

**MINUTES OF THE  
U.S. COMMODITY FUTURES TRADING COMMISSION'S  
GLOBAL MARKETS ADVISORY COMMITTEE  
SEPTEMBER 24, 2019**

The Global Markets Advisory Committee (“GMAC”) convened for a public meeting on Tuesday, September 24, 2019, at 9:30 a.m., at the U.S. Commodity Futures Trading Commission’s (“CFTC” or “Commission”) Headquarters Conference Center, located at Three Lafayette Centre, 1155 21st St., NW, Washington, DC. The meeting consisted of five panels. Panel 1 included an update on the implementation of uncleared swaps margin rules. Panel 2 discussed the buy-side perspective on the implementation of uncleared swaps margin rules. Panel 3 discussed the custody bank perspective on the implementation of uncleared swaps margin rules. Panel 4 discussed the cross-jurisdictional issues involved in the implementation of the uncleared margin rules. Panel 5 examined EMIR 2.2 and the ESMA consultation.

GMAC Members in Attendance

Angie Karna (GMAC Chair), Managing Director, Legal Department and Head of Legal for Global Markets, Americas, Nomura Securities International, Inc.  
Chris Allen, General Counsel, Clients & Products, Standard Chartered Bank  
Ashley Belich, Head of Global OTC Derivatives & Dodd-Frank Advisory, RBC Capital Markets  
Darcy Bradbury, Managing Director, D.E. Shaw & Co., L.P.  
Clive Christison (Via Telephone), Senior Vice President Pipelines, Supply & Optimization for Fuels North America, BP  
Joseph Cisewski, Consultant, Better Markets  
Jim Colby, Representative, Coalition for Derivatives End-Users  
Gerry Corcoran (Via Telephone), Chairman of the Board and Chief Executive Officer, R.J. O’Brien & Associates, LLC  
Sunil Cutinho, President, CME Clearing  
David Goone, Chief Strategy Officer, Intercontinental Exchange, Inc.  
Alexandra Guest, Chief Compliance Officer, Cargill Risk Management  
Paul Hamill, Global Head of Fixed Income, Currencies and Commodities, Citadel Securities  
Amy Hong (Via Telephone), Head of Market Structure Strategy, Goldman Sachs  
John Horkan, Group Chief Operating Officer and Head of North America, LCH Group  
Adam Kansler, President – Financial Services, IHS Markit  
Robert Klein, Managing Director & General Counsel, Citigroup Global Markets  
Ben MacDonald, Global Head of Enterprise Products & President of Bloomberg’s SEF, Bloomberg LP  
Erik Tim Müller, Chief Executive Officer, Eurex Clearing AG  
Joseph Nicosia (Via Telephone), Global Platform Head of Cotton, Louis Dreyfus Company  
Thomas Sexton, President & Chief Executive Officer, National Futures Association  
Jessica Sohl (Via Telephone), Partner & President, HC Technologies  
Supurna VedBrat, Managing Director & Global Head of Trading, BlackRock  
Mark Wetjen, Managing Director, Head of Global Public Policy, Depository Trust & Clearing Corporation  
Masahiro Yamada, Managing Director & Head of America’s Cross Asset Structuring, JP Morgan Securities LLC

### Invited Speakers and Panelists in Attendance

Michael Gibson, Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System (Panel 1)  
Rafael Martinez, Senior Financial Risk Analyst, Division of Swap Dealer and Intermediary Oversight (“DSIO”), CFTC (Panel 1)  
Richard Grant, Global Head of Regulatory and Government Affairs, Associate General Counsel, AQR Capital Management, LLC (Panel 2)  
Wendy Yun, Managing Director & Associate General Counsel, Goldman Sachs Asset Management (Panel 2)  
Judson Baker, Head of Product Development for Derivatives and Collateral Services, Northern Trust (Panel 3)  
Dominick Falco, Managing Director, Head of Segregation, BNY Mellon (Panel 3)  
Tara Kruse, Global Head of Infrastructure, Data and Non-Cleared Margin, International and Derivatives Association (“ISDA”) (Panel 4)  
Sean Downey, Executive Director, Global Clearing & Risk Policy, CME Group (Panel 5)  
Jacqueline Mesa, Chief Operating Officer & Senior Vice President of Global Policy, Futures Industry Association (“FIA”) (Panel 5)  
Carolyn Van den Daelen, Head of Regulation & Compliance, ICE Clear Europe (Panel 5)

### CFTC Commissioners and CFTC Staff in Attendance

Heath P. Tarbert, Chairman, CFTC  
Dawn D. Stump, Commissioner and GMAC Sponsor  
Rostin Behnam, Commissioner  
Dan Berkovitz, Commissioner (via teleconference)  
Brian D. Quintenz, Commissioner  
Andrée Goldsmith, Special Counsel, CFTC, Division of Clearing and Risk, GMAC Designated Federal Officer

## **I. Opening Remarks**

Ms. Goldsmith, the Designated Federal Officer for GMAC, called the meeting to order. In her opening statement, Commissioner Stump welcomed Chairman Tarbert to the second GMAC meeting of 2019. Turning to the agenda, she noted that the presentations of today’s meeting will delve deeper into two specific topics touched upon at the first GMAC meeting held in April of this year: first, the global process applied to implementing initial margin for non-centrally cleared derivatives and how phasing of such has progressed; and second, how clearing through central counterparties has evolved since the crisis. She then gave an overview of the scheduled presentations for the meeting.

