ISDA Safe, Efficient Markets

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DERIVATIVES SUBJECT TO NON-CLEARED MARGIN RULES (INITIAL AND VARIATION MARGIN)

DISCLAIMER: These charts provide summary information and are intended as an information resource only; they do 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 in these charts. ISDA assumes no responsibility for any use to which any of these materials or any other documentation published by ISDA may be put.

Instrument Type	CFTC	US Prudential Regulators	SEC[1]	EMIR	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore	Hong Kong (HKMA)	Hong Kong (SFC)	Australia	Korea	Brazil	South Africa
Interest Rate	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Foreign Exchange ("FX"), except:	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- FX spot	No	No	No	No[2]	No	No[3]	No[4]	No	No[5]	No	No	No	No	No
physically settled FX swaps	No[6]	No[7]	No	VM, not IM	No[8]	No[9]	No[10]	No	No	Limited VM[11], not IM	No	No	No	No

1 This chart examines products under the SEC's margin posting and collecting rules for uncleared security-based swaps and does not address margin for capital calculations or segregation requirements thereunder.

2 US and EU definitions of "spot" are not identical. Under MiFID1 there is no harmonized EU definition of "spot". However, under MiFID2 FX spot is defined in Article 10 of the Commission Delegated Regulation (EU) 2017/565 as a transaction that is settled within 2 trading days (or such longer period generally accepted as market standard) or, where the FX contract is used for the main purpose of the sale or purchase of certain securities, the transaction is settled within 5 trading days or such shorter period generally accepted in the market as the standard period for settlement of the relevant security.

3 OSFI Guideline E-22 ("OSFI E-22") does not define FX spot, but a separate OSFI advisory defines FX Spot as "the purchase of one currency for another, with immediate delivery according to local market convention (usually T+2BD)".

4 US and Swiss definitions of "spot" are not identical. Under the Financial Market Infrastructure Act ("FMIA"), "spot" means transactions that are settled either immediately or following expiry of the deferred settlement deadline within 2 business days (or such longer settlement deadline as is market standard).

5 Generally defined to cover transactions settling within 2 business days or such longer settlement period deadline as is market standard.

6 Supervisory guidelines (separate from the margin rules) provide that banks should exchange variation margin for physically settled swaps and forwards.

7 Supervisory guidelines (separate from the margin rules) provide that banks should exchange variation margin for physically settled swaps and forwards.

8 Currently out of scope from the definition of "OTC Derivatives" under the Financial Instruments and Exchange Act ("FIEA").

9 While excluded from exchange of VM and IM, physically settled FX swaps and forwards must be counted toward the CAD $12 billion notional threshold when determining an entity's Covered Entity status under OSFI E-22. OSFI has issued an advisory (separate from the margin rules) providing that banks, bank holding companies and trust and loan companies should exchange VM for physically settled FX swaps and forwards.

10 For FMIA purposes, physically settled FX swaps shall be understood as defined in Art. 84 of the Financial Market Infrastructure Ordinance ("FMIO"). Please note that there may be different definitions of "currency swaps" under US, EU and Swiss law.

11 Only when entered into between a licensed person and (i) an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap 155); (ii) a licensed corporation; or and entity that carries on a business outside Hong Kong and is engaged predominantly in banking, securities or derivatives business, or asset management; and both counterparties exceed HK$60 billion notional threshold of non-centrally cleared OTC derivatives.

Instrument Type	CFTC	US Prudential Regulators	SEC[1]	EMIR	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore	Hong Kong (HKMA)	Hong Kong (SFC)	Australia	Korea	Brazil	South Africa
- physically settled FX forwards	No[12]	No[13]	No	Limited VM, not IM[14]	No[15]	No	No[16]	No	No	Limited VM[17], not IM	No	No	No	No
- principal payments on cross- currency swaps	VM, not IM	VM, not IM	No	VM, not IM	VM, not IM	VM, not IM	VM potentially, not IM[18]	No[19]	No	VM, not IM	No[20]	No	VM, not IM	VM, not IM
Securities														
- swap based on single security or narrow index[21] of securities	N/A[22,23]	Yes[24]	Yes[25]	Yes	Yes	Yes	Yes	Yes[26]	Yes	Yes	Yes	Yes	Yes	Yes

