

U.S. CFTC and EU Regulation of OTC Margin for Uncleared Commodity Derivatives

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US RULES ON UNCLEARED MARGIN

FINAL CFTC RULE (JANUARY 2016)



US MARGIN RULES FOR UNCLEARED SWAPS: WHICH REGULATIONS APPLY?

- **CFTC Rules (the “CFTC Rules”)**
 - These margin rules apply to registered swap dealers and major swap participants for which there is no Prudential Regulator (“Covered Swap Entities” or “CSEs” – defined differently under the CFTC Rules and the PR Rules).
- **Prudential Regulators Rules (the “PR Rules”)**
 - The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (each an “Agency” or a “Prudential Regulator”) adopted a joint rule to establish minimum margin and capital requirements to apply to registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator (“Covered Swap Entities” or “CSEs”).
- **SEC Rules (the “SEC Rules”)**
 - These margin rules have not been published yet (although proposed rules have been published and will apply to registered security-based swap dealers, and major security-based swap participants for which there is no Prudential Regulator.

US MARGIN RULES FOR UNCLEARED SWAPS: WHICH TRANSACTIONS ARE GOVERNED BY THE RULES?

- **The PR Rules:**
 - Apply to CSEs' non-cleared swaps and non-cleared security-based swaps that are executed after the applicable compliance dates (exclusions with swaps with certain counterparties).
- **CFTC Rules**
 - Uncleared swaps, as defined in § 23.151, that are executed after the applicable compliance dates set forth in § 23.161.
- **SEC Rules**
 - Non-cleared security-based swaps.

Note that under all Rules, foreign exchange swaps and foreign exchange forwards are excluded from the margin requirements.

DFA PROVISION ON MARGIN (§ 731) – CFTC

- The Commodity Exchange Act (CEA) § 4s(e)(1)(A):
 - "Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A)."
- CEA § 4s(e)(1)(B):
 - "Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B)."

DFA PROVISION ON MARGIN (§ 764) – SEC

- Securities Exchange Act of 1934 (Exchange Act) §15F(e)(1)(A)
 - Each registered security-based swap dealer and major security based swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).
- Exchange Act § 15F(e)(1)(B)
 - Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

US MARGIN RULES FOR UNCLEARED SWAPS: APPLICATION TO OTHER PARTIES

- **APPLICATION TO OTHER ENTITIES**

As the Rules also require Covered Swap Entities (CSEs) to *post collateral to*, and to *collect collateral from*, financial end-users, those entities will also be subject to the Rules.

- Financial end-user: As per the CFTC Rules, a counterparty that is not a swap dealer or a major swap participant but which falls within one of the categories of entities primarily engaged in financial activities.
- Certain parties are excluded from this definition, such as sovereign entities, multilateral development banks, The Bank for International Settlements, captive finance companies.

US MARGIN RULES FOR UNCLEARED SWAPS: Non-financial end users and Other Counterparties

- Non-financial end-user: As per the CFTC Rules, a counterparty that is not a swap dealer, a major swap participant or a financial end user. The margin requirements do not apply to uncleared swaps between a CSE and a non-financial end-user.
- Other Counterparties: The PR Rules refer to “other counterparties” such as foreign sovereigns, and financial end users that do not have material swaps exposure (with respect to the initial margin requirement). A CSE’s margin collection from these “other counterparties” is subject to the judgment of the CSE.

US MARGIN RULES FOR UNCLEARED SWAPS: TRIPRA

- Section 302 of Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA): Amends the DFA so that margin requirements do not apply to a swap or a security-based swap in which a counterparty:
 - qualifies for an exception from clearing under section 2(h)(7)(A) of the CEA or section 3C(g)(1) of the Exchange Act (e.g., a non-financial entity using the swap or security-based swap to hedge or mitigate commercial risk, certain small financial institutions, and captive finance companies);
 - qualifies for an exemption from clearing under section 4(c)(1) of the CEA for cooperative entities, or
 - satisfies the criteria for the affiliate exception from clearing pursuant to section 2(h)(7)(D) of the CEA, or section 3C(g)(4) of the Exchange Act for treasury affiliates that act as agent.

