
		Non-Foreign Branch	Foreign Branch	U.S. Branch	Guaranteed Entity or SRS	Other Non-U.S. Persons
U.S. Swap Entity	Non-Foreign Branch	Yes	Yes	Yes	Yes	Yes
	Foreign Branch	Yes[1]	No	Yes[1]	No	No
Non-U.S. Swap Entity	U.S. Branch	Yes	Yes	Yes	Yes	Yes
	Guaranteed Entity or SRS	Yes[1]	No	Yes[1]	No	No
	Other Non-U.S. Persons	Yes[1]	No	Yes[1]	No	No

[1] Under the Proposed Rules the Exchange-Traded Exception would be available from certain group B and C requirements for certain anonymous, exchange-traded, and cleared foreign-based swaps between the listed parties.

Proposed Capital Requirements for SDs and MSPs

Proposed Capital Rules

— In 2011, the CFTC proposed capital rules for nonbank SDs and MSPs, and proposed amendments to the capital requirements for futures commission merchants (“**FCMs**”) to explicitly address swap and SBS transactions (the “**2011 Proposed Rules**”).[11]

— In 2016, the capital rules were re-proposed (the “**2016 Re-Proposed Rules**”).[12] In addition to amending the FCM net capital rule, the 2016 Re-Proposed Rules would permit (1) nonbank SDs that are not FCMs to elect a capital requirement that is based on existing bank holding company capital rules (the “**Bank-Based Capital Approach**”) or a capital requirement that is based on the existing CFTC FCM capital rule, the existing SEC broker-dealer capital rule, and the SEC’s proposed capital requirements for security-based swap dealers (“**SBSDs**”) (the “**Net Liquid Assets Capital Approach**”); or (2) certain non-financial SDs to compute their minimum capital requirements based on their tangible net worth (the “**Tangible Net Worth Capital Approach**”).

— After commenters raised a number of issues in connection with the 2016 Re-Proposed Rules, and in light of the SEC recently finalizing capital rules applicable to nonbank SBSDs, the CFTC re-opened the comment period and made several requests for new comments **(“2019 Proposed Rules**”).[13]

As part of the release, the CFTC reviewed comments submitted in response to the 2016 Re-Proposed Rules and issued new requests for comments in the following areas, among others:

- 8% Risk Margin Amount
- FCM Minimum Capital Amount
- Common Equity Tier 1 Capital (“**CET 1 Capital**”)
- Standardized Market Risk Charges— Netting of Uncleared Currency and Commodity Swaps
- Minimum Market Risk Capital Charge for Uncleared Interest Rate Swaps
- Tangible Net Worth Capital Approach
- Internal Models
- Model Approval Process
- Liquidity Requirements
- International Financial Reporting Standards and Certified Financial Statements
- Miscellaneous Requests for Comment

8% Risk Margin Amount

— Under the 2016 Re-Proposed Rules, SDs would have to maintain regulatory capital equal to or greater than 8% of the initial margin associated with the SD's proprietary futures and foreign futures and cleared and uncleared swap and SBS positions (the "**risk margin amount**").

Comments to 2016 Re-Proposed Rules

— Though one commenter strongly supported the 8% risk margin amount requirement as an appropriate counterbalance to ensure internal modelling does not reduce loss absorbency, other commenters stated that the 8% risk margin amount requirement was both (i) too high of a percentage and (ii) over-inclusive of the various types of business activities engaged in by SDs.

— Some commenters recommended adjusting the 8% to a lower multiplier, such as 2%

— Commenters stated that since the risk margin amount requirement is computed on a counterparty-by-counterparty basis, it may overstate the SD's risk by not taking into account offsetting positions across multiple counterparties, including hedging positions.

CFTC Requests for Comment

— The CFTC requested data on the potential minimum capital requirements that would be required of SDs electing the Bank-Based Capital Approach, the Net Liquid Assets Capital Approach, or the Tangible Net Worth Capital Approach as a result of the proposed 8% risk margin amount requirement.

— The CFTC requested comment on, among other things:

- whether it should harmonize its approach with the approach adopted by the SEC for SBSDs by lowering the risk margin amount requirement to 2% and thereafter allow the CFTC to increase the risk margin amount requirement based on the CFTC's experience with SD capital levels after implementation of any final regulations;
- whether the types of derivatives positions included in the computation of the risk margin amount should be modified; and
- whether it should adopt a leverage ratio in lieu of the risk margin amount.

