

**CALCULATING PHASE 5 AANA FOR U.S. REGULATIONS**

**ALERT: PHASE 5 IM CALCULATION PERIOD IN THE U.S. IS JUNE-AUGUST, 2019**

**THE U.S. NON-CLEARED MARGIN REGULATIONS REQUIRE AN EARLIER CALCULATION PERIOD THAN OTHER JURISDICTIONS TO DETERMINE WHETHER A PARTY IS IN-SCOPE FOR INITIAL MARGIN.**

To assist market participants that may be subject to the Phase 5 initial margin (IM) requirements in the U.S., ISDA has prepared a summary of the U.S. requirements for calculating the average aggregate notional amount (AANA) for Phase 5 for a compliance date of September 1, 2020. The requirements for calculating AANA in the U.S. deviate substantively from the requirements in other jurisdictions.

Who is subject to U.S. non-cleared margin regulations?

Under the regulations for the margining of non-cleared derivatives established by the CFTC<sup>1</sup> and U.S. prudential regulators<sup>2</sup> (the U.S. rules), a party trading derivatives products covered by these rules may be subject to requirements to exchange variation margin (VM) and initial margin (IM).

In general, the U.S. rules apply directly to registered swap dealers<sup>3</sup> (SDs) and major swap participants<sup>4</sup> and indirectly to “financial end users”. If a financial end user has an AANA of in-scope, non-cleared derivatives transactions greater than USD 8 billion, then the initial margin requirements will apply (in addition to variation margin). (The U.S. rules use the term “material swaps exposure” to refer to an AANA greater than USD 8 billion.)

The definition of “financial end user” includes various types of financial entities, and both U.S. and non-U.S. entities. If you are a party already exchanging VM with counterparties that are SDs subject to the U.S. rules, then you may also be indirectly subject to U.S. regulatory IM requirements. Therefore, it is necessary for you to calculate the AANA for your consolidated group of entities to determine whether it exceeds the U.S. threshold for Phase 5:

IM Phase	Compliance Date	AANA/MSE	AANA/MSE Calculation Period
Phase 5	1-Sep-20	> USD 8 billion	June 1 to August 31, 2019

The AANA calculation must be conducted at the principal level, i.e. aggregated across investment managers, if applicable.

<sup>1</sup> <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2015-32320a.pdf>

<sup>2</sup> Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency: <https://www.occ.gov/topics/laws-regulations/occ-regulations/11-30-15-margin-capital-requirements-for-covered-swap-entities.pdf>

<sup>3</sup> Swap Dealer Registry: <https://www.nfa.futures.org/registration-membership/membership-and-directories.html>

<sup>4</sup> Currently there are no provisionally registered major swap participants.

*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.*

## How do I calculate the AANA for IM Phase 5 in the U.S.?

**Step 1:** Identify all the legal entities that are part of your consolidated group – each a “margin affiliate” or “affiliate”, as defined in the relevant U.S. rules.

- A company is a [margin] affiliate of another company if: (1) either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards, (2) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards, or (3) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied.

**Step 2:** Identify the *uncleared* transactions in all AANA covered products for each of the entities in your consolidated group for each business day of the AANA calculation period.

AANA covered products: swaps<sup>5</sup>, security-based swaps<sup>6</sup>, deliverable (physically settled) and non-deliverable FX swaps and forwards that are not centrally cleared

- Physically settled FX swaps and forwards are included in the AANA calculation (but will not be included in the calculation of any IM amount).
- Equity options are not covered by the definition of swap or security-based swap.
- See [ISDA table on product scope](#) for margin rules for further information.
- If a swap is eligible for an exemption from the clearing mandate<sup>7</sup>, it may also be eligible to be excluded from the margin requirements (and thus the AANA calculation).

**AANA calculation period: June 1, 2019 to August 31, 2019**

Business day: Means any day other than a Saturday, Sunday or legal holiday.

- Each day between June 1, 2019 and August 31, 2019, excluding weekends and July 4, is a calculation date.

**Step 3:** Calculate the total notional amount of AANA covered products identified in Step 2 for each business day during the AANA calculation period

For your group’s AANA covered products as of the end of each business day (i) convert the notional amounts to USD and (ii) sum the notional amounts.

- The U.S. requires the calculation of average daily aggregate notional amount (some other jurisdictions use average based on the last business day of each month).
- The notional amounts for AANA covered products between margin affiliates should only be counted once.
- The calculation is gross notional – offsetting positions cannot be netted.

---

<sup>5</sup> <https://www.law.cornell.edu/uscode/text/7/chapter-1>

<sup>6</sup> <https://www.law.cornell.edu/uscode/text/15/78c#a>

<sup>7</sup> See, for instance, section 23.150(b) of the CFTC rule.

- There are 64 business days during the U.S. AANA calculation period, so you should have 64 separate daily totals.

**Step 4:** Calculate the AANA

Sum up the daily aggregate notional amounts for each day during the AANA calculation period and divide by the number of business days in the period (64) to get your final AANA.

**Step 5:** Notify your counterparties

If your AANA is greater than \$8B, then as soon as practicable following August 30<sup>th</sup>, notify all your derivatives counterparties that are SDs - even if you previously disclosed based on an indicative AANA calculation.

- Inform your SD counterparties that you are definitively “in-scope” for the U.S. regulations, and provide them with the list of all the Legal Entity Identifiers<sup>8</sup> (LEIs) for all your margin affiliates that enter into uncleared derivatives, including the LEI of the parent.
- Conversely, if your U.S. AANA does not exceed \$8B and you have previously advised your counterparties that you may be in-scope; kindly inform them you will not be in-scope for U.S. initial margin requirements in Phase 5.

ISDA offers the following 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](mailto:RegIMSelfDisclosure@isda.org) to receive the template and terms and conditions.

**Important Note:** The above steps need to be taken regardless of whether U.S. regulators provide certainty to U.S. regulated entities that they may delay certain aspects of preparation in accordance with the [statement](#) published by IOSCO and BCBS on March 5<sup>th</sup>. For more information on global AANA calculation, please see ISDA’s posting [Compliance with Initial Margin \(IM\) Regulatory Requirements Following BCBS/IOSCO Guidance Statement](#).

---

<sup>8</sup> <https://www.gleif.org/en/>