*The CFTC and the Agencies have each published an interim final rule to effect this exemption and have requested comments on the rule.

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN

- CSEs would be required to both collect initial margin from and post initial margin to swap entities and financial end users with material swaps exposure.
 - When does an entity have Material Swaps Exposure (MSE)?
 - If the entity and its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds \$8 billion, where such amount is calculated only for business days.
 - Parties can set a maximum initial margin threshold amount of \$50 million across itself and its margin affiliates (under the PR Rules, reduced for trades with affiliates as described infra).

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN: CALCULATION OF INITIAL MARGIN

- How is *Initial Margin* Calculated?

A covered swap entity can calculate initial margin either:

(1) by using a standardized margin schedule, which is set out in Appendix A of the Rules, or

(2) using an internal margin model that satisfies the set forth in the final rule and that has been approved by:

- (x) the relevant Prudential Regulator (when the PR Rules apply) or
- (y) the CFTC or a registered futures association (the NFA) (when the CFTC Rules apply).

Note: A standard initial margin model (SIMM) has been developed by ISDA and its members.

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN: ELIGIBLE COLLATERAL

- **Eligible Collateral** for Initial Margin includes (this is a non-exclusive list):
 - Immediately available cash funds denominated in: (A) U.S. dollars; (B) A major currency; (C) A currency of settlement for the uncleared swap
 - US Treasury Securities (T-bills, T-notes and T-bonds)
 - US Government Agency Securities
 - Certain U.S. Government-sponsored enterprise securities
 - A publicly traded common equity security that is included in the S&P 500 Index or the S&P 1500 Composite Index (which is not in the S&P 500 Index) (haircuts will vary based on the index)
 - Gold

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN: Prohibition of certain assets

- Eligible Collateral for Initial Margin may not include a security issued by:
 - The CSE or any margin affiliate thereof (for posting) or the counterparty or any margin affiliate thereof (for collection),
 - A bank holding company, a savings and loan holding company, certain U.S. intermediate holding companies, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or a margin affiliate of any of the foregoing institutions, or
 - A nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323).

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN: SEGREGATION REQUIREMENTS

- Initial Margin posted or collected by a CSE must be held by one or more custodians that are neither the CSE, its counterparty, or an affiliate thereof.
- The custodian must act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or similar proceedings.
- The custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing or otherwise transferring the funds or other property held by the custodian.
- Cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase other forms of eligible collateral and such eligible noncash collateral is segregated.

US MARGIN RULES FOR UNCLEARED SWAPS: VARIATION MARGIN: CALCULATION OF VARIATION MARGIN

- How is *Variation Margin* calculated?
 - CSEs must collect or post Variation Margin on uncleared swaps in an amount that is at least equal to the increase or decrease in the value of such swaps since the previous exchange of Variation Margin.
- Note on the CFTC Rules:
 - The CFTC Rules are more detailed than the PR Rules regarding this determination, requiring that Variation Margin calculations use methods, procedures, rules, and inputs that, to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

US MARGIN RULES FOR UNCLEARED SWAPS: VARIATION MARGIN: CALCULATION OF VARIATION MARGIN

- A swap between a CSE and another swap entity:
 - immediately available cash funds that are denominated in:
 - U.S. dollars;
 - Another major currency; or
 - The currency of settlement of the uncleared swap
- A swap between a CSE and a financial end user
 - any asset that is eligible to be posted or collected as initial margin

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN AND VARIATION MARGIN: HAIRCUTS

- Initial Margin (IM):
 - 8 percent discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, (except for collateral denominated in a single termination currency designated as payable to the non-posting counterparty under the eligible master netting agreement); plus other haircuts for non-cash collateral as per the relevant Rules.
- Variation Margin (VM):
 - 8 percent discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, (unless the initial margin is cash in USD or another major currency); plus other haircuts for non-cash collateral as per the relevant Rules.