FCM Minimum Capital Requirement

— Under the 2016 Re-Proposed Rules, an FCM and an FCM dually-registered as an SD would be required to include in its minimum capital requirement 8% of the uncleared swaps margin for uncleared swaps and 8% of the initial margin for uncleared SBS for which the FCM or dually-registered FCM/SD was a counterparty, as well as 8% of the total initial margin that the FCM or FCM/SD was required to post with a broker or clearing organization for all proprietary cleared swaps and SBS.

Comments to 2016 Re-Proposed Rules

— Commenters suggested that the proposed inclusion of an FCM's or FCM/SD's proprietary cleared swaps and SBS positions in the 8% risk margin amount would result in an unnecessary financial burden on FCMs and would not properly recognize that the same proprietary positions are subject to an existing net capital charge based upon exchange or clearinghouse margin requirements.

— Another commenter argued that the proposed revision would unnecessarily increase the amount of adjusted net capital an FCM would hold for swaps and SBS exposures, which could burden smaller FCMs/SDs and potentially exacerbate the concentration of clearing among larger FCMs.

CFTC Request for Comment

— The CFTC requested comment on whether it should adopt the proposed changes to the FCM minimum capital requirement.

CET 1 Capital

— Under the 2016 Re-Proposed Rules, an SD electing the Bank-Based Capital Approach must satisfy its capital requirement with only CET 1 Capital. CET 1 Capital generally represents the sum of a company's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income.

— The CFTC also proposed to limit the forms of capital that an SD electing the Bank-Based Capital Approach could recognize for CET 1 Capital purposes.

Comments to 2016 Re-Proposed Rules

— There was a split of opinion among commenters. Some commenters agreed with the conservative CET 1 Capital requirement, given that the 2016 Re-Proposed Rules did not contain all of the add-ons and supervisory safeguards that are set forth in the Prudential Regulators' capital rules.

— Other commenters argued that requiring CET 1 Capital to equal at least 8% of risk-weighted assets would place SDs subject to the CFTC capital rule at a disadvantage compared to SDs subject to the capital rules of the Prudential Regulators, who would be considered "adequately capitalized" with CET 1 capital equal to at least 4.5% of risk-weighted assets.

CFTC Requests for Comment

— The CFTC requested comment on, among other things:

- whether SDs electing the Bank-Based Capital Approach should be able to recognize capital other than CET1 Capital in meeting its 8% of risk-weighted assets ratio requirement;
- requiring an SD to instead maintain a CET1 Capital ratio of at least 6.5% (or 4.5%) of risk-weighted assets, with an additional 1.5% (or 3.5%) of risk-weighted assets permitted to be held in the form of Additional Tier 1 capital or Tier 2 capital; and
- whether an SD that elects the Bank-Based Capital Approach should be permitted to include subordinated debt in computing the amount of capital available to meet the 8% of risk-weighted assets ratio requirement.

Standardized Market Risk Charges— Netting of Uncleared Currency and Commodity Swaps

CFTC Requests for Comment

— The CFTC requests comment on whether it should amend the proposed provisions regarding market risk charges for uncleared currency and commodity swaps by adding a netting provision present in the recently finalized SEC capital rules that would permit a reduction of the resulting capital charge by an amount equal to any reduction recognized for a comparable long or short position in the reference asset under CFTC Regulations § 1.17 or SEC Rule 15c3–1.

— The CFTC specifically seeks comment on how the proposed changes to the netting or offsetting provisions would affect an FCM's or SD's risk management, liquidity provision, and capacity to serve end users in commodity swap and currency swap markets.

— The CFTC also requested comments on whether it should include a standardized calculation for market risk which recognizes offsets across commodity positions, as included in the Basel III framework.

Minimum Market Risk Capital Charge for Uncleared Interest Rate Swaps

— Under the 2016 Re-Proposed Rules, SDs that elect to follow the Bank-Based Capital Approach and are not approved to use internal models, FCMs, and dually-registered FCM/SDs ("**Covered Firms**") would be required to take a standardized market risk capital charge equal to a percentage of the notional amount of their uncleared interest rate swaps.