Chairman Tarbert made his opening remarks and noted that the meeting will address the implementation of the uncleared swaps margin rules (including cross-jurisdictional issues) and the potential effects of EMIR 2.2. He also noted the operational difficulties of the upcoming Phase 5 implementation of the uncleared margin rules, in which the number of covered entities is expected to increase from 40 to 700 with approximately 7,000 relationships institutionalized. He also stated that because of the potential for congestion at or near the deadline for Phase 5, federal banking regulators have extended the compliance period for one year. Chairman Tarbert ended his remarks noting that the Commission has been meeting with European regulators and expects

to engage in continuing talks relating to European oversight of non-European Union (“EU”) Central Counterparties (“CCPs”). Commissioner Quintenz remarked that in connection with uncleared margin requirements, there is a potential issue that risks are not properly calibrated through the use of notional values. Commissioner Benham noted that he looks forward to the deliberations and recommendations of the GMAC.

## **II. Panel 1: Status Update on Implementation of Uncleared Margin Rules**

Mr. Gibson opened the panel with a presentation on the status of the Phase 5 implementation of uncleared swaps margin, noting that the Phase 5 implementation is focused on compliance of smaller entities. He explained the proposed rulemaking by the prudential regulators would amend the uncleared margin rules in several respects. First, the proposal would repeal the requirement for a covered swap entity to collect initial margin from its affiliates, but would retain the requirement that variation margin be exchanged for affiliate transactions. Second, an additional initial margin compliance period for certain smaller counterparties (“CPs”) would be added. Third, the proposal would clarify that small entities are not required to have documentation/arrangements in place before reaching the \$50 million initial margin threshold. Fourth, the proposal would permit legacy swaps to retain their status if amended to replace existing interest rate provisions based on certain interbank offered rates (“IBORs”) and other interest rate benchmarks. Fifth, the proposal would permit legacy swaps to retain their status when swap amendments occur that are caused by certain routine life-cycle activities. Mr. Gibson noted that the Federal Deposit Insurance Corporation has approved the proposal but that it is still in process at the Federal Reserve Board and the Office of the Comptroller of the Currency.

Mr. Martinez presented next and set forth the various initiatives the Commission and other regulators are currently engaged in. In particular, Mr. Martinez noted that the Commission’s recent actions in connection with uncleared swaps margin are intended to coincide with prudential regulators so that regulations are harmonized. Mr. Martinez referenced a July 2019 DSIO Advisory explaining the potential for phase-in congestion and the clarification that smaller CPs are not required to have documentation/arrangements in place before reaching the \$50 million threshold. He also noted that substituted compliance has been a focus of regulators referencing the recent U.S. Securities and Exchange Commission uncleared margin rule and various initiatives that have been completed with the other major jurisdictions.

The panel then turned to a discussion session. Mr. Cisewski inquired about the reasons for proposing the inter-affiliate exemption for initial margin. Mr. Gibson explained that in a consolidated group there are going to be many legal entities facing different customers, and within the group, transactions among affiliates are often redistributing the risk around the group, which is sometimes centrally managed in one place. In addition, sometimes a customer wants to face a legal entity in a particular jurisdiction, and the firm might prefer to have the risk managed out of London or New York. Mr. Cisewski also asked about margin period of risk and how that relates to initial margin and the potential exposure calculation. Mr. Gibson noted that this is the time period right before a counterparty defaults, or stops making margin payments because it is about to default, and the non-defaulting counterparty is going to be exposed to the risk of market moves. Mr. Cisewski then followed up with questions regarding how the five-day margin period of risk was established for inter-affiliate transactions. Mr. Martinez noted that the starting point was a ten-day period, however, this period was shortened to five days because of the superior knowledge of affiliates within a consolidated group. Mr. Cisewski then asked how to address inter-affiliate risk exposure without initial margin. Mr. Gibson responded that Regulation W

applies to affiliate transactions to protect the depository institution. Mr. Klein asserted that a centralized risk management function in consolidated corporate groups manages risks for the purpose of risk reduction. He stated that Regulation W limits the ability of institutions to take on certain risks. Mr. Colby noted that central risk management is used to efficiently manage risk through inter-affiliate transactions, which in turn reduces direct facing trades with swap dealers.

