Banking and Finance Law Daily Wrap Up,SECURITIES AND DERIVATIVES—FDIC finalizes swap margin exemptions,(Jun. 22, 2016)

By John M. Pachkowski, J.D.

The Federal Deposit Insurance Corporation has finalized an interim final rule that it had issued in October 2015 to provide exemptions from swap margin requirements for commercial end users and certain captive finance affiliates and treasury affiliates, as well as certain cooperatives and small financial institutions. The final rule was developed jointly by the FDIC, Office of the Comptroller of the Currency, Federal Reserve Board, Farm Credit Administration, and Federal Housing Finance Agency. In all likelihood, the remaining agencies will also finalize the interim final rule in due course.

The final rule completes the agencies' rulemaking to implement sections 731 and 764 of the Dodd-Frank Act that required them to establish margin and capital requirements for a swap entity that is supervised by one of the agencies. The Commodity Futures Trading Commission and Securities and Exchange Commission were charged with establishing margin and capital requirements for swap entities that are not supervised by one of the agencies.

The agencies' margin and capital regulations require "covered swap entities" to comply with risk-based and leverage capital requirements already applicable to that covered swap entity as part of its prudential regulatory regime. In addition, a covered swap entity must exchange initial margin with counterparties that are swap entities, or financial end users with material swaps exposure. The covered swap entity's minimum initial margin requirement can be calculated in one of two ways: a Standardized Table set out in an appendix of the final rule; or an Internal Model that satisfies the criteria outlined within the final rule and has been approved by the supervising agency.

Finally, the agencies' margin and capital regulations also imposed a number of requirements regarding the types and uses of collateral that a covered swap entity may post or collect to meet its minimum margin requirements. For initial margin, the final rule permits cash as well as certain assets expected to remain highly liquid during a period of financial stress. To meet its variation margin, a covered swap entity will only be permitted to exchange immediately available cash funds denominated in U.S. dollars or the currency of settlement swaps with another swap entity (see *Banking and Finance Law Daily*, Oct. 22, 2015 and Nov. 2, 2015).

Specifically, the final rule adopted by the FDIC implements section 302 of the Terrorism Risk Insurance Program Reauthorization Act which provided exemptions from the margin and capital regulations for commercial end users and certain captive finance affiliates and treasury affiliates, as well as certain cooperatives and small financial institutions. The final rule becomes effective Oct. 1, 2016.

RegulatoryActivity: BankingOperations CapitalBaselAccords DoddFrankAct FinancialStability PrudentialRegulation SecuritiesDerivatives