— The percentage that would be applied to the notional amount would be based upon the remaining time to maturity of the interest rate swap, and would range from 0% (for interest rate swaps with a remaining time to maturity of less than 3 months) to 6% (for interest rate swaps with a remaining time to maturity of 25 years or more).

— A Covered Firm may net certain of the long and short uncleared interest rate swaps to reduce the net notional amount, provided that the net notional amount is subject to a minimum floor standardized capital charge equal to 0.5%.

Comments to 2016 Re-Proposed Rules

— Commenters were generally against the proposed standardized market risk charges, viewing them as too punitive, not tailored to the risk posed by the relevant portfolios of positions, and substantially higher than the capital charges based on clearinghouse maintenance margin requirements for cleared interest rate futures contracts, which would particularly impact small to mid-sized Covered Firms that are not approved or otherwise do not use internal market risk models.

CFTC Requests for Comment

— The CFTC requested comments on:

  — whether it should adopt the 0.125% capital charge used by the SEC for offsetting purposes; and

  — whether additional guidance concerning the method of applicable netting of uncleared interest rate swaps positions is necessary.

Revision of the Length of Time to Maturity Categories for Credit Default Swaps (“**CDS**”)

— Under the 2016 Re-Proposed Rules, an FCM or SD would be required to incur a standardized market risk capital charge for uncleared CDS, which would be determined by multiplying the notional amount of the swap by a fixed percentage based upon the remaining length of time to maturity of the swap and the current basis point spread of the swap.

— In the 2019 Proposed Rules, the CFTC proposes to modify the grid of the final length of time to maturity of the CDS contracts referencing a broad-based security index to harmonize the standardized CDS contract market risk capital charges with the final SEC standardized capital charges.

CFTC Requests for Comment

— The CFTC requested comments on the potential modification and whether there are additional modifications that need to be addressed in order to further harmonize the CFTC and SEC CDS standardized market risk charges.

Tangible Net Worth Capital Approach

- Under the 2016 Re-Proposed Rules, SDs that are ‘‘predominantly engaged in nonfinancial activities’’ may compute their minimum regulatory capital based upon the Tangible Net Worth Capital Approach.
- An entity would be considered ‘‘predominantly engaged in non-financial activities’’ if: (1) the consolidated annual gross financial revenues of the entity in either of its two most recently completed fiscal years represents less than 15% of the entity’s consolidated gross revenue in that fiscal year (‘‘**15% Revenue Test**’’), and (2) the consolidated total financial assets of an entity at the end of its two most recently completed fiscal years represents less than 15% of the entity’s consolidated total assets as of the end of the fiscal year (‘‘**15% Asset Test**’’).

Comments to 2016 Re-Proposed Rule

- Certain commenters noted that a parent entity that is predominantly engaged in non-financial activities would not realistically be able to establish an SD subsidiary that would be able to use the Tangible Net Worth Capital Approach because the swaps activity of the SD would be considered financial activities. Other commenters also argued that the Tangible Net Worth Approach would discriminate against corporate entities that are predominantly engaged in non-financial activities but who elect to maintain their swap dealing activities in separate legal entities.
- Commenters stated that the assessment of whether an entity satisfies the conditions for the use of the Tangible Net Worth Capital Approach should be made at the parent level.

CFTC Requests for Comments

- The CFTC sought comments on, among other things, whether:
  - it should permit an SD that is not ‘‘predominantly engaged in non-financial activities” to use the Tangible Net Worth Capital Approach if its parent entity or the ultimate parent of its consolidated ownership group satisfies the criteria;
  - SDs should be required to obtain parent guarantees, or some other form of financial support, for its swaps obligations if it relies on a parent entity to satisfy the ‘‘predominantly engaged in non-financial activities’’ criteria; and
  - an SD primarily engaged in commodity swap transactions whose parent entity is predominantly engaged in financial activities should be eligible for the Tangible Net Worth Approach.

Internal Models

— Under the 2016 Re-Proposed Rules, proposed Appendix A to CFTC Regulations § 23.102 described the requirements for the calculation of market risk exposure using internal models.

