ISDA Webinar for Pension Funds on US Margin Rules for Uncleared Swaps

February 1, 2016

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Margin Requirements

Swap Margin Rules

- Final rules issued in US by banking regulators, CFTC (rules of banking regulators and CFTC largely the same)
- Final rules expected in EU, Japan, other jurisdictions
- SEC rule is pending but timing is uncertain
- Will require posting and collection of variation margin ("VM") and potentially initial margin ("IM")
- Final US rules do not distinguish between different types of pension funds
Initial Margin

- If one party is below threshold (described below), IM is not required
- Disclosure to dealers
  - Required by September 2016
  - ISDA "self-disclosure form": Need to disclose
    - status under threshold test (described below)
    - counterparty-specific information to determine applicable regulatory jurisdiction(s)
Initial Margin (continued)

- **Threshold:**
  - Sep 2016 - $3 trillion in average aggregate swap notional as of March, April and May of 2016
  - Sep 2020 - $8 billion in average aggregate swap notional as of June, July and August of 2019

- Includes uncleared swaps, security-based swaps, physically settled FX swaps and forwards but not swaps with corporate end users or exempt small financial institutions

- Calculation of threshold is across all affiliates
  - Test for “affiliate”: consolidation under accounting standards
Initial Margin (continued)

Segregation:

• Need to segregate initial margin received from dealer.
• No rehypothecation permitted
• Requires use of independent third party custodian.
• Custodial arrangements need to be enforceable, including in bankruptcy.
Variation Margin

- VM required March 2017 for swaps with dealers
- Netting: If dealer cannot determine that swap agreement is an "eligible master netting agreement" (i.e. that netting is enforceable), counterparty must post collateral on a gross basis
  - Recognition of netting
  - FDICIA representation
Possible changes to documents as a result of VM requirements:

- Zero threshold
- VM delivered same day as call for VM
- Collection and posting
- Eligible collateral – includes certain securities but specified haircuts apply
- 8% haircut for currency mismatch
- Minimum transfer amount
Variation Margin (continued)

**Variation Margin Documentation**

- ISDA protocol
  - New CSA
    - Amend existing CSA terms to make them regulatory compliant and otherwise preserve existing agreed terms
  - New regulation-compliant VM CSA forms to be published
    - New regulation-compliant IM CSA forms will also be published
- Self-disclosure form – relevant for classification
- Bilateral amendments
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