12 Supervisory guidelines provide that banks should exchange variation margin for physically settled swaps and forwards.
13 Supervisory guidelines provide that banks should exchange variation margin for physically settled swaps and forwards.
14 VM requirements for physically settled FX forwards has applied since the 3rd of January 2018. On 24 November 2017, ESMA, EBA and EIOPA published a joint statement encouraging national competent authorities to apply a risk based approach and announcing upcoming changes to the EMIR Margin RTS which will make the application of VM for FX Forwards mandatory only when entered into between firms which are 'Institutions' under the Capital Requirements Regulation.
15 Currently out of scope from the definition of "OTC Derivatives" under the FIEA.
16 For FMIA purposes, physically settled FX swaps shall be understood as defined in Art. 84 FMIO. Please note that there may be different definitions of "currency swaps" under US, EU and Swiss law.
17 Only when entered into between a licensed person and (i) an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap 155); (ii) a licensed corporation; or and entity that carries on a business outside Hong Kong and is engaged predominantly in banking, securities or derivatives business, or asset management; and both counterparties exceed HK$60 billion notional threshold of non-centrally cleared OTC derivatives.
18 Cross-currency swaps are more likely to be viewed as transactions where the interest component prevails over the FX component so that they would not fall under the exemption for physically settled FX swaps and forwards. If the margining rules are generally interpreted in line with BIS/IOSCO principles, though, principal payments could be exempted from IM.
19 The Singapore Guidelines provide that the margin requirements do not apply to a fixed physically settled FX transaction associated with the exchange of principal of a cross-currency swap.
20 Prudential Standard CPS 226 ("CPS226") provides in a footnote to the rule that deals with the obligation to exchange VM that the fixed physically settled FX transactions associated with the exchange of principal in cross-currency swaps may be excluded from the calculation of VM. All other risks must be included. In respect of IM, if the model approach is adopted to calculate IM, then the fixed physically settled FX transactions associated with the exchange of principal can be excluded from the calculation. All other risks must be included.
21 When referred to herein, index means an index or a basket.
22 However, (1) a swap linked to an exempted security (other than a municipal security) is a CFTC-regulated swap; (2) a swap based on a single security or a narrow index of securities with a composite FX feature is a mixed swap and will be subject to CFTC margin rules until the SEC's margin rules become effective. Once the SEC's margin rules become effective it is not clear how non-legacy mixed swaps will always be margined by a non-bank SD/SBSD.
23 A swap based on a security or narrow index of securities is a security-based swap and therefore subject to the SEC's jurisdiction rather than the CFTC's jurisdiction.
24 "Securities" for this purpose excludes a broad index. Also, (1) a swap linked to an exempted security (other than a municipal security) is a CFTC-regulated swap; (2) a swap based on a single security with a composite FX feature is a mixed swap and will be subject to CFTC margin rules only to the extent that SEC regulation does not apply.
25 A security-based swap includes a swap that is based on a single security. If a security-based swap has a composite FX feature it is a mixed swap.
26 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on July 26, 2019, securities-based derivatives are expressly excluded from VM and IM requirements until February 29, 2020 only, and then come into scope.

Instrument Type	CFTC	US Prudential Regulators	SEC[1]	EMIR	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore	Hong Kong (HKMA)	Hong Kong (SFC)	Australia	Korea	Brazil	South Africa
- swap based on broad index of securities	Yes[27]	Yes[28]	No[29]	Yes	Yes	Yes	Yes	Yes[30]	Yes	Yes	Yes	Yes	Yes	Yes
- option based on a security or a narrow index of securities	No	No	No	Yes[31]	Yes	Yes	Yes[32]	No[33]	Yes[34]	Yes[35]	Yes	Yes[36]	Yes	Yes
- option based on a broad index of securities	No	No	No	Yes[37]	Yes	Yes	Yes	No[38]	Yes[39]	Yes[40]	Yes	Yes	Yes	Yes
- forward based on one or more securities	No[41]	No[42]	No[43]	Yes	Some[44]	Yes	Yes	Yes[45]	Yes	Yes	Yes	Yes	Yes	Yes