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN AND VARIATION MARGIN: COMPLIANCE SCHEDULE

- September 1, 2016:
 - For ***Initial Margin*** (where the CSE is required to post and collect Initial Margin from its counterparty) and ***Variation Margin***, if both:
 - the CSE combined with all of its margin affiliates; and
 - its counterparty combined with all of its margin affiliates,
 - each have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps (Covered Swaps NA) for March, April, and May 2016 that exceeds \$3 trillion, where such amounts are calculated only for business days.

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN AND VARIATION MARGIN: COMPLIANCE SCHEDULE (CONTINUED)

- March 1, 2017 – all parties subject to **Variation Margin** (if not already phased in earlier)
- Additional phase in dates for **Initial Margin** (where the CSE is required to post and collect Initial Margin from its counterparty):
- September 1, 2017 - if the Covered Swaps NA for both the CSE and all of its margin affiliates and its counterparty and all of its margin affiliates for March, April, and May 2017 exceeds \$2.25 trillion
- September 1, 2018 - if the Covered Swaps NA for both the CSE and all of its margin affiliates and its counterparty and all of its margin affiliates for March, April, and May 2018 exceeds \$1.5 trillion
- September 1, 2019 - if the Covered Swaps NA for both the CSE and all of its margin affiliates and its counterparty and all of its margin affiliates for March, April, and May 2019 exceeds \$0.75 trillion
- September 1, 2020 - for any other CSE with respect to uncleared swaps entered into with any other counterparty that is subject to Initial Margin.

US MARGIN RULES FOR UNCLEARED SWAPS: INITIAL MARGIN AND VARIATION MARGIN: ADDITIONAL POINTS

- The Threshold for **Variation Margin** must be zero.
- The maximum Minimum Transfer Amount for **Initial Margin** and **Variation Margin** combined cannot be greater than \$500,000.
- Swaps between Affiliates:
 - **CFTC Rules:** Generally, a CSE does not need to **collect** initial margin from, or **post** initial margin to, an affiliate (subject to certain exceptions).
 - **PR Rules:** CSEs do not need to **post** initial margin to an affiliate that is not a CSE but must **collect** initial margin from its affiliate (in this case, the initial margin threshold is reduced to \$20,00,000 per affiliate).
 - **CFTC Rules and PR Rules:** Require that variation margin be posted to and collected from its affiliates.



EU RULES ON OTC MARGIN FOR UNCLEARED DERIVATIVES

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: WHO ARE THE PLAYERS?

- FCs -Financial Counterparties—including banks (credit institutions), broker dealers (investment firms), insurance and reinsurance entities, some pension schemes (IORPS), some funds (AIFs) and their fund managers (AIFMs), money market funds and their managers (UCITS)
- NFC+s -Non Financial Counterparties that are over the clearing threshold (“gross notional” by class of derivatives - credit (€1 billion); equity (€1 billion); IR (€3 billion); FX (€3 billion), and commodities and others (€3 billion))

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: KEY POINTS

- ESA Final Report published 8 March 2016
- Initial margin (**IM**) two-way - segregation
- Daily variation margin (**VM**)
- Application:
 - FCs and NFC+ dealing between themselves
 - Collect margin from TCE+
 - Phase-in by threshold (by agreement)
- Requirement to *exchange* IM - entities with OTC derivatives exposure above EUR 8 billion
- Do not have to exchange collateral with NFC-/ TCE-

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: WHO IS CAUGHT?

- FCs and NFC+s are required to exchange VM on a daily basis
- FCs and NFC+s with a gross notional of over €8 billion are also required to exchange IM
- Also applies to FCs and NFC+s dealing with TCE+s
- May apply in some circumstances to TCE+ dealing with a TCE+
- No longer requires FCs and NFC+s to collect margin from TCE-s
- There is now no requirement for a written agreement to disapply the rules with an NFC- and this exemption has been extended to those trading with a TCE-

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: SUMMARY

ENTITY TYPE	COUNTERPARTY TYPE				
	FC	NFC+	NFC-	TC+	TC-
FC	red	red	green	red	green
NFC+	red	red	green	red	green
NFC-	green	green	green	green	green
TC+	peach	peach	green	orange	green
TC-	green	green	green	green	green

red

Entity required to exchange/collect margin if both parties over collateral threshold

green

Entity not required to exchange margin

peach

Indirect application only

orange

If contract has effect within EU or necessary to prevent evasion and neither party is established in “equivalent” jurisdiction (and both over collateral threshold)

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: WHAT IS CAUGHT?