Comments to 2016 Re-Proposed Rules

— Commenters noted that the internal capital model requirements in proposed CFTC Regulations § 23.102 did not explicitly incorporate the market risk and credit provisions of 12 CFR part 217, even though an SD that elects the Bank-Based Capital Approach must compute its risk-weighted assets in accordance with the requirements of the Federal Reserve Board for bank holding companies as set forth in 12 CFR part 217, and suggested that the CFTC amend CFTC Regulations § 23.102 to address this omission.

CFTC Requests for Comments

— The CFTC requested comment on whether the suggested modifications to Appendix A of CFTC Regulations § 23.102 as set forth in the 2019 Proposed Rules adequately address commenters' concerns.

Model Approval Process

- The 2016 Re-Proposed Rules would require SDs and FCMs, in computing their respective capital, to take market risk capital charges to protect against potential losses in the value of their proprietary trading positions, and to take counterparty credit risk charges to protect against potential counterparty credit risk.
- In order to compute market risk and credit risk capital charges using internal models in lieu of standardized market risk and credit risk capital charges, an SD must get prior approval from the CFTC or National Futures Association ("**NFA**").

Comments to 2016 Re-Proposed Rules

- While one commenter expressed strong concerns regarding the potential heavy reliance on the use of internal models, noting that such reliance could permit regulated entities to manipulate risk controls to increase their own profits at the cost of increasing risks to the public, other commenters generally supported the CFTC's proposal to permit internal capital models.
- One commenter argued that the CFTC should recognize internal capital models that had been approved by a prudential regulator, the SEC, or a foreign regulator in a jurisdiction that has adopted the Basel capital requirements.
- Commenters also stated that the CFTC should automatically approve market risk models and credit risk models of SDs that have already been approved by a prudential regulator, the SEC, or certain foreign regulators, and that models should be deemed "provisionally approved" while under review by the CFTC or NFA.

CFTC Requests for Comments

- The CFTC sought comment on, among other things:
  - if and how its regulatory approval process for internal models should be modified, including whether there should be different processes for SDs and FCMs;
  - what conditions should the CFTC and NFA consider in permitting SDs to use models of affiliates that have been approved by other regulators; and
  - suggested rule language submitted by a commenter that would permit SDs to use internal market risk and/or credit risk models without obtaining the prior written approval of the CFTC or the NFA.

Liquidity Requirements

— Under the 2016 Re-Proposed Rules, an SD that elects the Bank-Based Capital Approach must maintain each day an amount of high quality liquid assets (“**HQLAs**”) that is no less than 100 percent of the SD’s total net cash outflows over a prospective 30 calendar-day period (the “**HQLA Test**”).

— An SD that elects the Net Liquid Assets Capital Approach and dually-registered FCM/SDs must perform stress testing on at least a monthly basis that takes into account certain assumed conditions lasting for 30 consecutive days (the **“Liquidity Stress Test**”).

Comments to 2016 Re-Proposed Rules

— One commenter suggested that SDs should be able to freely elect either the HQLA Test or the Liquidity Stress Test requirement regardless of the SD’s chosen capital approach.

— Another commenter stated that the requirements of the HQLA Test and the Liquidity Stress Test should be revised to be more similar to each other.

— Some commenters also raised the prospect of the application of a qualitative, rather than quantitative, requirement applicable to SDs that are subsidiaries of bank holding companies and already subject to comprehensive overall liquidity risk management program requirements at a parent level.

CFTC Requests for Comments

— The CFTC requested comment on, among other things:

- whether it should permit an SD to elect the HQLA Test or the Liquidity Stress Test irrespective of its capital approach;
- whether to amend the definition of liquidity reserves to make the definition in the Liquidity Stress Test similar to the HQLA Test;
- whether to permit an SD to rely on the existing application of qualitative liquidity controls applicable at bank holding companies for SDs which are subsidiaries of bank holding companies as a third alternative or to rely solely on existing SD liquidity risk management requirements; and
- whether to adopt the Liquidity Stress Test requirement or an alternative liquidity requirement on SDs that elect the Net Liquid Assets Capital Approach.

