### 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.

<table>
<thead>
<tr>
<th>Instrument Type</th>
<th>CFTC/USPR</th>
<th>SEC¹</th>
<th>EMIR</th>
<th>UK²</th>
<th>Japan Canada (OSFI/AMF)</th>
<th>Switzerland (FMIA)</th>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Foreign Exchange (&quot;FX&quot;), except:</td>
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<td></td>
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<td></td>
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<td></td>
<td></td>
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<tr>
<td>- FX spot</td>
<td>No</td>
<td>No²</td>
<td>No³</td>
<td>No⁴</td>
<td>No⁵</td>
<td>No⁶</td>
<td>No</td>
<td>No/Limited VM¹¹, not IM</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>physically settled FX swaps</td>
<td>No⁷</td>
<td>No</td>
<td>VM, not IM</td>
<td>VM, not IM</td>
<td>No⁸</td>
<td>No⁹</td>
<td>No¹⁰</td>
<td>No</td>
<td>No</td>
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</tr>
</tbody>
</table>

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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. The UK is in the process of revising their RTS to follow the recent revision of the EU Margin RTS. As a result, changes are expected. Unless noted in the footnotes following, the UK rules align with the EU RTS.
3. US and EU/UK 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.
4. 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)".
5. 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).
6. Generally defined to cover transactions settling within 2 business days or such longer settlement period deadline as is market standard.
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 an 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.

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<th>Instrument Type</th>
<th>CFTC/USPR SEC</th>
<th>EMIR</th>
<th>UK SEC</th>
<th>Japan (OSFI/AMF)</th>
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<tr>
<td>- physically settled FX forwards</td>
<td>No 12</td>
<td>No</td>
<td>Limited VM, not IM 13</td>
<td>Limited VM, not IM 14</td>
<td>No 14</td>
<td>No</td>
<td>No</td>
<td>No/Limited VM 16, not IM</td>
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<tr>
<td>- principal payments on cross-currency swaps</td>
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<td>No</td>
<td>VM, not IM</td>
<td>VM, not IM</td>
<td>VM, not IM</td>
<td>VM, potentially, not IM 18</td>
<td>No 19</td>
<td>No/VM, not IM</td>
<td>No 20</td>
<td>No</td>
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<td>Securities</td>
<td>- swap based on single security or narrow index 2 of securities</td>
<td>N/A 22, 23</td>
<td>Yes 25</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes 26</td>
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12 Supervisory guidelines provide that banks should exchange variation margin for physically settled swaps and forwards.
13 EMIR Revised Margin RTS (Article 31a EU Margin RTS added by Commission delegated regulation (EU) 2021/236) which makes the application of VM for FX Forwards mandatory only when entered into between firms which are 'Institutions' under the Capital Requirements Regulation. Current consultation paper from the UK PRA and the UK FCA supports full alignment with the EMIR revised margin RTS.
14 Currently out of scope from the definition of "OTC Derivatives" under the PISA.
15 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.
16 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.
17 AMP has excluded fixed physically settled foreign exchange transactions associated with the exchange of principal payments of cross-currency swaps.
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.
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, non-legacy mixed swaps will be margined by a non-bank SD/SBSD under SEC rules.
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 April 8, 2020, a securities-based derivatives contract (other than an equity option or an equity index option contract is expressly excluded from VM and IM requirements until February 29, 2020 only, and then came into scope.

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## Derivatives Subject to Non-Cleared Margin Rules (Initial and Variation Margin)

**March 2, 2022**

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<th>Instrument Type</th>
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<th>South Africa</th>
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</thead>
<tbody>
<tr>
<td>- swap based on broad index of securities</td>
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<td>No 28</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes 30</td>
<td>Yes 30</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>No 32</td>
<td>Yes 34</td>
<td>Yes</td>
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<tr>
<td>- option based on a broad index of securities</td>
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<td>No</td>
<td>Yes 35</td>
<td>Yes 35</td>
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<td>Yes</td>
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<td>No 37</td>
<td>Yes 38</td>
<td>Yes</td>
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<tr>
<td>- forward based on one or more securities</td>
<td>No 39</td>
<td>No 40</td>
<td>Yes</td>
<td>Yes</td>
<td>Some 41</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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</table>

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 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).

29 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on April 8, 2020, a securities-based derivatives contract (other than an equity option or an equity index option contract) is expressly excluded from VM and IM requirements until February 29, 2020 only, and then came into scope.

30 VM and IM requirements for single-stock equity option and index option derivatives are deferred until January 4, 2024 (Commission Delegated Regulation (EU) 2021/236 Art. 38(1)). Current consultation paper from the UK PRA and the UK FCA supports full alignment with the EMIR revised margin RTS.

31 Per FINMA Ordinance which came into force on August 1, 2021, Art. 331 para. 5bis, the duty to exchange collateral applies from 1 January 2024 for non-centrally cleared OTC derivatives transactions that are options on individual equities, index options or similar equity derivatives such as derivatives on baskets of equities.

32 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on April 8, 2020, equity option or equity index option contracts are expressly excluded from VM and IM requirements.

33 Single-stock options, equity basket options and equity index options are out of scope until further notice with HKMA and until 4 January 2024 with SFC.

34 Under the FSS guidelines, margin requirements for equity options, including options based on an equity-index and equity-basket, shall be exempted until September 1, 2022, and then come into scope (Guideline Section II Article 1 Footnote 5).

35 VM and IM requirements for single-stock equity option and index option derivatives are deferred until January 4, 2024 (Commission Delegated Regulation (EU) 2021/236 Art. 38(1)). Current consultation paper from the UK PRA and the UK FCA supports full alignment with the EMIR revised margin RTS.