- Most “OTC derivatives”
- Parties may agree not to exchange IM on physically settled FX forwards, swaps and the principal of cross currency swaps
- Conditional exemption for swaps hedging covered bonds and pools
- Expansion of scope of OTC derivative contract re. physical commodity derivatives with implementation of MiFID II
- Application of “REMIT Carve-out” re OTF trades

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: PHASE-IN TIMELINE FOR IM AND VM

	> €3.0 trillion	> €2.25 trillion	> €1.5 trillion	€0.75 trillion	> €8 billion
IM	1 September 2016	1 September 2017	1 September 2018	1 September 2019	1 September 2020
VM	1 September 2016	1 March 2017			

- Calculations against IM thresholds in phase-in period measured using aggregate average gross notional amount of all non-centrally cleared OTC derivative contracts of all entities in the group recorded on last business day of March, April and May of the then current year.
- N.B. –No frontloading requirement

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: INITIAL MARGIN REQUIREMENTS

- Parties may agree not to exchange IM until total IM to be collected exceeds €50 million at group level
- Risk management procedures must:
 - determine allocation between group entities,
 - include provisions on monitoring, at a group level, whether the threshold is exceeded and maintaining records of single counterparty exposures
- Parties may agree “minimum transfer amount” up to €500,000 covering VM and IM
- IM must be recalculated and called at least every 10 business days
- Certain events (e.g. new trades) require IM to be recalculated within 1 business day of occurrence
- IM is calculated either under standardised approach or meeting RTS requirements for initial margin models (**IMM**)

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: INITIAL MARGIN– STANDARDISED APPROACH

- Exposures uplifted & collateral subject to prescribed haircut
- Derivative notionals multiplied by asset & maturity based add-ons to produce gross figure per netting set (e.g. 15% for commodities)
- Off-sets within netting sets applied to produce net-to-gross ratio (**NGR**)
- Net Standardised IM = $0.4 \times \text{gross IM} + 0.6 \times \text{NGR} \times \text{gross IM}$

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: PROTECTION OF IM

- IM must be segregated from proprietary assets of collecting party - protected in insolvency
- Re-hypothecation, re-pledge or re-use of collateral posted as IM prohibited
 - Requirement deemed met where third party holder or custodian reinvests the initial margin received in case
- Independent legal review required at least annually:
 - verify enforceability of netting arrangements and
 - whether segregation arrangements for IM meet the RTS requirements in all relevant jurisdictions

EMIR MARGIN REQUIREMENTS FOR UNCLEARED OTC DERIVATIVES: COLLATERAL ELIGIBILITY

- Collateral must fall within one of the specified asset classes. These include:
 - cash
 - high-quality securities (including high-quality government, corporate and covered bonds, the most senior tranche of some securitisations, but not re-securitisations)
 - equities included in a main index
 - gold (in the form of allocated bullion with recognised good delivery)
 - certain shares or units in UCITS that meet eligibility criteria
- Collateral must be of a type that can be liquidated in a timely manner by the transferee (and be of a type for which the transferee has market access) upon default of the transferor



US CROSS-BORDER APPLICATION OF UNCLEARED SWAPS MARGIN

RULES FINAL CFTC RULE (MAY 24, 2016)

