



US vs EU/UK MARGIN RULES

Comparative Summary

LATHAM & WATKINS LLP

US vs EU/UK MARGIN RULES

Comparative Summary*

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* Last updated June 2, 2022

As regulators and market practice clarify the scope and application of the rules in the coming months, we will update this Reference Guide to reflect the most current understanding. Please bookmark <https://www.lw.com/thoughtLeadership/US-EU-margin-rules-reference-guide> to ensure access to the most recent version of this Reference Guide.

US vs EU/UK MARGIN RULES

Comparative Summary

	US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
	PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		
I. SCOPE					
Covered Entities	Swap Entities ⁷ and SBS Entities ⁸ that are prudentially regulated ⁹ (PR Swap/SBS Entities)	Swap Entities that are not prudentially regulated (CFTC Swap Entities)	SBS Entities that are not prudentially regulated (SEC SBS Entities)	(i) Financial Counterparties (FC) ¹⁰ (ii) Non-Financial Counterparties above clearing thresholds (NFC+) ¹¹ (iii) Third Country Entities (TCE) that would be FC or NFC+ if established in the EU (under EMIR) or the UK (under UK EMIR) (TCE (FC/NFC+)) ¹²	
Covered Products	Uncleared swaps and security-based swaps (SBS) entered into on or after the relevant compliance date (other than FX Products)	Uncleared swaps entered into on or after the relevant compliance date (other than FX Products)	Uncleared SBS entered into on or after the relevant compliance date	Non-centrally cleared over-the-counter (OTC) derivatives (uncleared OTC derivatives) entered into on or after the relevant compliance date (other than Exempted Products)	
Exempted Products	FX Products ¹³ are not subject to IM/VM requirements under PR/CFTC Margin Rules		N/A	<p>Permanent Exemptions</p> <ul style="list-style-type: none"> FX Products (exempt from IM requirements; physically settled FX forward contracts and physically settled FX swap contracts are exempt from VM requirements where one of the parties is not a credit institution or investment firm (or a third country equivalent)¹⁴ Hedging swaps related to regulated covered bonds (subject to certain conditions) (Covered Bond Swaps) Hedging swaps related to securitisations (subject to certain conditions) <p>Temporary Exemptions (i.e., delayed implementation)</p> <p>Single-stock equity options and options on equity indices¹⁵</p>	
Covered Counterparties	(i) PR Swap/SBS Entities (ii) CFTC Swap Entities (iii) Financial End-Users		(i) SEC SBS Entities (ii) All other uncleared SBS counterparties which are not Exempted Counterparties	(i) FCs (ii) NFC+ (iii) TCE (FC/NFC+)	
Exempted Counterparties	Exempted End-Users ¹⁶		(i) Commercial end-users ¹⁷ (ii) Certain supranational organizations ¹⁸	(i) Non-Financial Counterparties below clearing thresholds (NFC-) (ii) TCEs that would be NFC- if established in the EU or UK, as applicable (TCE (NFC-)) (iii) TCEs trading with each other if there is no “direct, substantial and foreseeable effect” within the EU or UK, as applicable (iv) Certain covered bond issuers or covered pools (subject to certain conditions) (v) Intragroup entities (provided certain criteria are met) ¹⁹ (vi) Central counterparties (CCPs) that are (a) also authorised as credit institutions in accordance with Directive 2013/36/EU and (b) entering into uncleared OTC derivative contracts during a default management process ²⁰	