International Financial Reporting Standards

- Under the 2016 Re-Proposed Rules, the CFTC would permit certain non-U.S. SDs and MSPs to submit unaudited and audited financial statements in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board ("**IFRS**") in lieu of generally accepted accounting principles established in the United States ("**GAAP**").
- To be eligible to use IFRS, the SD or MSP may not be organized under the laws of a state or other jurisdiction of the United States, and may not be otherwise required to prepare financial statements in accordance with GAAP.

Comments to 2016 Re-Proposed Rules

- Commenters generally supported the CFTC's approach of permitting non-U.S. SDs and MSPs to use IFRS in lieu of GAAP in the preparation of required financial statements, but requested that U.S.-based SD subsidiaries of non-U.S. parent entities be allowed to prepare required financial statements in accordance with IFRS.

CFTC Requests for Comment

- The CFTC requested comment on whether to permit U.S. domiciled SDs that are subsidiaries of foreign parent entities or holding companies to submit required unaudited or audited financial statements prepared in accordance with IFRS in lieu of GAAP.

Certified Financial Statements and Public Disclosures

— Under the 2016 Re-Proposed Rules, an SD subject to the CFTC's capital rules must file an annual audited financial report as of the close of its fiscal year no later than sixty days after the close of the SD's fiscal year-end.

— The 2016 Re-Proposed Rules also would require that certain financial information be posted publicly to the SD's website within ten business days after the SD is required to file the financial information with the CFTC.

Comments to 2016 Re-Proposed Rules

— Several commenters expressed concern that the sixty days timeline was not practical for many large non-financial companies as they are typically permitted to provide audited financial statements within ninety days of the end of the year.

— One commenter stated that public disclosure of financial reports will be onerous for commercial SDs and requested elimination of public disclosures by prudentially regulated SDs.

CFTC Requests for Comment

— The CFTC requested comment on, among other things:

- whether there should be an exception to the requirement to file the annual audited financial report within sixty days of the SD's year-end date;
- whether the CFTC should modify the requirement to permit a ninety day period for SDs that are not predominantly engaged in financial activities or that consolidate into parent entities that are not predominantly engaged in financial activities;
- whether the CFTC should align the public disclosure requirements for SDs that are not affiliated with banks with the SEC's; and
- whether it would be appropriate to remove the proposed requirement that bank SDs publicly post certain financial information on their website under the rationale that this information is already provided to the public on a timely basis as a result of separate disclosure requirements imposed by the prudential regulators.

Additional Requests for Comments

CFTC Requests for Comment

- The CFTC also requested comment on:
  - what revisions need to be made to the CFTC's regulations or requirements to accommodate SD/SBSDs electing to use the SEC's alternative compliance mechanism;
  - whether SDs should recognize alternative forms of collateral provided by commercial end users that are exempt from clearing and from the uncleared margin requirements in computing the SDs' counterparty credit risk charges for uncleared swap transactions; and
  - the appropriate compliance schedule for the final capital and financial reporting requirements.

Proposed Amendments to Margin Requirements for Uncleared Swaps

Extension of Final Implementation Phase of Margin Requirements for Uncleared Swaps

- The Basel Committee on Banking Supervision (“**BCBS**”) and the Board of the International Organization of Securities Commissions (“**IOSCO**”) established a global framework for margin requirements for uncleared derivatives (the “**BCBS-IOSCO Framework**”),[14] which included a compliance schedule. The BCBS-IOSCO Framework was intended to be implemented in five phases, with compliance dates ranging from September 1, 2016 to September 1, 2020. This compliance schedule was adopted by the CFTC and the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, Farm Credit Administration and the Federal Housing Finance Agency (together, the “**Prudential Regulators**”).[15]
- Covered entities with an aggregate average notional amount (“**AANA**”) of greater than €8 billion of uncleared derivatives would have been phased in on September 1, 2020. This would have brought a considerable number of firms in scope of the uncleared margin rules, given that the fourth compliance date had an AANA that was significantly greater (€750 billion).

