

Compliance with Initial Margin (IM) Regulatory Requirements Following BCBS/IOSCO Guidance Statement

What steps do I need to take in the event my aggregate average notional amount (AANA) is above the relevant phase-in amount but one or more of my relationships does not exceed the IM exchange threshold?

Margin regulations for non-cleared derivatives impose initial margin (IM) requirements on in-scope entities whose non-cleared derivatives portfolio exceeds a specified amount. On March 5, 2019, the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) published a [statement](#) highlighting that where a counterparty relationship is in scope of the initial margin requirements but the amount of IM to be exchanged falls below the €50 IM exchange threshold specified in the BCBS/IOSCO WGMR [margin framework](#), the documentation, custodial or operational requirements will not apply to that relationship.

According to ISDA’s analysis, a significant portion of Phase 5 and Phase 6 relationships – upwards of 70-80%, depending on the IM calculation method used - could defer some of their regulatory IM preparation beyond September 1, 2021 and September 1, 2022, respectively, because their IM amount would not initially exceed the IM exchange threshold. Market participants should confirm that the ability to defer aspects of preparation applies in the jurisdictions relevant to them (which could include jurisdictions applicable to their counterparties).

It is important to note that even if a party expects all of its relationships to fall below the IM exchange threshold, it will still need to do the following:

- **AANA calculation:** Run indicative and actual AANA calculations level on derivatives exposures at the consolidated group to determine in-scope status
- **Self-disclosure:** Conduct advance indicative self-disclosure to counterparties, and disclose any subsequent changes to Phase 5 and Phase 6 qualifications in one or more jurisdictions after each AANA calculation period

Identify In-Scope Entities – the AANA calculation

The first step is to determine which of your entities are likely to be in-scope for regulatory IM requirements for Phase 5 or Phase 6 by calculating your indicative AANA at the consolidated group level. Below is a chart highlighting the AANA amounts by jurisdiction and phase-in date:

Compliance Date	USA	Japan	Canada	Europe	Switzerland	Australia	Hong Kong	Singapore	Korea	Brazil	South Africa ¹
1-Sep-21	USD 50 billion	JPY 7 trillion	CAD 73 billion	EUR 50 billion	CHF 50 billion	AUD 75 billion	HKD 375 billion	SGD 80 billion	KRW 70 trillion	BRL 160 billion	ZAR 23 trillion
1-Sep-22	USD 8 billion	JPY 1.1 trillion	CAD 12 billion	EUR 8 billion	CHF 8 billion	AUD 12 billion	HKD 60 billion	SGD 13 billion	KRW 10 trillion	BRL 25 billion	ZAR 15 trillion

*This document is intended as an information resource only; it does not contain legal advice and should not be considered a guide to or explanation of all relevant issues or considerations in connection with the impact of margin rules on derivative transactions. You should consult your legal advisors and any other advisor you deem appropriate in considering the issues discussed herein. ISDA assumes no responsibility for any use to which any of these materials may be put.
Copyright © 2019 and 2020 by International Swaps and Derivatives Association, Inc.*

¹ South Africa also has an Initial IM Phase threshold that is ZAR 30 trillion; the compliance date for that phase has not yet been confirmed.

In order to most effectively prepare for implementation, an indicative AANA calculation will need to be made well in advance of the actual AANA calculation period so that potential in-scope status can be disclosed to counterparties as described later.

The AANA calculation must be done (i) at the principal level, i.e., aggregated across investment managers, if used, and (ii) at the consolidated group level, which is generally based on applicable accounting standards. Relevant inter-affiliate/intra-group transactions are counted only once.

When performing the formal AANA calculation to confirm whether a firm is in-scope for the relevant compliance date, there are jurisdictional variations to consider, some of which are detailed in the [AANA Calculation Periods and Compliance Dates for Non-Cleared Margin Requirements](#):

- 1) AANA calculation period
- 2) Notional reference dates
- 3) Local currency AANA levels for each relevant jurisdiction
- 4) Derivatives products included in calculation

The jurisdictions relevant to considering which variations apply are those that apply to you and those that apply to your counterparties when they enter into non-cleared derivatives with you, so more than one regulatory regime may need to be considered for this purpose.

Although not subject to the exchange of regulatory IM, physically settled FX swaps and forwards are required to be included in the AANA calculation. This makes a substantive impact on the scope of counterparties which are subject to the regulatory IM requirements. A summary chart of the products which are subject to the exchange of regulatory IM is available on ISDA's website [here](#).

Important: Your counterparties need to know if your legal entity/ies are in scope, whether directly or indirectly, for the uncleared margin rules (i.e. your AANA calculation exceeds the phase-in threshold in one or more applicable jurisdictions) regardless of whether you will need to exchange IM in the near term, as one or both of the parties may be obliged to monitor the IM amount associated with your mutual in-scope transactions.

Self- Disclosure to Counterparties

If your indicative AANA calculation suggests you might be in scope for Phase 5 or Phase 6, you should disclose this to your counterparties as early as possible in order to provide enough time to complete all necessary preparation with each party.

There are multiple methods by which market participants can self-disclose to their counterparties:

- 1) Electronically deliver the ISDA Initial Margin Self-Disclosure Letter to other ISDA Amend participants via the [ISDA Amend](#) platform.
- 2) Provide the [ISDA Initial Margin Self-Disclosure Letter](#) to counterparties directly.
- 3) Participate in ISDA’s multi-lateral IM self-disclosure exercise; information will be shared exclusively with other contributing entities from all IM phases. If you would like to participate, please send a note to RegIMSelfDisclosure@isda.org to receive the template and terms and conditions.

When coordinating the Self-Disclosure, it is important to consider the following:

- 1) Disclose as soon as possible for your firm to your counterparties and custodians.
- 2) When a legal entity is a separately managed account and has a relationship with multiple asset managers, the legal entity should disclose to counterparties and also inform the asset managers.
- 3) Disclose relevant contact information to facilitate counterparty and custodian communications, particularly if this differs across legal entities in a consolidated group.

IM Monitoring

If the parties to a relationship determine that they are subject to regulatory IM requirements in accordance with the procedures above, but they anticipate that the aggregate IM amount under that relationship and any other relationship between the two parties (or their corporate groups) will not exceed the IM exchange threshold (and therefore they will not have to post or collect any IM), then, as explained in the March 5, 2019 BCBS/IOSCO statement, they may not be required to meet the documentation, custodial or operational requirements for IM on the applicable compliance date. In order to assess whether the parties are eligible to delay these requirements, one or both parties will need to calculate the IM amount at the consolidated group level for the products subject to IM exchange which are entered from the compliance date and compare to the allowable IM Threshold for the relevant jurisdictions, as summarized in the following table:

USA	Japan	Canada	Europe	Switzerland	Australia	Hong Kong	Singapore	Korea	Brazil
USD 50 million	JPY 7 billion	CAD 75 million	EUR 50 million	CHF 50 million	AUD 75 million	HKD 375 million	SGD 80 million	KRW 65 billion	BRL 150 million

Where two entities face each other through multiple accounts (e.g. through multiple asset managers), this monitoring will need to occur at the principal entity level. This means that the total IM amount will need to be monitored as between the two principals across all relevant accounts.

Each party should establish its own policies and procedures with respect to how it will monitor the above IM levels and the approach it will use to engage with its counterparties to ensure the necessary documentation, custodial and operational arrangements are in place by the time IM exchange is required.