27 Broad index refers to a product with more than 9 components that satisfies certain other conditions, including weighting requirements (only relevant for US rules).
28 Broad index refers to a product with more than 9 components that satisfies certain other conditions, including weighting requirements (only relevant for US rules).
29 Security-based swaps include swaps that are based on a narrow-based index, but not a broad-based index. Broad index refers to a product with more than 9 components that satisfies certain other conditions, including weighting requirements (only relevant for US rules).
30 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on July 29, 2019, securities-based derivatives contracts are expressly excluded from VM and IM requirements until February 29, 2020 only, and then come into scope.
31 Under the EU margin rules, VM and IM requirements for single-stock equity option and index option derivatives shall be deferred until January 4, 2021 (Commission Delegated Regulation (EU) 2016/2251 Art. 38)(1).
32 Single-stock options, equity basket options and similar equity derivatives, e.g. derivatives on equity baskets, are out of scope until 4th January 2021. The Swiss regulator FINMA is empowered to specify if additional categories of equity derivatives will benefit from this exclusion.
33 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on February 11, 2020, equity option or equity index option contracts are expressly excluded from VM and IM requirements.
34 Single-stock options, equity basket options and equity index options are out of scope until further notice.
35 Single-stock options, equity basket options and equity index options are out of scope until 3 January 2021.
36 Under the FSS guidelines, margin requirements for single stock equity options shall be exempted until August 31, 2021, and then come into scope (Guideline Section II Article 1 Footnote 5).
37 Under the EU margin rules, VM and IM requirements for single-stock equity option and index option derivatives shall be deferred until January 4, 2021 (Commission Delegated Regulation (EU) 2016/2251 Art. 38(1).
38 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on February 11, 2020, equity option or equity index option contracts are expressly excluded from VM and IM requirements.
39 Single-stock options, equity basket options and equity index options are out of scope until further notice.
40 Single-stock options, equity basket options and equity index options are out of scope until 3 January 2021.
41 A forward on securities would be out of scope as a swap, security-based swap or mixed swap if the parties had a bona fide intention to physically settle that forward. Otherwise, the forward may be a swap, security-based swap or mixed swap.
42 A forward on securities would be out of scope as a swap, security-based swap or mixed swap if the parties had a bona fide intention to physically settle that forward. Otherwise, the forward may be a swap, security-based swap or mixed swap.
43 A forward on securities would be out of scope as a swap, security-based swap or mixed swap if the parties had a bona fide intention to physically settle that forward. Otherwise, the forward may be a swap, security-based swap or mixed swap.
44 Currently physically settled forwards on securities are out of scope from the definition of "OTC Derivatives" under the FIEA.
45 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on July 29, 2019, securities-based derivatives contracts are expressly excluded from VM and IM requirements until February 29, 2020 only, and then come into scope.

Instrument Type	CFTC	US Prudential Regulators	SEC[1]	EMIR	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore	Hong Kong (HKMA)	Hong Kong (SFC)	Australia	Korea	Brazil	South Africa
Commodities, except:	Yes	Yes	No	Yes	Yes[46]	Yes	Yes	Certain classes only[47]	Yes	Yes	Yes	Yes	Yes	Yes
physically settled forwards	No	No	No	Some[48]	No	No	Some[49]	Certain classes only [50]	No	No	Yes	No	No (except for gold)	No
- trade options[51]	Yes	Yes	No	Some[52]	No	Some[53]	Some[54]	Certain classes only [55]	Yes	Yes	Yes	Yes	Yes	No[56]
Credit														

46 A Specified OTC Commodity Derivative Business Operator under the Commodity Derivatives Act, which is also a covered entity under the margin rules of the Japanese Financial Services Agency ("JFSA"), is required to include all non-centrally cleared OTC commodity derivatives for IM and VM calculation.

