

Public Statements & Remarks

Statement of CFTC Commissioner Rostin Behnam Regarding Interim Final Rule with Request for Comment on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

May 28, 2020

A little over two months ago, the Commission cancelled a scheduled open public meeting due to the COVID-19 pandemic.[1] One of the three matters on the agenda for deliberation that day was the most recent amendment to the CFTC Margin Rule, which sought to align the compliance schedule for initial margin or “IM” requirements with recent changes to the BCBS/IOSCO framework extending implementation dates through September 1, 2021. The Commission ultimately voted to approve a final rule, the April 2020 Final Rule, extending the schedule one year by dividing the last compliance “phase”—which had been phase 5—into two phases, now phases 5 and 6.[2] The primary stated purpose for the extension was to mitigate the potential for market disruption that could result from the large number of entities—approximately 700—coming into compliance with IM requirements at the same time.[3] The Commission’s action reflected further efforts to coordinate and harmonize with international counterparts and U.S. Prudential Regulators, who establish the margin requirement for the uncleared swaps of swap dealers and major swaps participants for whom they are the primary regulator.[4]

Today’s interim final rule will amend the CFTC Margin Rule a second time. The interim final rule will align part of the remaining compliance schedule—phase 5— with recent revisions to the BCBS/IOSCO framework further extending the implementation schedule for the margin requirements for non-centrally cleared derivatives by one year in response to concerns expressed by market participants in the early stages of the COVID-19 pandemic. The interim final rule does not address the last compliance phase, phase 6, beginning on September 1, 2021. While a similar extension would preserve both the intent of the recent amendments to the CFTC Margin Rule and consistency with the BCBS/IOSCO framework, the standards for foregoing notice and comment rulemaking procedures under the Administrative Procedure Act[5] are rightfully high and demonstrating separate exigency for the 2021 compliance deadline without notice and comment would be inappropriate given that there is adequate time for the process. Accordingly, the Commission is focusing its resources on entities that will need relief within the next several months.

I approved the April 2020 Final Rule cautiously; noting that this seminal part of the policy response following the 2008 financial crisis was perhaps becoming even more critical as we collectively faced the uncertainty of COVID-19.[6] As I highlighted in my statement, in times of market stress and volatility, margin not only provides confidence, but it embodies vigilance when responding to risks and real-world concerns. While I believed—and continue to believe—that it is important to address transition risks associated with IM implementation, it is nevertheless my expectation that covered entities will work diligently in the time they are given to come into compliance.

I have and continue to be fully prepared to respond to the fallout of current market conditions as a result of the pandemic, and will not hesitate to act within my capacity to preserve market interests and protect customers and market participants, I have no appetite for an indefinite deferral of the final phases for IM implementation. We are collectively working through the COVID-19 pandemic towards goals of continuity, resiliency, and normalcy. I do not believe that there is any circumstance where that equates to abandonment of core reforms at a time when the very relief being sought is a result of addressing market volatility and stress.

I support today's interim final rule deferring for one year compliance for the phase 5 swap entities that would come into scope beginning on September 1st of this year. I base my decision on representations that the COVID-19 pandemic has severely and adversely impacted preparations for the exchange of regulatory IM. Such disruption will undeniably make compliance with the September 1, 2020 deadline untenable if doing so diverts already strained resources from critical continuity functions. I have some concerns that by postponing the compliance deadline, we are inviting increased counterparty risk and the risk of contagion through the additional uncleared swaps that will be entered into during the one year extension period and will not be subject to IM requirements. Addressing claims for relief due to increased market volatility by delaying margin requirements for a subset of swaps seems counterintuitive, and I am pleased that the Commission is soliciting comments on the matter. I am hopeful that the Commission will take appropriate action if subsequent facts or comments so require.

In closing, I'd like to recognize Commissioner Stump and her leadership as Sponsor of the Global Markets Advisory Committee, which recently adopted recommendations in connection with implementation of the IM requirements for uncleared swaps for the Commission to consider.^[7] Also, I wish to thank the staff in the Division of Swap Dealer and Intermediary Oversight for their diligent and thoughtful work on this interim final rule.

[1] Press Release Number 8131-20, CFTC, CFTC Cancels March Open Meeting (Mar. 16, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8131-20>.

[2] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19878 (Apr. 9, 2020).

[3] *Id.* at 19879.

[4] *Id.*

[5] See 5 U.S.C. 553(b).

[6] 85 FR at 19883.

[7] See *Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps*, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, April 2020, https://www.cftc.gov/media/3886/GMAC_05192020MarginSubcommitteeReport/download.

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