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

II. INITIAL MARGIN

Rule	<p>(i) Swap Entity Counterparty: Swap/SBS Entity must post/collect IM</p> <p>(ii) Financial End-User Counterparty with Material Swaps Exposure: Swap/SBS Entity must post IM</p> <p>(iii) Financial End-User Counterparty without Material Swaps Exposure: No IM requirement under PR/CFTC Margin Rules</p>		<p>IM Posting</p> <p>No regulatory requirement to post IM under SEC Margin Rules but SEC SBS Entities are permitted to do so²¹</p> <hr/> <p>IM Collection</p> <ul style="list-style-type: none"> • SEC SBS Entities that are SBSDs: Must collect IM from all Covered Counterparties, except for: <ul style="list-style-type: none"> (i) Financial Market Intermediaries²³ (ii) Sovereign entities that pose only a minimal credit risk²⁴ • SEC SBS Entities that are MSBSPs: No IM requirements under SEC Margin Rules to collect IM 	<p>(i) FC/NFC+ Counterparty with Material Swaps Exposure: Covered Entity must post/collect IM²²</p> <p>(ii) FC/NFC+ Counterparty without Material Swaps Exposure: No IM requirement under EU/UK Margin Rules</p>
IM Collection Frequency/Timing	Daily, beginning on or before the business day following execution and ending upon termination/expiration of the relevant transaction		Daily (and more frequently in certain circumstances, such as extreme market volatility), beginning on or before the business day following execution and ending upon termination/expiration of the relevant transaction	Must be recalculated and collected within one business day following the occurrence of certain events (e.g., change in the portfolio between the parties such as execution/expiration/non-margin related payment or delivery, underlying risk measurement approach has changed, minimum recalculation period if no calculation performed in the preceding 10 business days) <ul style="list-style-type: none"> • IM collection shall be performed without offsetting the IM amounts due as between the two counterparties
Material Swaps Exposure	> US\$8 billion ²⁵		N/A	> €8 billion ²⁶
Minimum Transfer Amount	US\$500,000 per counterparty	US\$500,000 per counterparty <ul style="list-style-type: none"> • Maximum US\$50,000 alternative minimum transfer amount (MTA) for certain Separately Managed Accounts²⁷ 	US\$500,000 per counterparty	€500,000 (or equivalent in another currency) per counterparty (shared across VM and IM) ²⁸
IM Threshold Amount	US\$50 million ^{29,30}			€50 million ³¹

US Margin Rules¹

PR Margin Rules⁴

CFTC Margin Rules⁵

SEC Margin Rules⁶

EU Margin Rules²

UK Margin Rules³

II. INITIAL MARGIN (continued)

IM Calculation

Standardized IM Schedule

Calculated as a percentage of notional exposure according to a schedule of percentages for different collateral types, with adjustment for net-to-gross replacement cost ratio

Standardized Approach

Calculated as a percentage of notional based on the haircuts set out in the SEC net capital requirements applicable to the SBS:

- For Credit Default Swaps (CDS) that are short positions, the SEC net capital requirements set out a table of percentage haircuts of the notional amount of the swap based on the current basis point spread of the CDS and the maturity of the CDS. For long positions, the haircut is half of the haircut for the equivalent short positions.
- For all other SBS, calculated as a percentage of notional based on the percentages set out in the SEC net capital requirements or the schedule under the CFTC Margin Rules if the SEC requirements do not reference a particular asset.

Standardized Approach³²

Calculated as a percentage of notional exposure according to a schedule of percentages for different collateral types

Approved Proprietary Margin Models³³

- The ISDA Standardized Initial Margin Model (SIMM) is the most widely used proprietary model. Use of ISDA SIMM requires a license from ISDA, which is free for most buy-side entities
- Proprietary models must calculate an amount of IM that is equal to the potential future exposure
- Potential future exposure is an estimate of 99% confidence interval over a holding period equal to the shorter of either:
 - (i) 10 business days
 - (ii) The maturity of the swap or netting portfolio
- Historical observation period requirements:
 - (i) Equally weighted data from a period of 1-5 years
 - (ii) Must include period of significant financial stress

Approved Proprietary Margin Models

Permitted Use:

- For SBS that are not equity SBS, SEC-approved proprietary models may be used to calculate IM
- For equity SBS, SEC-approved proprietary models may only be used to calculate IM by SBSs that are not broker-dealers (other than OTC derivatives dealers)
- Where permitted, the relevant model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices
- The model must use risk factors sufficient to cover all the material price risks inherent in the positions for which the IM amount is being calculated, including FX or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate

Approved Proprietary Margin Models (IM Models)

- Parties using ISDA SIMM to calculate IM will need a license from ISDA, which is free for most buy-side entities
- IM Models use risk sensitivities as input
 - Risk divided into six asset classes (interest rate, FX, credit qualifying, credit non-qualifying, equities and commodities) (risk classes); risk factors are prescribed per risk class
 - Calibration of risk weights on a periodic basis
- Potential future exposure is an estimate of 99% confidence interval over margin period of risk of at least 10 days
- Historical observation period requirements:
 - (i) Equally weighted data from a period of 3-5 years
 - (ii) At least 25% of data must be representative of period of significant financial stress

US Margin Rules¹

PR Margin Rules⁴

CFTC Margin Rules⁵

SEC Margin Rules⁶

EU Margin Rules²

UK Margin Rules³

II. INITIAL MARGIN *(continued)*

Eligible Collateral

- Immediately available cash funds denominated in USD, another major currency or the agreed currency of settlement (**US Cash Collateral**)
- Securities issued or guaranteed by a US government agency, the European Central Bank (the **ECB**) or certain sovereign entities
- Certain debt securities and asset-backed securities issued by US government-sponsored enterprises (**GSEs**)
- Certain interests in pooled investment funds that invest in certain US government securities or securities issued by, or guaranteed by, the ECB or certain sovereign entities (**Eligible Investment Fund Interests**)
- Certain corporate debt securities
- Securities issued or guaranteed by the Bank for International Settlements, the IMF or a multilateral development bank
- Certain listed equities
- Gold

Unlike the PR Margin Rules and the CFTC Margin Rules, the SEC Margin Rules do not specifically prescribe a list of assets that constitute eligible collateral

Rather, the SEC Margin Rules provide that when calculating an IM amount for a particular counterparty, an SEC SBS Entity may take into account the fair market value of collateral delivered by the counterparty, provided that the collateral satisfies each of the following:

- Has a ready market
- Is readily transferable
- Consists of cash, securities, money market instruments, a major foreign currency, the settlement currency of the non-SBS, or gold
- Does not consist of securities and/or money market instruments issued by the counterparty or a party related to the SEC SBS Entity or the counterparty
- Is subject to an agreement between the SEC SBS Entity and the counterparty that is legally enforceable by the SEC SBS Entity against the counterparty and any other parties to the relevant agreement

In addition, the collateral must be either:

- Subject to the physical possession or control of the SEC SBS Entity and able to be liquidated promptly without intervention by any other party
- Carried by an independent third-party custodian³⁴

- Cash in the form of money credited to an account in any currency, or similar claims for the repayment of money (e.g., money market deposits accounts) (**Cash Collateral**)
- Gold in the form of allocated pure gold bullion of recognised good delivery (**Gold**)
- Certain debt securities issued by EU/UK central governments, EU/UK central banks, certain regional and local authorities of EU Member States/UK and certain public sector entities of EU Member States/UK, multilateral development banks or international organisations
- Certain debt securities issued by third countries' governments, central banks and certain regional and local authorities
- Certain debt securities issued by credit institutions or investment firms
- Corporate bonds
- Most senior tranche of a securitisation that is not a re-securitisation (**securitisation positions**)
- Certain convertible bonds provided that they can be converted only into equities which are included in a main index
- Certain equities included in a main index
- Shares or units in UCITS, where specified conditions are satisfied (**Eligible UCITS Units**)³⁵

* Additional considerations required for credit quality risk³⁶, wrong-way risk and concentration risk³⁷

