

Press Release

At Joint Open Meeting, SEC and CFTC Approve Final Rule on Security Futures Margin and Request for Comment on Portfolio Margining

FOR IMMEDIATE RELEASE

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Washington D.C., Oct. 22, 2020 —The Securities and Exchange Commission and the Commodity Futures Trading Commission, at their first joint open meeting to vote on rulemaking initiatives, today approved: (1) a joint final rule to harmonize the minimum margin level for security futures held in a futures account with the minimum margin level for security futures held in a securities portfolio margin account, and (2) the issuance of a joint request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps.

The joint final rule and request for comment are two components of the Commissions' ongoing efforts to further harmonize their regulatory regimes to better serve the markets and investors.

"Collaboration and coordination between the two Commissions are critical to achieving our shared regulatory objectives," said SEC Chairman Jay Clayton. "I want to express my thanks to my colleagues at both the SEC and CFTC for their hard work, and I look forward to continuing to work together to improve our markets, including exploring potential opportunities for efficiencies in portfolio margining."

"The markets the CFTC and SEC regulate are highly interconnected, so coordination is vital to regulatory effectiveness. The historic joint open meeting of our two agencies reflects our strong commitment to cooperation and harmonizing our efforts where appropriate," said CFTC Chairman Heath P. Tarbert. "Today's final rule represents an important example of our long history of cooperation regarding the joint regulation of security futures. I am pleased that the Commissions will continue this collaboration to examine potential ways to implement the portfolio margining of uncleared swaps and non-cleared security-based swaps."

FACT SHEET

Joint Final Rule: Customer Margin Rules Relating to Security Futures October 22, 2020

Action

The joint final rule will harmonize the minimum margin level for security futures, whether they are held in a futures account, a securities portfolio margin account, or a securities account that is not approved for portfolio margining.

Highlights of the Action

The Commissions have joint rulemaking authority regarding margin requirements for security futures. In 2002, the Commissions adopted rules establishing margin levels for unhedged security futures at 20 percent. In light of the asymmetry in margin requirements resulting from the 15 percent margin level that has been established for security futures and comparable financial products held in a securities portfolio margin account, the Commissions are adopting the proposed margin requirement to set the required margin level for each long or short unhedged position in a security future at 15 percent of its current market value.

At this time, there are no security futures contracts listed for trading on U.S. exchanges. The final rule amendments, however, would set a 15 percent level for security futures if an existing exchange were to resume operations or another exchange were to launch security futures contracts.

What's Next?

This final rule is effective 30 days after publication in the Federal Register.

FACT SHEET

Joint Request for Comment: Portfolio Margining of Uncleared Swaps and Non-Cleared Security-based Swaps

October 22, 2020

Action

The joint request for comment seeks public input on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps, including whether there are opportunities to enhance efficiencies, reduce complexity, increase consistency and add resiliency to our financial system through adjustments to our current margin rules.

Highlights of the Action

Portfolio Margining

Portfolio margining generally refers to the cross margining of related positions in a single account. Portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions can offer benefits to customers and the markets, including promoting greater efficiencies in margin calculations with respect to offsetting positions. At the same time, facilitating portfolio margining for uncleared swaps, non-cleared security-based swaps, and related positions requires careful consideration to ensure that any customer protection and applicable regulatory issues and potential impacts are appropriately considered and addressed.

Regulation of Non-Cleared Security-based Swaps and Uncleared Swaps

Under the Dodd-Frank Act, the CFTC has jurisdiction over uncleared swaps and the SEC has jurisdiction over non-cleared security-based swaps. The CFTC has adopted margin rules (including minimum standards for the safekeeping of collateral) for uncleared swaps applicable to nonbank swap dealers and the SEC has adopted margin and segregation rules applicable to nonbank security-based swap dealers. As discussed in the request for comment, the requirements of these rules differ in some ways that would be relevant to portfolio margining.