36 Per FINMA Ordinance which came into force on August 1, 2021, Art. 331 para. 5bis, the duty to exchange collateral applies from 1 January 2024 for non-centrally cleared OTC derivatives transactions that are options on individual equities, index options or similar equity derivatives such as derivatives on baskets of equities.

37 Under the MAS Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts which were revised on April 8, 2020, equity option or equity index option contracts are expressly excluded from VM and IM requirements.

38 Single-stock options, equity basket options and equity index options are out of scope until further notice with HKMA and until 4 January 2024 with SFC.

39 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.

40 Currently physically settled forwards on securities are out of scope from the definition of “OTC Derivatives” under the FIEA.

41 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.

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<tr>
<td>Commodities, except:</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes 63</td>
<td>Yes 63</td>
<td>Yes</td>
<td>Certain classes only 64</td>
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<td>Yes</td>
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<tr>
<td>physically settled forwards</td>
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<td>No</td>
<td>Some 45</td>
<td>Some 46</td>
<td>No</td>
<td>No</td>
<td>Some 46</td>
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<td>No (except for gold)</td>
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<td>Physically settled contracts other than forwards</td>
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<td>Certain classes only 47</td>
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<td>Yes</td>
<td>Yes</td>
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43 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.

44 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.

45 Physically settled commodity contracts are in-scope if:
(a) they are traded on a regulated market, MTF or OTF except for wholesale energy products traded on an OTF that must be physically settled (Section C(6) Annex I MiFID); (b) they have the characteristics of other derivative financial instruments as specified in Article 7 of Commission Delegated Regulation (EU) 2017/565 (Section C(7) Annex I MiFID). Wholesale energy products that must be physically settled are defined in Article 5 of Commission Delegated Regulation (EU) 2017/565. Under Article 7 of Commission Delegated Regulation (EU) 2017/565, a physically settled commodity contract which is not a spot contract and which is not for commercial purposes shall be considered as having the characteristics of other derivative financial instruments where it meets certain criteria, in particular: it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF; it is equivalent to such a contract as with regards to the price, the lot, the delivery date and other contractual terms; or it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

46 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.

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

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<tr>
<th>Instrument Type</th>
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<th>SEC(^1)</th>
<th>EMIR (^49)</th>
<th>UK(^50)</th>
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<tbody>
<tr>
<td>- trade options (^48)</td>
<td>Yes</td>
<td>No</td>
<td>Some  (^49)</td>
<td>Some (^49)</td>
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<td>Some (^51)</td>
<td>Certain classes only (^52)</td>
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<tr>
<td>- based on single name</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>- based on a broad index</td>
<td>Yes (^58)</td>
<td>No</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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</table>

\(^{48}\) Trade options are physically-settled commodity options used for commercial purposes.

\(^{49}\) Physically settled commodity contracts are in-scope if: (a) they are traded on a regulated market, MTF or OTF except for wholesale energy products traded on an OTF that must be physically settled (Section C(6) Annex I MiFID); (b) they have the characteristics of other derivative financial instruments as specified in Article 7 of Commission Delegated Regulation (EU) 2017/565 (Section C(7) Annex I MiFID). Wholesale energy products that must be physically settled are defined in Article 5 of Commission Delegated Regulation (EU) 2017/565. Under Article 7 of Commission Delegated Regulation (EU) 2017/565, a physically settled commodity contract which is not a spot contract and which is not for commercial purposes shall be considered as having the characteristics of other derivative financial instruments where it meets certain criteria, in particular: it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF; it is equivalent to such a contract as regards to the price, the lot, the delivery date and other contractual terms; or it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

\(^{50}\) The margin obligations of OSFI E-22 do not apply to physically settled commodity transactions.

\(^{51}\) 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.

\(^{52}\) To the extent that the products are “commodity derivatives contracts entered into for commercial purpose”, they will not be subject to the margin requirements.

\(^{53}\) All physically-settled commodity derivatives, regardless of whether they are used for commercial purposes or not, are excluded from the margin requirements.

\(^{54}\) 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.

\(^{55}\) 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.

\(^{56}\) 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.

\(^{57}\) 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.

\(^{58}\) 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.
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<th>South Africa</th>
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<tbody>
<tr>
<td>Other (e.g. weather)</td>
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<td>Yes</td>
<td>Certain classes only</td>
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</tbody>
</table>

59 Cash-settled derivative contracts linked to a weather variable (e.g., temperature or levels of wind, precipitation, sunshine or snowfall) are specified as financial instruments under MiFID (Annex I, Subsection C (10) of Directive 2014/65/EU) and this is further elaborated in Article 7(3)(a) and Article 8(e) and of Commission Delegated Regulation 2017/565, which indicate that such contracts should be treated as derivatives – including for margin purposes - if they are not traded on an EU regulated market or equivalent third country venue.

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

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

62 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.

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

64 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.

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In addition, the following applications or exclusions also apply:

<table>
<thead>
<tr>
<th>Cleared and Exchanged Traded</th>
<th>CFTC</th>
<th>SEC</th>
<th>EMIR</th>
<th>UK</th>
<th>Japan</th>
<th>Canada (OSFI/AMF)</th>
<th>Switzerland (FMIA)</th>
<th>Singapore (HKMA/SFC)</th>
<th>Australia</th>
<th>Korea</th>
<th>Brazil</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Derivatives traded on a futures exchange</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Derivatives cleared on a recognized CCP</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Derivatives cleared on an unrecognized CCP</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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65 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. The UK rules are aligned, however, under UK EMIR, the margin rules may apply to uncleared derivatives traded on a non-UK futures exchange if that exchange has not been found “equivalent” by HM Treasury.

66 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.


68 Provided it is cleared through a CCP.

69 Subject to margin requirements, unless the recognized CCP is exempted by the CFTC.

70 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.

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

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


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

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