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

III. VARIATION MARGIN

Rule	Swap/SBS Entity must post/collect VM to any Covered Counterparties		FC/NFC+/TCE (FC/NFC+) must collect VM from any FC/NFC+/TCE (FC/NFC+) counterparties
VM Collection Frequency/Timing	Daily, beginning on or before the business day following execution and ending upon termination/expiration of the relevant transaction	<p>Must be calculated as of the close of each business day, and more frequently in certain circumstances such as extreme market volatility.</p> <p>VM must be collected or delivered by the close of business on the next business day following the day of the calculation, except that the collateral can be collected or delivered by the close of business on the second business day following the day of the calculation if the counterparty is located in another country and more than 4 time zones away.</p>	Must be calculated at least daily and provided within the same business day (or, if certain conditions are met, within two business days)
Eligible Collateral	<p>(i) Swap Entity Counterparty: Swap/SBS Entity may only post/collect US Cash Collateral</p> <p>(ii) Financial End-User Counterparty: Swap/SBS Entity may post/collect the same forms of Eligible Collateral as for IM</p>	Same Eligible Collateral as for IM	<p>Same Eligible Collateral as for IM</p> <ul style="list-style-type: none"> No concentration limits for VM

IV. COLLATERAL

Collateral Valuation	<p>The value of any Eligible Collateral collected/posted to satisfy the PR/CFTC Margin Rules is subject to the sum of the applicable Haircuts</p> <ul style="list-style-type: none"> Haircuts may only be determined by using the standard methodology provided for under the PR/CFTC Margin Rules 	<p>The fair market value of any Eligible Collateral collected/posted to satisfy the SEC Margin Rules must be reduced by the applicable haircuts</p>	<p>The value of any Eligible Collateral collected/posted to satisfy the EU/UK Margin Rules is subject to the application of Haircuts to the market value of collected collateral</p> <ul style="list-style-type: none"> Haircuts may be determined using either: <ul style="list-style-type: none"> (i) The standard methodology provided for under the EU/UK Margin Rules (ii) An FC/NFC+'s own estimates using internal models (volatility estimates) compliant with the EU/UK Margin Rules Haircuts for debt securities and securitisation positions based on internal Credit Quality Steps corresponding with the probability of default (PD) associated with such posted securities: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Credit Quality Step</th> <th>PD</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>≤ 0.10%</td> </tr> <tr> <td>2.....</td> <td>≤ 0.25%</td> </tr> <tr> <td>3.....</td> <td>≤ 1.00%</td> </tr> <tr> <td>4.....</td> <td>≤ 7.50%</td> </tr> </tbody> </table> 	Credit Quality Step	PD	1.....	≤ 0.10%	2.....	≤ 0.25%	3.....	≤ 1.00%	4.....	≤ 7.50%
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1.....	≤ 0.10%												
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US Margin Rules¹

PR Margin Rules⁴

CFTC Margin Rules⁵

SEC Margin Rules⁶

EU Margin Rules²

UK Margin Rules³

IV. COLLATERAL (continued)

Standardized Haircuts

<u>Asset Class</u>	<u>Haircut</u>
(i) VM collateral denominated in a currency that is not the settlement currency of the transaction (or group of transactions) for which such collateral was posted (except for immediately available cash funds denominated in USD or another major currency)	8.0%
(ii) IM collateral denominated in a currency that is not the settlement currency (except for Eligible Collateral denominated in a single termination currency designated as payable to the collecting counterparty under an Eligible Master Netting Agreement (EMNA)	8.0%
(iii) Eligible government and related debt	
Residual maturity <1 year	0.5%
Residual maturity 1-5 years	2.0%
Residual maturity >5 years	4.0%
(iv) Eligible GSE debt securities and other eligible publicly-traded debt	
Residual maturity <1 year	1.0%
Residual maturity 1-5 years	4.0%
Residual maturity >5 years	8.0%
(v) Equity included in the S&P 500 or a related index	15.0%
(vi) Equity included in the S&P 1500 or a related index	25.0%
(vii) Gold	15.0%

