

Cross-Jurisdictional Issues in Implementation of Uncleared Margin Rules

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- AANA Calculation and Compliance Dates
- Product Scope
- Settlement Timing
- Eligible Collateral
- Inter-affiliate Initial Margin
- IM Model Governance
- SEC vs. CFTC/USPR
- Substituted Compliance

AANA Calculation and Compliance Dates

- Average Aggregate Notional Amount (AANA) Calculation Method

Month-end averaging	Daily averaging
BCBS-IOSCO, EU, Japan, Canada, Switzerland, Australia, Hong Kong, Singapore, Korea, South Africa	CFTC, USPRs, Brazil

- AANA/MSE Calculation Period following phase-in period

March, April, May	June, July, August
BCBS-IOSCO, EU, Japan, Canada, Switzerland, Australia, Hong Kong, Singapore, Korea, Brazil, South Africa	CFTC, USPRs

- Compliance Dates following phase-in period

Each September 1	Each January 1st
BCBS-IOSCO, Japan, Canada, Switzerland, Australia, Hong Kong, Singapore, Korea, South Africa	US, EU

AANA Calculation and Compliance Dates

- IM AANA/MSE Calculation Periods and Compliance Dates through January 2023



- USPR rule proposal issued September 17th, proposes to move Phase 5 AANA calculation period to March-May 2020.

AANA Calculation and Compliance Dates

- IM AANA Calculation Periods and Compliance Dates – if fully aligned with BCBS-IOSCO margin framework



Product Scope

- Variants in product scope make cross-border margining complex and create an unlevel playing field across jurisdictions.

Instrument Type	CFTC	USPRs	SEC	EMIR	Japan	Canada	Switzerland	Singapore	Hong Kong	Australia	Korea	Brazil	South Africa
Physically settled FX swaps	No	No	No	VM, not IM	No	No	No	No	No	No	No	No	No
Physically settled FX forwards	No	No	No	VM, not IM	No	No	No	No	No	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, not IM	No	No	No	No	VM, not IM	VM, not IM
Option based on a security or a narrow index of securities	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Option based on a broad index of securities	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Forward based on one or more securities	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Physically settled commodity forwards	No	No	No	Some	No	No	Some	Some	No	Yes	No	No (except for gold)	No
Physically settled commodity options	Yes	Yes	No	Some	No	No	Yes	Some	Yes	Yes	Yes	Yes	No
Derivatives cleared on an unrecognized CCP	Yes	Yes	No	No	Yes	No	Yes	No	No	No	No	Yes	Yes

- Settlement deadlines vary significantly:

T+1	T+1/T+2	T+2	T+3	T+4	Promptly
CFTC USPRs	SEC	EU Switzerland	Singapore Hong Kong Korea	Canada	Japan Australia

- The US is the most restrictive, with a T+1 settlement requirement.
 - Particularly problematic for settlement between Asian and US entities
 - The T+1 requirement prevents firms from using collateral types with longer settlement cycles
 - More difficult in final IM phases where greater use of third party custodial architecture anticipated
 - SEC allows settlement on T+2 if the counterparty is located more than 4 time zones away

- In cross-border relationships the parties must agree a collateral schedule based on the intersection of collateral which is eligible in their respective jurisdictions.
- Cross-border collateral options often limited to cash, sovereign bonds, corporate bonds and equities.
- Money Market Funds
 - Due to US T+1 settlement requirement in the US parties may use cash.
 - As cash has to be transformed to another form of collateral in the US, money market funds are expected to be used.
 - But US restrictions on use of MMF directly conflict with the conditions in the EU – meaning MMF cannot be used as collateral for US: EU transactions.

Money Market Funds

Conflict	US	EU	Request
Liquidity Restriction	Do not allow for securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements	Allows for repurchase agreements and reverse repurchase agreements	US to allow for repo, reverse repo, and securities lending within MMFs
MMF Issuing Entity	Redeemable securities in a pooled investment fund, including SEC 2a-7 funds	UCITS shares or units	Broaden issuing entity
Substituted Compliance/ Equivalence Determination	Only CFTC has provided, not U.S. Prudential Regulators	Limited to entities <i>established</i> in the USA and authorized and supervised by CFTC	U.S. Prudential Regulators to provide Substituted Compliance EU to expand equivalence determination to entities regulated in the US, not just domiciled/established in the US

- Inter-affiliate IM is currently only required to be posted under the margin requirements of the US prudential regulators.

Yes	Delayed	No
USPRs	EU	CFTC, SEC, Switzerland, Canada, Brazil, Japan, Singapore, Hong Kong, Australia, Korea

- In rule proposal issued September 17th, USPRs proposed to repeal the inter-affiliate initial margin requirement.
- The EU has delayed application until January, 2020 and is currently considering extension.

- Do firm-level IM model validation and backtesting requirements apply to parties in final IM implementation phases?

No	Yes
CFTC, USPR, Japan, Switzerland, Canada	EU, Singapore, Hong Kong, Australia

- Establishing internal model governance and conducting regular backtesting is especially onerous for smaller firms.
- Smaller firms may be precluded from using a risk-sensitive approach to IM calculation, forced to use GRID and face greater costs.
- Extensive dealer testing of ISDA SIMM[™] occurs at an industry and firm level, covering all in-scope portfolios.