BCSB-IOSCO

- In July 2019, BCBS and IOSCO, recognizing the operational challenges of implementing the margin requirements for smaller firms that would be complying with the BCBS-IOSCO Framework for the first time in the final phase, extended the final implementation date by one year to September 1, 2021, at which point covered entities with an AANA of greater than €8 billion of uncleared derivatives will be phased in (“**Phase VI**”).
- An additional implementation phase was also introduced whereby covered entities with an AANA of greater than €50 billion of uncleared derivatives as of September 1, 2020 will be phased in (“**Phase V**”).[16]

Prudential Regulators and the CFTC

- Consistent with the revisions to the BCBS-IOSCO Framework’s implementation schedule, the Prudential Regulators and the CFTC have issued proposed rules,[17] which would also provide for Phases V and VI with AANAs of $50 billion and $8 billion, respectively.

Excluding the European Stability Mechanism from Margin Requirements

- In July 2017, the European Stability Mechanism ("**ESM**") submitted a request to the CFTC that SDs be relieved from complying with the CFTC's margin rule when entering into swap transactions with ESM.
- DSIO granted this relief, stating that it would not recommend enforcement action if an SD did not comply with the CFTC's margin rule when entering into uncleared swaps with ESM in CFTC Letter No. 17-34.[18]
- In October 2019, the CFTC released a notice of proposed rulemaking to codify the relief granted in CFTC Letter No. 17-34.[19]

Exclude ESM from the definition of "financial end user"

- The CFTC's margin rule applies to swap transactions between nonbank SDs and MSPs and counterparties that are SDs, MSPs, and financial end users.
- The CFTC proposed to revise the definition of "financial end user" to further exclude ESM and thus codify CFTC Letter No. 17-34.
- To bridge the gap until the date final CFTC action on this rule proposal becomes effective (the "**Effective Date**"), the CFTC is issuing a revised no-action letter to provide relief until the earlier of:
  - April 14, 2020; or
  - The Effective Date.[20]

CFTC LIBOR Transition Relief

LIBOR Transition Relief – Introduction

— The London Interbank Offered Rate ("**LIBOR**") is set to be phased out in 2021. Regulators are encouraging financial firms to transition to other options, such as the Secured Overnight Financing Rate, which is tied to U.S. Treasury repurchase market transactions.

— In December 2019, in connection with an industry-wide initiative associated with the transition of swaps that reference LIBOR and other interbank offered rates (together with LIBOR, the "**IBORs**") to swaps that reference alternative benchmarks, the CFTC issued conditional no-action relief clarifying that amendments to outstanding swaps to either introduce more robust fallback amendments, or to replace an IBOR with a new risk-free rate, will generally not cause the swap to lose its legacy status for purposes of certain obligations under the CFTC's rules.

Relief Provided

Staff Letter 19-26, a no-action letter from DSIO, provides relief to swap dealers from *de minimis* calculation requirements, uncleared swap margin rules, business conduct requirements, confirmation, documentation, and reconciliation requirements, and certain other end-user exception eligibility requirements.[21]

Staff Letter 19-27, a no-action letter from the Division of Market Oversight, provides time-limited relief from the trade execution requirement until December 31, 2021.[22]

Staff Letter 19-28, a no-action letter from the Division of Clearing and Risk will, until the end of 2021, offer relief from the CFTC's mandatory clearing requirement, and related exceptions and exemptions.[23]

Key Swap-Related Enforcement Actions

Notable CFTC/NFA Title VII Swap Dealer Enforcement Actions

Name	Date	Summary of Alleged Misconduct	Penalties
Christophe Rivoire (No. 19-cv-11701) (S.D.N.Y.)	Dec. 20, 2019	Engaging in a deceptive scheme to manipulate the pricing of an interest rate swap between a bond issuer and a global investment bank by manipulating the prices of five-year basis swaps that were used to price the swap	TBD
Wells Fargo Bank, N.A. (CFTC Docket No. 20-08)	Nov. 08, 2019	Failing to deal with a counterparty in a fair and balanced manner based on principles of fair dealing and good faith by providing a rate in the range of the true weighted average for a foreign exchange contract instead of the agreed upon weighted average price; failing to implement and monitor systems to ensure compliance with policies and procedures regarding communicating with counterparties in a fair and balanced manner	$10 million civil monetary penalty and $4.475 million restitution
PNC Bank, National Association (CFTC Docket No. 19-43)	Sept. 30, 2019	Failing to properly report legal entity identifiers, primary economic terms, and continuation data to its swap data repository ("**SDR**"); failing to file large trader reports for its physical commodity swaps; and failing to timely report certain trades to its SDR	$300,000 civil monetary penalty
The Bank of New York Mellon (CFTC Docket No. 19-42)	Sept. 30, 2019	Failing to correctly report hundreds of thousands of swap transactions to an SDR as required by the CEA and CFTC regulations	$750,000 civil monetary penalty
HSBC Bank USA, N.A. (CFTC Docket No. 19-41)	Sept. 30, 2019	Failing to establish an appropriate risk management system for its swap activities or to properly report swap data in certain categories, for certain swap transactions, to an SDR	$650,000 civil monetary penalty