Overview

- In 2014, the CFTC proposed 3 approaches to cross-border application of margin requirements for uncleared swaps: (1) **transaction-level approach** (consistent with CFTC's cross-border guidance from July 26, 2013); (2) **Prudential Regulators' approach**; and (3) **an entity-level approach** that would apply margin rules on a firm-wide basis (without any exclusion for swaps with non-US counterparties).
- CFTC adopted hybrid approach closer to Prudential Regulators'.
 - Consider that out of 106 SDs, 54 are subject to CFTC rules, and 33 of these are affiliated with Prudentially regulated SD (effectively leaving only 21 out of 106 exclusively regulated by the CFTC, *i.e.*, 19%).
 - E.g., CFTC took the concept of Foreign Consolidated Subsidiary (FCS) from PRs.
- General approach of the Rule:
 - These rules apply to **uncleared OTC swaps** between US CSEs and US persons and counterparties located overseas (*i.e.*, across the border);
 - Certain uncleared OTC swaps will be eligible for **substituted compliance** under local jurisdiction regime (*i.e.*, non-US participants will be deemed complied with this margin rule if they comply with their local rules); and
 - Certain uncleared swaps will be **excluded** from this rule entirely.

A different view...

- Commissioner C. Giancarlo stated in his dissent: *“... the Commission is adopting a set of preconditions to substituted compliance that is overly complex, unduly narrow and operationally impractical... In effect, the Commission’s approach is somewhat principles-based, except when it is rules-based and somewhat objective, except when it is subjective”*



Summary Table

CSE	Counterparty	Applicable Margin Requirements
<ul style="list-style-type: none"> • US CSE or • Non-US CSE (including US branch of non-US CSE and a FCS) whose obligations under a relevant swap are guaranteed by a US person 	<ul style="list-style-type: none"> • US person (including a US CSE) • Non-US person (including non-US CSE, FCS, and US branch of a non-US CSE) whose obligations under a relevant swap are guaranteed by a US person. 	US (IM and VM)
	<ul style="list-style-type: none"> • Non-US person (including non-US CSE, FCS, and US branch of a non-US CSE) whose obligations under a relevant swap are not guaranteed by a US person. 	US (IM collected by CSE) SC (IM posted by CSE) US (VM)
<ul style="list-style-type: none"> • FCS whose obligations under the relevant swap are not guaranteed by a US person; or • a US branch of a non-US CSE whose obligations under the relevant swap are not guaranteed by a US person 	<ul style="list-style-type: none"> • US CSE • Non-US CSE (including US branch of a non-US CSE and FCS) whose obligations under a relevant swap are guaranteed by a US person. 	US (IM posted by CSE) SC (IM collected by CSE) US (VM)
	<ul style="list-style-type: none"> • US person (except as noted above for CSE) • Non-US person whose obligations under a relevant swap are guaranteed by a US person (except a non-US CSE, a US branch of a non-US CSE and FCS whose obligations are guaranteed as noted above) • Non-US person (including non-US CSE, US branch of a non-US CSE, and a FCS) whose obligations under a relevant swap are not guaranteed by a US person 	SC (IM and VM)
<ul style="list-style-type: none"> • Non-US CSE (that is not an FCS or a US branch of a non-US CSE) whose obligations under the relevant swap are not guaranteed by a US person 	<ul style="list-style-type: none"> • US CSE • Non-US CSE (including US branch of a non-US CSE and FCS) whose obligations under a relevant swap are guaranteed by a US person 	US (IM posted by CSE) SC (IM collected by CSE) US (VM)
	<ul style="list-style-type: none"> • US person (except as noted above for CSE) • Non-US person whose obligations under a relevant swap are guaranteed by a US person (except a non-US CSE, a US branch of a non-US CSE and FCS whose obligations are guaranteed as noted above) • Non-US person (including non-US CSE, US branch of a non-US CSE, and a FCS) whose obligations under a relevant swap are not guaranteed by a US person 	SC (IM and VM)
	<ul style="list-style-type: none"> • Non-US person (including a non-US CSE, but an FCS or a US branch of a non-US CSE) whose obligations are not guaranteed by a US person. 	Excluded (except in connection with certain inter-affiliate swaps)

SC – substituted compliance; FCS – a non-US CSE that is a foreign consolidated subsidiary ; IM – initial margin; VM – variation margin

Added New Definitions

- “**Foreign Consolidated Subsidiary**” (FCS) – a non-US CSE consolidated with and controlled by a U.S. “ultimate parent entity” (use consolidated GAAP statements).
- “**Guarantee**” – very broadly defined, includes general rights to collect.
- “**Non-US CSE**” – is an CSE that is not a US Person and includes FCS and U.S. branches of non-US CSEs.
- “**U.S. Person**” – generally follows Cross-Border Guidance, but has some differences (e.g., does not include majority owned fund entity by a US person). Defined at the entity level, thus includes branches but not non-US subsidiaries.
- “**U.S. CSE**” - is an CSE that is a “US Person”, while a non-US CSE is an CSE that is not a “US Person”.