Haircuts may be determined by applying either:

- The standardized haircuts under the net capital requirements applicable to the SBSD³⁸
- The standard methodology provided for under the CFTC Margin Rules, provided that it consistently applies those haircuts with respect to the relevant Covered Counterparty

<u>Asset Class</u>	<u>Haircut</u>		
(i) Cash Collateral posted as VM	0.0%		
(ii) VM non-cash Eligible Collateral denominated in a currency other than those agreed in an individual derivative contract, EMNA or the relevant credit support annex	8.0%		
(iii) IM collateral (Cash Collateral and non-cash Eligible Collateral) denominated in a currency other than the agreed termination currency with respect to such counterparty ³⁹	8.0%		
(iv) Eligible convertible bonds	15.0%		
(v) Eligible equities	15.0%		
(vi) Gold	15.0%		
(vii) Eligible debt securities issued by central governments and central banks			
	<u>Residual Maturity</u> (long-term vs. short-term credit quality assessments)		
	≤1 year	>1 ≤ 5 years	>5 years
Credit Quality Step 1	0.5% / 0.5%	2.0% / 0.5%	4.0% / 0.5%
Credit Quality Step 2-3	1.0% / 1.0%	3.0% / 1.0%	6.0% / 1.0%
(viii) Eligible debt securities issued by credit institutions and investment firms			
	<u>Residual Maturity</u> (long-term vs. short-term)		
	≤1 year	>1 ≤ 5 years	>5 years
Credit Quality Step 1	1.0% / 1.0%	4.0% / 1.0%	8.0% / 1.0%
Credit Quality Step 2+	2.0% / 2.0%	6.0% / 2.0%	12.0% / 2.0%
(ix) Other eligible debt securities meeting certain regulatory requirements or issued by multilateral development banks, international organisations			
	<u>Residual Maturity</u>		
	≤1 year	>1 ≤ 5 years	>5 years
Credit Quality Step 1	0.5%	2.0%	4.0%
Credit Quality Step 2-3	1.0%	3.0%	6.0%
Credit Quality Step 4+	15.0% (for any residual maturity)		
(x) Other eligible debt securities not meeting certain regulatory requirements and eligible corporate bonds			
	<u>Residual Maturity</u>		
	≤1 year	>1 ≤ 5 years	>5 years
Credit Quality Step 1	1.0%	4.0%	8.0%
Credit Quality Step 2+	2.0%	6.0%	12.0%
(xi) Eligible securitisation positions (long-term vs. short-term)			
	<u>Residual Maturity</u>		
	≤1 year	>1 ≤ 5 years	>5 years
Credit Quality Step 1	2.0% / 2.0%	8.0% / 2.0%	16.0% / 2.0%
Credit Quality Step 2+	4.0% / 4.0%	12.0% / 4.0%	24.0% / 4.0%