- In response to industry feedback, SEC's final non-cleared margin rules are more aligned with the CFTC, USPRs than proposed draft
- Key differences remain:
 - Party scope
 - Segregation
 - Haircuts
 - IM Calculation
 - Portfolio margining
- Alternative compliance mechanism
 - Stand alone SBS may elect to comply with CFTC margin rules for their SBS
 - Not available to SBSs registered as Broker Dealers or those clearing for clients
 - Not available if SBS positions exceed lesser of (i) \$250 billion (\$50 billion after 3 year transition period) or (ii) 10% of combined aggregate gross notional amount of swaps + SBS

Intra-Jurisdictional Complexity

- Determining application of rules is complex for a swap dealer:

#	Party A registration	Party A prudentially regulated?	Party B registration	Party B prudentially regulated?	Party A combined position, treating Party B obligation to collect as Party A obligation to post
1	SD	No	SD	No	Collect swap IM, post swap IM
2	SD	No	SBSD	No	Collect swap IM, post swap IM
3	SD	No	SD and SBSB	No	Collect swap IM, post swap IM
4	SD	No	None (other FEU)	N/A	Collect swap IM, post swap IM
5	SD and SBSB	No	SD	No	Collect swap IM, post swap IM
6	SD and SBSB	No	SBSB	No	Collect swap IM, post swap IM
7	SD and SBSB	No	SD and SBSB	No	Collect swap IM, post swap IM
8	SD and SBSB	No	None (other FEU)	N/A	Collect swap IM and SBS IM separately[?], post swap IM
9	SD	Yes	SD	No	Collect swap/SBS IM, post swap IM
10	SD	Yes	SBSB	No	Collect swap/SBS IM
11	SD	Yes	SD and SBSB	No	Collect swap/SBS IM, post swap IM
12	SD	Yes	None (other FEU)	N/A	Collect swap/SBS IM, post swap/SBS IM
13	SD and SBSB	Yes	SD	No	Collect swap/SBS IM, post swap IM
14	SD and SBSB	Yes	SBSB	No	Collect swap/SBS IM
15	SD and SBSB	Yes	SD and SBSB	No	Collect swap/SBS IM, post swap IM
16	SD and SBSB	Yes	None (other FEU)	N/A	Collect swap/SBS IM, post swap/SBS IM
17	SD	No	SD	Yes	Collect swap IM, post swap/SBS IM
18	SD	No	SBSB	Yes	Collect swap IM, post greater of swap IM and swap/SBS IM
19	SD	No	SD and SBSB	Yes	Collect swap IM, post swap/SBS IM
20	SD	No	None (other FEU)	N/A	Collect swap IM, post swap IM
21	SD and SBSB	No	SD	Yes	Collect swap IM, post swap/SBS IM
22	SD and SBSB	No	SBSB	Yes	Collect swap IM, post greater of swap IM and swap/SBS IM
23	SD and SBSB	No	SD and SBSB	Yes	Collect swap IM, post swap/SBS IM
24	SD and SBSB	No	None (other FEU)	N/A	Collect swap IM and SBS IM separately, post swap IM
25	SD	Yes	SD	Yes	Collect swap/SBS IM, post swap/SBS IM
26	SD	Yes	SBSB	Yes	Collect swap/SBS IM, post swap/SBS IM
27	SD	Yes	SD and SBSB	Yes	Collect swap/SBS IM, post swap/SBS IM
28	SD	Yes	None (other FEU)	N/A	Collect swap/SBS IM, post swap/SBS IM
29	SD and SBSB	Yes	SD	Yes	Collect swap/SBS IM, post swap/SBS IM
30	SD and SBSB	Yes	SBSB	Yes	Collect swap/SBS IM, post swap/SBS IM
31	SD and SBSB	Yes	SD and SBSB	Yes	Collect swap/SBS IM, post swap/SBS IM
32	SD and SBSB	Yes	None (other FEU)	N/A	Collect swap/SBS IM, post swap/SBS IM

Substituted Compliance

- Substituted compliance is only available for non-cleared margin requirements in limited cases

		Jurisdiction/Regulator for which equivalence determination has been made														
		Australia	Brazil	Canada	EU	UK	Hong Kong	Japan	Mexico	Singapore	South Africa	South Korea	Switzerland	US (CFTC)	US (PR)	US (SEC)
Issuing Regulatory Jurisdiction	Australia	Grey	Red	Yellow	Yellow	Green	Yellow	Yellow	Red	Yellow	Red	Red	Yellow	Yellow	Yellow	Red
	Brazil	Red	Grey	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red
	Canada	Red	Red	Grey	Yellow	Red	Red	Red	Red	Red	Red	Red	Red	Yellow	Yellow	Red
	EU	Red	Red	Red	Grey	Red	Green	Red	Red	Red	Red	Red	Red	Yellow	Red	Red
	UK	Red	Red	Red	Red	Grey	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red
	Hong Kong	Green	Red	Red	Green	Green	Grey	Green	Green	Green	Red	Green	Green	Green	Green	Green
	Japan	Green	Red	Red	Green	Red	Green	Grey	Red	Green	Red	Red	Red	Green	Red	Red
	Mexico	Red	Red	Red	Red	Red	Red	Red	Grey	Red	Red	Red	Red	Red	Red	Red
	Singapore	Green	Red	Green	Green	Red	Green	Green	Green	Grey	Red	Green	Green	Green	Green	Green
	South Africa	Red	Red	Red	Red	Red	Red	Red	Red	Red	Grey	Red	Red	Red	Red	Red
	South Korea	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Grey	Yellow	Yellow	Yellow	Yellow
	Switzerland	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Grey	Red	Red	Red
	US (CFTC)	Green	Red	Red	Green	Red	Red	Green	Red	Red	Red	Red	Red	Grey	Red	Red
	US (PR)	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Grey	Red
US (SEC)	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Grey	

Equivalence Determination

Fully Equivalent

Equivalent with Exceptions

No equivalence

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