Relevant Categories of Entities

US Persons

- U.S. CSE
- U.S. Counterparty (non-CSE)

Non-US Persons (but treated almost like US Persons)

- Non-U.S. CSE (guaranteed by a U.S. Person)
- Non-U.S. CSE (guaranteed FCS)
- U.S. branch of non-U.S. CSE (guaranteed)
- Non-U.S. Person (guaranteed)

Non-US Persons (some US Person rules apply)

- Non-U.S. CSE (not guaranteed FCS)
- US branch of Non-U.S. CSE (not guaranteed)

Non-US Persons

- Non-U.S. CSE (not guaranteed, not FCS)
- Non-U.S. Person Counterparty (non-CSE and not guaranteed)

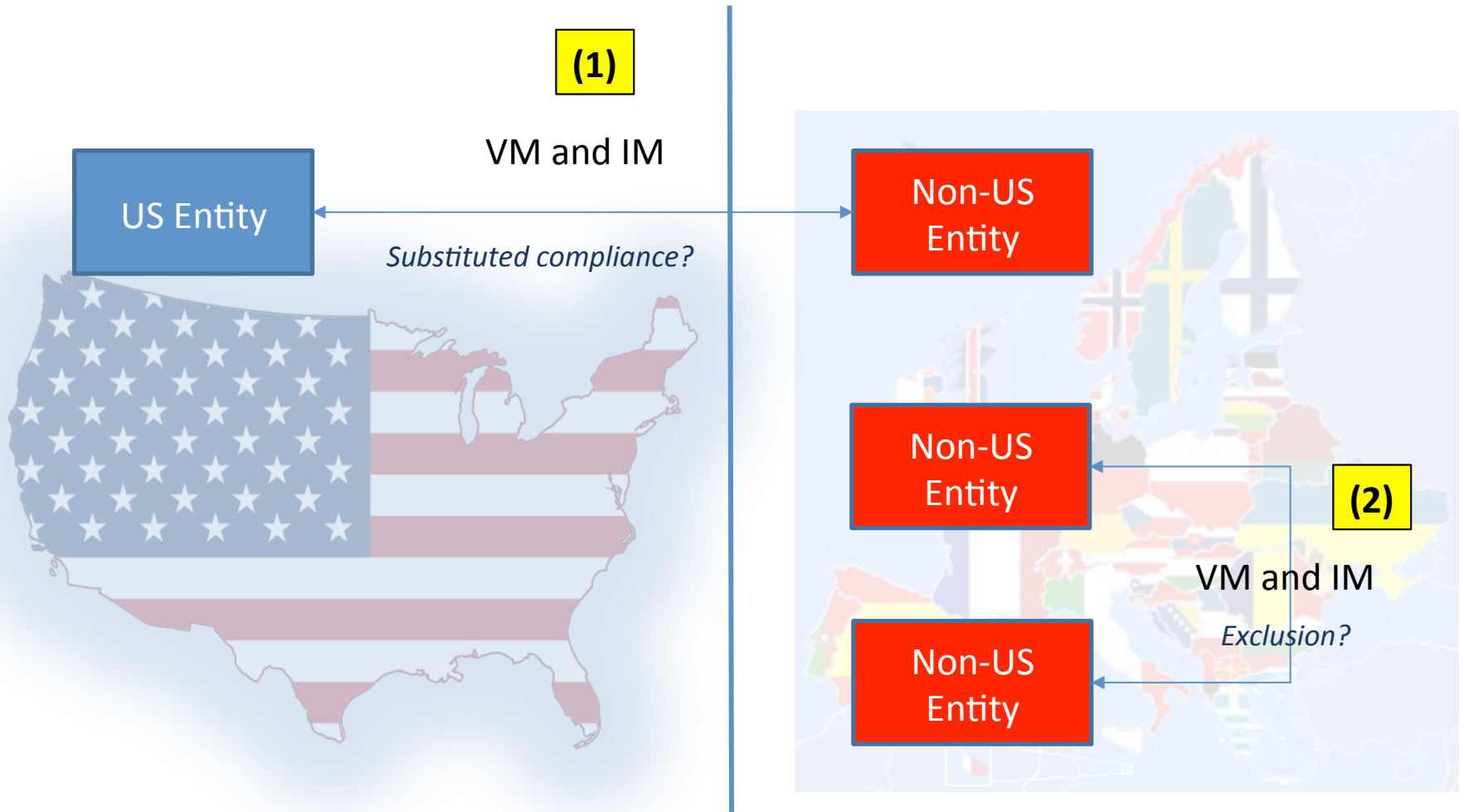


How do you know who is who?

- The Rule recognizes that ascertaining whether a counterparty overseas is guaranteed by a US person or not, and whether it is an FCS can be very expensive and only through extensive due diligence.
- The Rule allows reasonable reliance on counterparty representations (*e.g.*, that it is not guaranteed by a US person).



Two Scenarios in Focus





Substantive Margin Requirements

Swaps of US CSEs and Guaranteed Non-US CSEs

- Margin rule apply to all uncleared swaps of US SCEs and non-US SCEs that are guaranteed by a US person.
- Substituted compliance is available for IM posted to (but not collected from) any non-US counterparty whose obligations are not guaranteed by a US person.

Swaps of Not Guaranteed Non-US CSEs

- Those that qualify as FCS, are eligible for substituted compliance (but not eligible for the Exclusion from the Rule).
- Non-FCS, are eligible for substituted compliance and the Exclusion.



Exclusion of Certain Uncleared Swaps from Margin Rule

- An uncleared swap entered into by a non-US CSE with a non-US person (including another non-US CSE) is Excluded from the Rule, if the following conditions are met:
 - 1) ***Neither*** counterparty obligations are guaranteed by a US person;
 - 2) ***Neither*** counterparty is a FCS;
 - 3) ***Neither*** counterparty is a US branch of a non-US CSE;
