



Commodity Futures Trading Commission

Office of Public Affairs

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Fact Sheet - Comparability Determination for Japan Uncleared Swap Margin Rules for Substituted Compliance Purposes

In response to an application submitted by the Japan Financial Services Agency (JFSA), the Commodity Futures Trading Commission (CFTC) is approving a comparability determination that would permit substituted compliance with certain of Japan's margin requirements for uncleared swaps as compared to the uncleared swap margin provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and CFTC regulations.

Margin For Uncleared Swaps and the Cross-Border Margin Rule

On January 6, 2016, pursuant to section 4s(e) of the Commodity Exchange Act (CEA), the CFTC adopted rules to address margin requirements for uncleared swaps entered into by swap dealers (SDs) or major swap participants (MSPs) (Covered Swap Entities) with financial institutions. On May 31, 2016, the CFTC then adopted rules regarding how these margin requirements apply to cross-border uncleared swaps (Cross-Border Margin Rule). The Cross-Border Margin Rule was generally designed to address the risks to an SD or MSP that is subject to the margin requirements associated with its uncleared swaps, consistent with section 2(i) of the Commodity Exchange Act and the statutory objectives of the margin requirements.

As part of the Cross-Border Margin Rule, the CFTC established a framework which permits certain non-U.S. CSEs to rely on substituted compliance to the extent that the Commission determines the relevant foreign jurisdiction's margin requirements are comparable to the CFTC's. Specifically, the Cross-Border Margin Rule outlines a framework for the CFTC's comparability determinations, including eligibility and submission requirements for requesters and the CFTC's standard of review for making comparability determinations.

Standard of Review for Comparability Determinations

Consistent with the key factors that the Commission indicated it will consider in making a comparability determination under the Cross-Border Margin Rule, in making the comparability determination for Japan, the Commission considered the scope and objectives of Japan's margin requirements; whether Japan's margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements; and the ability of the JFSA to supervise and enforce compliance with Japan's margin requirements. This process reflects an outcome-based approach to assessing the comparability of a foreign jurisdiction's margin requirements with focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.

Summary of Comparability Determination for Japan

On June 17, 2016, the JFSA submitted a request pursuant to the Cross-Border Margin Rule that the CFTC determine that laws and regulations applicable in Japan provide a sufficient basis for an affirmative finding of comparability with respect to margin requirements for uncleared swaps applicable to certain SDs and MSPs registered with the CFTC. As listed in the chart below, with one exception, the Commission has found the margin requirements for uncleared swaps under the laws and regulations of Japan comparable to those under the CEA and CFTC regulations.

CFTC Rule	Japan Uncleared Swap Margin Requirements
Treatment of Inter-Affiliate Swaps Regulation § 23.159	Not comparable (Note 1)
Methodologies for Calculating Initial and Variation Margin Amounts Regulations §§ 23.154, 23.155	Comparable
Process and Standards for Approving Models for Calculating Initial Margin Regulation § 23.154(b)	Comparable
Timing and Manner of Collection and Payment of Margin Regulations §§ 23.152, 23.153	Comparable
Threshold Levels or Amounts § 23.154(a)(3)	Comparable
Risk Management Controls for Calculation of Initial and Variation Margin Regulation § 23.154(b)(5)	Comparable
Eligible Collateral Regulation § 23.156	Comparable
Custodial Arrangements, Segregation, and Rehypothecation Regulation § 23.157	Comparable
Margin Documentation Regulation § 23.158	Comparable
Cross-Border Application/Reciprocity Regulation § 23.160	Comparable

Note 1: Japan does not require collection or posting of initial or variation margin between consolidated affiliates. The Commission's rules require collection and posting of variation margin and, in some cases, collection of initial margin between consolidated affiliates.