47 The Singapore Guidelines provide that the margin requirements **do not** apply to a commodity derivatives contract entered into for commercial purpose. This refers to a derivatives contract that satisfies all of the following:
(a) the contract is for the sale and purchase of one or more commodities for the purpose of fulfilling the needs of the day to day operations of the business of one or more of the parties of the contract, whether or not the contract contains some form of cash-settle option of a portion of the contract in specific agreed circumstances (referred to as the "settlement option");
(b) subject to the settlement option, the seller of the underlying commodity has, under the terms of the contract, an obligation to deliver the underlying commodity;
(c) subject to the settlement option, the buyer of the underlying commodity has, under the terms of the contract, an obligation to take physical delivery of the underlying commodity.

48 The margin obligation under EMIR will only apply to physically settled commodity contracts if additional conditions are met e.g. that it is traded on an MTF or non-EU trading venue, or has the "characteristics of other derivative financial instruments" (as defined in Commission Regulation 1287/2006/EC, including that it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or non-EU trading venue). As of January 3, 2018, MiFID2, (1) carves out contracts on wholesale energy products (e.g., gas and power) that are traded on an OTF and must be physically-settled and (2) provides a temporary exemption (until July 3, 2020) on contracts on coal and oil that are traded on an OTF and must be physically settled.

49 Per Art. 94, paragraph 3, the margin obligation under FMIA will only apply to physically settled commodity contracts if additional conditions are met; i.e. that they are traded on a trading venue or organized trading facility or may be settled in cash at a party's discretion.

50 To the extent that the products **are** "commodity derivatives contracts entered into for commercial purpose", they will **not** be subject to the margin requirements.

51 Trade options are physically-settled commodity options used for commercial purposes.

52 The margin obligation under EMIR will only apply to physically settled commodity contracts if additional conditions are met e.g. that it is traded on an MTF or non-EU trading venue, or has the "characteristics of other derivative financial instruments" (as defined in Commission Regulation 1287/2006/EC, including that it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or non-EU trading venue). As of January 3, 2018, MiFID2, (1) carves out contracts on wholesale energy products (e.g., gas and power) that are traded on an OTF and must be physically-settled and (2) provides a temporary exemption (until July 3, 2020) on contracts on coal and oil that are traded on an OTF and must be physically settled.

53 The margin obligations of OSFI E-22 do not apply to physically settled commodity transactions.

54 Per Art. 94, paragraph 3, the margin obligation under FMIA will only apply to physically settled commodity contracts if additional conditions are met; i.e. that they are traded on a trading venue or organized trading facility or may be settled in cash at a party's discretion.

55 To the extent that the products **are** "commodity derivatives contracts entered into for commercial purpose", they will **not** be subject to the margin requirements.

56 All physically-settled commodity derivatives, regardless of whether they are used for commercial purposes or not, are excluded from the margin requirements.

Instrument Type	CFTC	US Prudential Regulators	SEC[1]	EMIR	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore	Hong Kong (HKMA)	Hong Kong (SFC)	Australia	Korea	Brazil	South Africa
- based on single name	N/A[57]	Yes	Yes[58]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- based on a narrow index	N/A[59]	Yes	Yes[60]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- based on a broad index	Yes[61]	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Other (e.g. weather)	Yes	Yes	No	Certain classes only	Yes[62]	Yes	Certain classes only[63]	Yes	Yes[64]	Yes[65]	Yes[66]	Yes[67]	Yes	Yes
Security linked to an underlying index, commodity or reference asset	No	No	No	No	No	No	No	No	No	No	No	No	No	No

57 A credit swap based on a single name is a security-based swap and therefore subject to the SEC's jurisdiction rather than the CFTC's.

58 A credit swap based on a single name (security) is a security-based swap and therefore subject to the SEC's jurisdiction rather than the CFTC's.

59 A credit swap based on a narrow index is a security-based swap and therefore subject to the SEC's jurisdiction rather than the CFTC's.