The following table summarizes some of the similarities and differences between the agencies' margin rules:

Requirement	SEC Margin Rule for Non-Cleared Security-based Swaps	CFTC Margin Rule for Uncleared Swaps
Dealer Must Collect/Post Variation Margin	Required, unless exception	Required, unless exception
Dealer Must Collect Initial Margin	Must collect from all counterparties, unless a counterparty, threshold or legacy exception applies	Required collection from other swap dealers and financial end users with material swaps exposure, unless a counterparty threshold or legacy exception applies
Dealer Must Post Initial Margin	Permitted, but not required	Required posting to other swap dealers and financial end users with material swaps exposure, unless a counterparty threshold or legacy exception applies
Dealer Can Use An Approved Initial Margin Model (including an industry standard model)	Permitted; provided Broker-dealer/SBSDs must use a standardized method for equity security-based swaps	Permitted
Initial Margin Posted to/by Dealer Must Be Held by Third-	Permitted, but not required	Required

Party Custodian		
Waiver of Segregation Requirements for Initial Margin Collateral	Permitted; provided that, if the SBSB is a broker-dealer, non-affiliated customers cannot waive segregation	Prohibited
Re-hypothecation of Initial Margin Collateral	Permitted under limited circumstances	Prohibited

Specific Requests for Comment; Different Account Types

The request for comment solicits comment on various specific aspects of the margining of uncleared swaps, non-cleared security-based swaps, and related positions, including on the merits, benefits, and risks of portfolio margining these types of positions, and on any regulatory, legal, and operational issues associated with portfolio margining these various positions in different account types.

The following table, organized by account type and position type, summarizes the current margin and segregation requirements that apply and the types of positions subject to our requests for comment:

Account Type	Types of Positions Subject to Request for Comment	Current Margin Requirements for Account Type	Current Segregation Requirements for Account Type
Broker-Dealer/SBSD Securities Account: Portfolio Margin	<ul style="list-style-type: none"> - Uncleared swaps - Non-cleared security-based swaps - Cash market securities positions - Listed securities options - OTC securities options - Futures - Options on futures - Security futures 	<ul style="list-style-type: none"> - Securities self-regulatory organization ("SRO") portfolio margin rules 	<ul style="list-style-type: none"> - Possession or control of fully paid and excess margin securities and excess securities collateral (SEC Rule 15c3-3) - Reserve account for excess credits (SEC Rule 15c3-3) - Affiliates of broker-dealer can waive segregation for non-cleared security-based swaps -Counterparties to non-cleared security-based swap transactions can elect to have individual segregation at a third-party custodian.
Broker-Dealer/SBSD Securities Account: Non-Portfolio Margin	<ul style="list-style-type: none"> - Uncleared swaps - Non-cleared security-based swaps - Cash market securities positions - Listed securities options 	<ul style="list-style-type: none"> - Federal Reserve Board's Regulation T - SRO margin rules - SEC margin rules for security futures 	<ul style="list-style-type: none"> - Possession or control of fully paid and excess margin securities and excess securities collateral (SEC Rule 15c3-3) - Reserve account for excess credits (SEC Rule 15c3-3) - Affiliates of broker-dealer can waive segregation for non-cleared security-based swaps -Counterparties to non-cleared

	<ul style="list-style-type: none"> - OTC securities options - Futures - Options on futures - Security futures 		security-based swap transactions can elect to have individual segregation at a third-party custodian.
Broker-Dealer/SBSD Security-Based Swap Account	<ul style="list-style-type: none"> - Uncleared swaps - Non-cleared security-based swaps - OTC securities options - Related collateral 	<ul style="list-style-type: none"> - SEC Rule 18a-3 (Margin requirements for SBSDs) -SRO margin rules (for OTC securities options) 	<ul style="list-style-type: none"> - Possession or control excess securities collateral (SEC Rule 15c3-3) - Reserve account for excess credits (SEC Rule 15c3-3) - Affiliates of broker-dealer can waive segregation for non-cleared security-based swaps -Counterparties to non-cleared security-based swap transactions can elect to have individual segregation at a third-party custodian.
SBSD (including SBSD/OTC derivatives dealer) Security-Based Swap Account	<ul style="list-style-type: none"> - Uncleared swaps - Non-cleared security-based swaps - OTC securities options - Related collateral 	<ul style="list-style-type: none"> - SEC Rule 18a-3 (Margin requirements for SBSDs) - Federal Reserve Board's Regulation U (for OTC securities options) 	<ul style="list-style-type: none"> - Possession or control excess securities collateral for security-based swaps (SEC Rule 18a-4) - Reserve account for excess credits for security-based swaps (SEC Rule 18a-4) - All counterparties can waive segregation for non-cleared security-based swaps or elect individual segregation at a third party custodian.
Swap Dealer Swap Account	<ul style="list-style-type: none"> - Uncleared swaps - Non-cleared security-based swaps - Related collateral 	CFTC Rules 23.150 - 23.161 (Margin requirements for swap dealers)	Initial margin must be held at an independent third-party custodian (CFTC Rule 23.157)

What's Next

The public comment period will remain open for 30 days following publication in the Federal Register. All comments will be posted on both the CFTC's website and the SEC's website.

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