



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Segregation for Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy

What is the goal of the rulemaking?

The goal of the rulemaking is two-fold: (i) to codify section 4s(l) of the Commodity Exchange Act (CEA) requiring swap dealers (SDs) and major swap participants (MSPs) to notify their uncleared swaps counterparties of such counterparties' right to have any Initial Margin segregated in a separate account; and (ii) to clarify, pursuant to section 20(c) of the CEA, that securities in a portfolio margining account that is a futures account or a Cleared Swaps Customer Account will constitute "customer property" and any owners of such accounts "customers" in a commodity broker bankruptcy.

What registrants are covered by the final regulations?

The final regulations apply to SDs and MSPs.

Does the final rule require that initial margin be segregated?

No. The counterparty has the right to elect to require segregation of initial margin, but also may elect not to require such segregation.

Does the final rules address how much initial margin is required, or what assets a counterparty may post as margin?

No. These rules only address the counterparty's right to require segregation, and the requirements for segregated accounts.

Are there any regulations around the use of initial margin posted by a counterparty to an uncleared swap?

Where the counterparty elects to segregate initial margin pursuant to an election under regulation 23.701, any collateral so segregated must be invested consistent with regulation 1.25.

Are there any limitations on the type of collateral the SD or MSP may accept from its counterparty to an uncleared swap?

No. The parties are free to negotiate the type of collateral the SD or MSP may accept from the counterparty.

How is collateral segregated pursuant to the regulation withdrawn?

The SD/MSP and the counterparty may, by mutual written request, agree to the withdrawal of collateral. Any unilateral request for withdrawal of collateral must be made in writing by the party so requesting stating, under penalty of perjury that it has the right to do so under the agreement of the parties.

What are the time frames for compliance with the notification requirements?

For uncleared swaps transactions with new counterparties, SDs and MSPs must comply with these regulations no later than 180 days following publication of the final rule in the federal register.

For uncleared swap transactions that are entered into with existing counterparties, SDs and MSPs must comply with these regulations no later than 360 days following publication of the final rule in the federal register.

What is a “new counterparty”?

A “new counterparty” is a counterparty with whom, at the time of the effective date of this final rule, no agreement exists between the SD or MSP and that counterparty concerning uncleared swaps.

What other matters does the final rule address?

As required by section 713(c) of the Dodd-Frank Act, the proposed rules clarify that securities held in a portfolio margining account carried as a futures account are customer property and that the owners of those accounts are customers for the purposes of the commodity broker provisions of the Bankruptcy Code.