Notable CFTC/NFA Title VII Swap Dealer Enforcement Actions

Name	Date	Summary of Alleged Misconduct	Penalties
NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (CFTC Docket No. 19-40)	Sept. 30, 2019	Failing to comply with its obligations to submit to the CFTC accurate large trader reports for physical commodity swap positions	$850,000 civil monetary penalty
The Northern Trust Company (CFTC Docket No. 19-39)	Sept. 30, 2019	Failing to correctly report hundreds of thousands of swap transactions to an SDR as required by the CEA and CFTC regulations	$1 million civil monetary penalty
Société Générale International Limited (CFTC Docket No. 19-38)	Sept. 30, 2019	Failing to comply with its swap data reporting obligations as a swap dealer, failing to implement required policies and procedures, and related supervision failures	$2.5 million civil monetary penalty
Wells Fargo Bank, N.A. (NFA Case No. 19-BCC-010)	Aug. 9, 2019	Failing to communicate with a counterparty in a fair and balanced manner by providing a rate in the range of the true weighted average for a foreign exchange contract instead of the agreed upon weighted average price	$2.5 million fine

Background Documents

1. CFTC Staff Letter No. 19-24 (Dec. 4, 2019).
2. Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, 83 Fed. Reg. 43510 (Aug. 27, 2018) (codified at 17 CFR § 3.3).
3. CFTC, Statement of Division of Swap Dealer and Intermediary Oversight on Annual Report Requirements (Jan. 3, 2020), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/dsio120419advstatement010220.
4. Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 Fed. Reg. 952 (Jan. 8, 2020).
5. Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013).
6. CFTC Staff Advisory No. 13-69 (Nov. 14, 2013).
7. *See, e.g.*, CFTC No-Action Letter No. 17-36 (July 25, 2017).
8. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants-Cross-Border Application of the Margin Requirements, 81 Fed. Reg. 34817 (May 31, 2016).
9. Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 Fed. Reg. 71946 (Oct. 18, 2016).
10. CFTC Chairman J. Christopher Giancarlo, "Cross Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-US Regulation" (Oct. 1, 2018), available at https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf.

Background Documents (continued)

11. Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. 27802 (May 12, 2011).
12. Capital Requirements of Swap Dealers and Major Swap Participants, 81 Fed. Reg. 91252 (Dec. 16, 2016).
13. Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 59970 (Nov. 7, 2019); Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 71833 (Dec. 30, 2019).
14. Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions, Margin Requirements for Non-Centrally Cleared Derivatives (Mar. 2015), available at https://www.bis.org/bcbs/publ/d317.pdf.
15. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 635 (Jan. 6, 2016); Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74839 (Nov. 30, 2015).
16. Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions, Margin Requirements for Non-Centrally Cleared Derivatives (July 2019), available at https://www.bis.org/bcbs/publ/d475.pdf.
17. Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 59970 (Nov. 7, 2019); Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 71833 (Dec. 30, 2019); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84. Fed. Reg. 56950 (Oct. 24, 2019); see also Letter from Chairman J. Christopher Giancarlo, dated Apr. 29, 2019.

Background Documents (continued)

18. CFTC No-Action Letter No. 17-34 (July 24, 2017).
19. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 Fed. Reg. 56392 (Oct. 22, 2019).
20. CFTC No-Action Letter No. 19-22 (Oct. 16. 2019).
21. CFTC Staff Letter No. 19-26 (Dec. 17, 2019).
22. CFTC Staff Letter No. 19-27 (Dec. 17, 2019).
23. CFTC Staff Letter No. 19-28 (Dec. 17, 2019).