60 A credit swap based on a narrow index is a security-based swap and therefore subject to the SEC's jurisdiction rather than the CFTC's.

61 If a credit swap on a broad index has a mandatory physical settlement provision that would require the delivery of, and therefore the purchase and sale of, a non-exempted security or a loan in the event of a credit event, that credit swap is a mixed swap. If a credit swap on a broad index has a mandatory cash settlement provision or provides for cash settlement in accordance with the Credit Derivatives Determinations Committees and Auction Settlement Supplement or Auction Settlement CDS Protocol, that credit swap is a swap.

62 To the extent that the products fall into the definition of "OTC Derivatives" under the FIEA.

63 To the extent that the product falls into the definition of "OTC Derivatives" under the FMIA.

64 To the extent that the product falls into the definition of "OTC derivative product" under the Securities and Futures Ordinance (Cap. 571) of Hong Kong.

65 To the extent that the product falls into the definition of "OTC derivative product" under the Securities and Futures Ordinance (Cap. 571) of Hong Kong.

66 To the extent that the product falls into the definition of "Derivative" under CPS226.

67 To the extent that the product falls into the definition of "OTC derivatives" under Article 5 of the Financial Investment Services and Capital Markets Act.

In addition, the following applications or exclusions also apply:

Cleared and Exchanged Traded	CFTC	US Prudential Regulators	SEC	EMIR[68]	Japan	Canada (OSFI)	Switzerland (FMIA)	Singapore[69]	Hong Kong	Australia	Korea	Brazil	South Africa
Derivatives traded on a futures exchange	No[70]	No[71]	No[72]	No	No	No[73]	No	No	No[74]	No	No	No	No
Derivatives cleared on a recognized CCP	No	No	No	No	No	No	No	No	No	No	No	No	No
Derivatives cleared on an unrecognized CCP	Yes[75]	Yes[76]	No[77]	No	Yes[78]	No	Yes	No	No	No[79]	No[80]	Yes[81]	Yes

68 Even though Article 11(3) EMIR only refers to OTC derivatives, the EMIR margin rules only apply to OTC derivatives not cleared by a central counterparty ("CCP") (in line with the heading to Article 11) and, on this basis, the margin rules do not apply to OTC derivatives cleared by a CCP even if that CCP is not recognized under EMIR (see ESMA OTC Question 11(j)). However, the margin rules may apply to uncleared derivatives traded on a non-EU futures exchange if that exchange has not been found to be "equivalent" by the European Commission".

69 The Singapore Guidelines define "uncleared derivatives contract" as a derivatives contract that is not, or is not intended to be, cleared or settled by a person operating a clearing facility through which parties to a contract substitute, through novation or otherwise, the credit of the person operating the clearing facility for the credit of the parties.

70 The definition of swap excludes "any contract of sale of a commodity for future delivery … [or] securities future product" Commodity Exchange Act §1a(47)(B)(i).

71 The definition of swap excludes "any contract of sale of a commodity for future delivery … [or] securities future product" Commodity Exchange Act §1a(47)(B)(i).

72 The definition of swap excludes "any contract of sale of a commodity for future delivery … [or] securities future product" Commodity Exchange Act §1a(47)(B)(i).

73 Provided it is cleared through a CCP.

74 Provided the futures market is recognised under the Securities and Futures Ordinance (Cap. 571) of Hong Kong.

75 Subject to margin requirements, unless the foreign CCP is exempted by the CFTC.

76 Subject to margin requirements, unless the foreign CCP is exempted by the CFTC.

77 Although the SEC can exempt a foreign CCP, the SEC's margin rules do not refer to those security-based swaps being not subject to the margin rules as is the case with the CFTC's margin rules.

78 Subject to margin requirements, unless the unrecognized CCP is licensed by the JFSA.

79 In Australia, no distinction is made between recognized and unrecognized CCPs.

80 Korean margin guideline makes reference to "foreign central counterparties" defined under Article 186-3 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act.

81 Subject to margin requirements, unless the unrecognized CCP is licensed by the BCB.