Ms. Bradbury stated that there are several implementation challenges that investment management firms are facing with respect to the initial margin requirements, and encouraged regulators to address these challenges before the asset managers come into scope.

### **III. Panel 2: Buy-Side Perspective on Implementation of Uncleared Margin Rules**

Mr. Grant gave a presentation on the buy-side perspective in connection with the implementation of the uncleared swaps margin rules. In particular, Mr. Grant detailed the tremendous operational challenges that exist for firms to calculate and transfer initial margin resulting from a host of technology and systems issues. He also noted the legal challenges that occur due to a host of new agreements required with each CP. Mr. Grant further stated that “congestion” is likely to occur as numerous firms rush to complete their necessary requirements near the final deadline for the uncleared margin rules. He then explained that in order to ease the potential for congestion, regulators should provide an initial margin threshold extension, address forex transaction impacts, and focus on meaningful swaps exposure rather than notional amounts.

Ms. Yun presented next and stated that her firm supported regulators’ efforts to provide an extension to the implementation phase-in schedule, and noted the need for harmonization across jurisdictions. She stated that firms are finding it challenging to implement the margin rules as a result of difficulties in calculating average annual notional amounts (“ANNA”) and the initial margin threshold. Ms. Yun also noted that the ability to use money market funds as cash collateral to avoid settlement issues is very important for firms, but that current limitations in the rule prohibiting the use of money market funds if they invest in repurchase or reverse repurchase transactions are impeding their use. Ms. Yun thus noted that regulators need to eliminate the restrictions on the use of money market funds as cash collateral. Lastly, Ms. Yun indicated that end-user clients find developing and implementing their own uncleared margin models to be too costly and burdensome, and therefore, look to third party vendors to manage the process.

Following the presentations by Mr. Grant and Ms. Yun, there was a discussion among the members. Ms. Guest stated that her firm shares the same challenges and especially noted the data challenges that exist due to differing transaction booking systems. Ms. Bradbury noted that the frequency of the ANNA calculation depends on the jurisdiction so that it may be preferable to have clients collect the data and perform the calculation. Ms. Bradbury also questioned whether dealers will stop trading swaps for a particular client due to compliance burdens. Both Mr. Grant and Ms. Yun stated that dealers may re-evaluate the effort necessary to service smaller buy-side firms.

(Break)

### **IV. Panel 3: Custody Bank Perspective on Implementation of Uncleared Margin Rules**

Following the break, Chairwomen Karna introduced the third panel.

Mr. Falco presented that the number of accounts set up to comply with the uncleared swaps margin rule has steadily increased from 2016 through 2019. He explained that the process

is focused on two documents: (1) the Account Control Agreement (“ACA”) and (2) the ISDA Credit Support Annex (“CSA”). Mr. Falco also stated that the current focus of custodians is to reduce bespoke negotiations through automation such as the ISDA Doc Create platform. Mr. Falco expects 2020 to be a busy client on-boarding phase due to the margin rule implementation phase-in deadline.

Mr. Baker presented next and explained that his firm provides collateral management and collateral segregation services for the buy-side. He indicated that the ACA is the starting point for negotiation with clients and that the ISDA legal review will help to make the process more efficient. Mr. Baker also noted that the documentation relief for CPs not meeting the \$50 million threshold exposure level is very helpful. He explained that the work flow is still heavily paper-based but expects the process to become increasingly automated in the near term.

Following the presentations, Chairwoman Karna asked members for any comments and questions. There being none, the Chairwoman then introduced the fourth panel.

#### **V. Panel 4: Cross-Jurisdictional Issues in Implementation of Uncleared Margin Rules**

Ms. Kruse opened the fourth panel by explaining that differences among jurisdictions in uncleared margin regulations is causing challenges for the industry due to increased complexities and cost. She detailed that these complexities include: (1) AANA calculation, (2) product scope, (3) settlement timing, (4) eligible collateral, (5) inter-affiliate initial margin and (6) initial margin model governance. Ms. Kruse also stated that substituted compliance will be a key concept for regulators to address for efficiently implementing the margin rules across jurisdictions.

