Public Statement

Joint Open Meeting with CFTC - Customer Margin Rules for Security Futures and Request for Comment on Uncleared Swaps and Non-cleared Security-based Swaps

Chairman Jay Clayton

Oct. 22, 2020

Opening Remarks

Today marks a milestone in the 45-year relationship between the SEC and CFTC as we hold the first joint open meeting to both consider and vote on policy initiatives. I thank Chairman Tarbert for suggesting that we come together, as well as my fellow Commissioners and the Commissioners of the CFTC, for their support of this meeting and, more importantly, the continuing coordination among our agencies. Over the years, and as most recently evidenced by the standing up of the Dodd-Frank Act Title VII regulatory regime for swaps and security-based swaps, America's investors have benefited from our agencies' commitment to working together to ensure that our regulations are effective, consistent, mutually reinforcing, and efficient.[1] In certain cases, these important objectives are best served by harmonizing our rules.

Today's recommendations from the CFTC and SEC staffs demonstrate that commitment to harmonization where practicable. Specifically, the Commissions will consider (1) rule amendments related to margin requirements for certain positions and (2) a request for comment regarding portfolio margining. Particularly with respect to portfolio margining, I expect today's recommendation will mark the beginning of a close collaborative process to align better our approaches to the important regulatory objectives underlying our respective margining requirements.

Likewise, I am looking forward to our staffs' continued productive engagement on swap and security-based swap interpretations as the new regulatory regime becomes effective. I want to thank our CFTC colleagues for their coordination and collaboration on Title VII issues as we stood up our new regime, and in particular, I would like to thank Commissioner Peirce and CFTC Commissioner Quintenz for their leadership in this regard. We have a more formal thank you to them coming at the end of today's meeting.

Before turning to Chairman Tarbert for his opening remarks, I want to thank the CFTC and SEC staffs for their work on the matters being considered today. In particular, I would like to acknowledge members of the SEC staff that contributed to this effort:

- From the Division of Trading and Markets: Brett Redfearn, Lizzie Baird, Ajay Sutaria, Mike Macchiaroli, Tom McGowan, Randall Roy, Ray Lombardo, Sheila Swartz, and Abraham Jacob.

- From the Office of the General Counsel: Meridith Mitchell, Robert Teply, Donna Chambers, and William Shirey.
- From the Division of Economic and Risk Analysis: S.P. Kothari, Hari Phatak, and Chantal Hernandez.

Finally, I would also like to thank the CFTC for hosting this meeting virtually, including the CFTC's Office of the Secretariat and Office of Data and Technology for their hard work on today's meeting.

Customer Margin Rules Relating to Security Futures

Thank you, Chairman Tarbert, and thank you Director [Clark] Hutchison of the CFTC's Division of Clearing and Risk for the CFTC staff presentation. Together with the CFTC staff, our Division of Trading and Markets recommends that the Commission, jointly with the CFTC, adopt rule amendments to align the margin level for security futures held in a futures account with the margin level for these products when held in a portfolio margin securities account.

Prior to today's amendment, unhedged security futures held in a futures account were subject to a higher margin level than unhedged security futures held in a securities account approved for portfolio margining. Today's recommended amendments would harmonize the required margin levels for unhedged securities 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. This will result in a margin requirement of 15% for an unhedged security futures position.

Since 2002, the Commission and the CFTC have cooperated in implementing a regulatory program for security futures and overseeing the trading of these products. In particular, in 2002, the Commissions collaborated on joint rules for security futures that stood up a margin program for these products. The joint rules, among other things, established account administration requirements, minimum customer margin levels, margin offsets, collateral requirements, requirements for when margin may be withdrawn, and consequences for failing to collect margin. The Commissions also collaborated on joint rules for security futures that established customer disclosure, cash settlement, and regulatory halt requirements as well as rules designed to address the bankruptcy treatment of security futures and related collateral.

Today's recommendation is another example of the agencies' collaborative efforts in overseeing these products. Currently, there are no exchanges in the United States that offer security futures for trading. Harmonizing the margin level for security futures held in futures accounts with the level for these products when held in a portfolio margin securities account may provide the opportunity for the security futures market in the United States to operate more effectively in the future.

Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps

Thank you again, Chairman Tarbert, and thank you Director [Brett] Redfearn for the SEC staff's presentation of the recommendation.

In 2019, as part of the final rulemaking adopting capital, margin, and segregation requirements for security-based swap dealers, the SEC stated it would need to coordinate further with the CFTC to implement the portfolio margining of uncleared swaps and non-cleared security-based swaps in a single account.

Today's recommended request for comment is designed to facilitate this coordination by asking market participants and other interested parties to provide information and their views on portfolio margining. The objective is to gather information to help us carefully consider how portfolio margining might promote greater efficiencies, and also how to address any potential customer protection, financial stability and other regulatory impacts that might result from portfolio margining.

Since 2012, the Commissions have coordinated to permit the portfolio margining of cleared credit default swaps that are swaps and security-based swaps in a CFTC cleared swaps account. The request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps is another important step for our agencies to continue our collaborative efforts and dialogue to explore whether and how increased harmonization in portfolio margining would better serve our markets and our investors. I look forward to public comment.

Today's actions are the result of our staff's diligent efforts and collaboration with CFTC staff, and I am proud to support the staff's efforts in this area.

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[1] *See, e.g.*, https://www.sec.gov/news/public-statement/joint-statement-cftc-sec-portfolio-margining-harmonization-efforts.