 - 4) The risk from the swap trade is ***not*** transferred to a US covered swap entity via an inter-affiliate swap and
 - 5) Market-facing swap ***is*** subject to comparable IM collection requirements in home jurisdiction.



Substituted Compliance

- Comparability Determination
 - The Rule allows in certain circumstances to US CSE transacting with a non-US counterparty to apply local jurisdiction non-US counterparty margin requirements instead of those of the CFTC rule.
 - Substituted compliance may be available if local jurisdiction's margin requirements are recognized by the CFTC as comparable to CFTC's margin requirements.
 - Process for applying for such determination is set forth in the Rule.



Special Jurisdictional Situations

- Non-Netting Jurisdictions
 - Qualifying CSEs permitted to engage in uncleared swaps if they treat swaps under the netting agreement on a gross basis in determining the amount of margin they collect (and would be permitted to net those swaps in determining the amount of margin they post, in accordance with the netting provisions of the margin rule).
- Non-Segregation Jurisdictions
 - FCSs and foreign branches of U.S. CSEs are permitted to engage in swaps with non-U.S. counterparties that are not guaranteed by a U.S. person, without complying with either (1) the requirement to post IM or (2) the custodial arrangement requirements that pertain to IM collected by a CSE, subject to a 5% limit that applies separately to each of four broad risk categories.

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FIA

The logo consists of three letters: 'F', 'I', and 'A'. The 'F' is a solid dark grey block letter. The 'I' is a solid dark grey vertical bar. The 'A' is composed of two overlapping shapes: a light green triangle pointing upwards and a light blue triangle pointing downwards. The background features a network of thin, light grey lines forming a complex geometric pattern.