Chairwoman Karna opened the discussion portion of the panel by asking the Committee members to identify the challenging aspects of the uncleared margin requirements across jurisdictions and whether they have any suggestions for regulators. Ms. Guest indicated that settlement timing is challenging for firms. Mr. Yamada stated that implementation is very challenging across jurisdictions and would like to see increased harmonization globally through a risk-based priority approach. Ms. Bradbury asked Ms. Kruse how the ISDA SIMM model was developed. Ms. Kruse stated that when the rules were being developed it became clear that having multiple models was not tenable. Therefore, the industry got together and came to ISDA to find a workable solution for calculating initial margin. She emphasized that the model should not be too complex. And to date, the model is being used across the board by almost all market participants that have phased in. Ms. Belich questioned the potential for regulatory arbitrage due to the product scope of the model. Ms. Kruse responded that when ISDA seeks information from parties regarding disputes about the IM amounts, the issue often arises from the trades that each party has put into the portfolio to do the IM calculation. She also stated that ISDA provides guidance where appropriate. She further noted that at the end of the day, there are inconsistencies, and ISDA encourages people to prepare ahead of time and test with counterparties before going live to identify product differences when calculating the initial margin.

(Lunch)

Following lunch, Chairwoman Karna asked Committee members whether a subcommittee consisting of GMAC members and nonmembers should be established for uncleared margin issues. Following a discussion among Committee members in support of

establishing a new subcommittee, Ms. Bradbury moved that the Committee recommend to the CFTC the establishment of a subcommittee of the GMAC relating to uncleared margin issues. Ms. Guest seconded the motion. The motion was then approved unanimously by the Committee.

## **VI. Panel 5: EMIR 2.2 and ESMA Consultation**

After the motion was passed, Chairwoman Karna introduced the fifth panel.

The presenters of this panel provided information on this topic both individually and collectively.

Mr. Downey began his presentation by explaining the focus and intent of EMIR 2.2 and the process of implementation for EMIR 2.2. In particular, Mr. Downey detailed the concept of Tier 1 and Tier 2 firms, whereby Tier 1 firms would be subject to current requirements for non-EU CCPs, while a Tier 2 firm would be directly subject to EU laws because they are systemically important to the EU. Ms. Van den Daelen discussed the criteria/indicators for determining whether a firm is Tier 1 or Tier 2. She stated that the indicators are overly broad, and therefore, left to the discretion of regulators. She also indicated that the indicators need to have a nexus to systemic risk in the EU, an element that several of the indicators are currently missing. Ms. Mesa then noted that the EU should prioritize the indicators for Tier 1 and Tier 2 status, indicating that examples from ESMA would help the industry. Mr. Downey then stated that he went through each of the 14 indicators in EMIR 2.2, and found language that did not have an EU nexus and was not a true test or relevant to determining whether a non-EU CCP is of systemic importance in Europe.

Ms. Mesa then detailed how comparable compliance is expected to work under EMIR 2.2. Both Mr. Downey and Ms. Van den Daelen explained that the EU approach for comparable compliance for non-US CCPs that require home country regulation equal or greater than EMIR 2.2 essentially removes comparable compliance from the regulatory regime. Depending on the timing and scope of Brexit, the panelists indicated that U.S. CCPs could be the only ones subject to comparable compliance determinations under EMIR 2.2 in the short term.

Following the presentations, Chairwoman Karna opened the floor for comments and questions. Mr. Cutinho noted that the spirit of EMIR 2.2 is not consistent with comparable or substituted compliance. Mr. Horkan noted that the industry requires clarity related to the tiering requirements and that the comparable compliance requirements in EMIR 2.2 are outcome-based rather than true requirements for comparable compliance by non-US CCPs. Mr. Wetjen also questioned the role of central banks, stating that central banks in EMIR 2.2 have not been thoroughly addressed. Mr. Müller noted that the CCP business is global so that regulators must cooperate noting that there are ways to navigate differences in regulatory regimes. Ms. Van den Daelen noted that the G-20 directive focuses on OTC derivatives and indicated deference to local laws; however, EMIR includes exchange-traded products and does not fully support comparable compliance.

Commissioner Stump asked the panel how a U.S.-based CFTC registered derivatives clearing organization ("DCO") offering commodities would be impacted if it is labeled a Tier 2 firm. Mr. Downey stated that it might impact a firm's ability to use letters of credit as collateral in addition to increasing costs and access.

Chairwoman Karna asked the panel what feedback they have received from clients regarding these proposals. According to Mr. Downey, CME's engagement has been at the


association level, primarily FIA and ISDA. The recognition is that regulatory cooperation and reciprocal deference is important to a CCP and to the market from a risk and efficiency perspective. Ms. Mesa added that FIA does not want duplicative regulation anywhere. If it is comparable, that should be enough.


**V. Closing Remarks**

In closing, Commissioner Stump noted that the reason uncleared margin was initiated was to ensure that the interconnectedness of institutions was addressed outside of the clearing space in the event that clearing was not appropriate or sought after. With regard to clearinghouses and the utility they provide, she emphasized that one of the key reforms was to encourage more clearing without creating a situation where regulatory impediments would make that challenging.

Ms. Goldsmith adjourned the meeting at 3:00 p.m.

I hereby certify that the foregoing minutes are accurate.

  
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Angie Karra  
Chair, Global Markets Advisory Committee

  
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Date