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

IV. COLLATERAL (continued)

<p>Standardized Haircuts (continued)</p>	<p>Eligible Investment Fund Interests The Haircut for any Eligible Investment Fund Interests under the PR Margin Rules is the weighted average Haircut on all assets within the relevant investment fund at the end of the prior month, with the weights applied in the weighted average calculated as a fraction of the fund's total market value that is invested in each asset with a given Haircut</p>	<p>Eligible Investment Fund Interests The CFTC Margin Rules do not specify any Haircut with respect to Eligible Investment Fund Interests posted/collected as collateral under the CFTC Margin Rules</p>	<p>N/A</p>	<p>Eligible UCITS Units The Haircut for any Eligible UCITS Unit(s) under the EU/UK Margin Rules is the weighted average of the Haircuts that would apply to the assets in which the UCITS fund is invested</p>
<p>Holding of Collateral</p>	<p>Initial Margin</p> <ul style="list-style-type: none"> IM collected pursuant to the PR/CFTC Margin Rules must be segregated at a third-party custodian No rehypothecation, but third-party custodian may reinvest US Cash Collateral that is required to be segregated, in other Eligible Collateral Treatment of excess collateral: <ul style="list-style-type: none"> <u>PR Margin Rules</u>: All IM posted by PR Swap/SBS Entities (even if not pursuant to the PR Margin Rules) must be held by a third-party custodian <u>CFTC Margin Rules</u>: Any excess collateral posted above IM amounts required under CFTC Margin Rules need not be segregated at a third-party custodian <p>Variation Margin No segregation requirements</p>	<p>Initial Margin Under the SEC Margin Rules collateral must be either:</p> <ul style="list-style-type: none"> Subject to the physical possession or control of the SEC SBS Entity and able to be liquidated promptly without intervention by any other party Carried by an independent third party custodian⁴⁰ <p>However, a nonbank SBSB is required to give counterparties the option to elect individual segregation of their collateral in respect of uncleared SBS.</p> <p>Variation Margin Same as for IM.</p>	<p>Initial Margin</p> <ul style="list-style-type: none"> All IM collected must be segregated to protect from the insolvency or default of the collecting counterparty (and can be held by an independent third-party holder or independent custodian or, in certain circumstances and in the case of non-Cash Collateral only, by the collecting counterparty or the collateral provider). Cash Collateral collected as IM must be deposited with an independent third-party holder or independent custodian (in either case, where credit quality has been considered using a methodology that does not rely solely upon external assessments) or with a central bank If non-Cash Collateral is held by the collecting party, collecting party must offer posting party right to individual segregation The segregation arrangements shall ensure that collateral posted as IM is available to the posting counterparty in a timely manner, in case the collecting counterparty defaults No rehypothecation, but third-party holder/custodian or central bank may reinvest Cash Collateral that is required to be segregated, in other Eligible Collateral Diversification requirements for Cash Collateral posted as IM where parties are global systemically important institutions (G-SIIs) or other systemically important institutions (O-SIIs) dealing among themselves, including, <i>inter alia</i>: <ul style="list-style-type: none"> <u>Custodian Diversification</u>. No more than 20% of such IM may be held in Cash Collateral by a single third-party custodian <u>Jurisdictional Diversification</u>. Country diversification requirements if IM collected in excess of €1 billion from a single counterparty for certain transactions <p>Variation Margin No segregation requirements</p>	

US Margin Rules¹

PR Margin Rules⁴

CFTC Margin Rules⁵

SEC Margin Rules⁶

EU Margin Rules²

UK Margin Rules³

V. INTER-AFFILIATE TRANSACTIONS

Rule

Initial Margin

(i) **General Exemption:** On each business day, PR Swap/SBS Entity must calculate an IM collection amount for each Covered Counterparty affiliate (**Covered Affiliates**)

- **Aggregate Amounts ≤15% of Tier 1 Capital:** PR Swap/SBS Entity **not** required to collect IM from Covered Affiliates
- **Aggregate Amounts >15% of Tier 1 Capital:** PR Swap/SBS Entity must collect IM for additional uncleared swaps/SBS with Covered Affiliates until either:
 - (a) the termination date of such uncleared swap/SBS
 - (b) the business day on which the aggregate amounts fall below the 15% threshold

(ii) **Foreign Affiliate Exemption:** PR Swap/SBS Entity **not** required to collect IM from affiliates (even if above 15% threshold), if both:

- PR Swap/SBS Entity is either:
 - (a) **Foreign Covered Swap Entity (FCSE)⁴¹**
 - (b) US branch or agency of a foreign bank
 - (c) non-US entity that is a subsidiary of a depository institution, Edge corporation or agreement corporation

(Foreign PR Swap/SBS Entity)

- PR Swap/SBS Entity's relevant uncleared swap/SBS obligations are not guaranteed by either:
 - (a) an entity organized under US law (excluding a US branch or agency of a foreign bank)
 - (b) a natural person who is a US resident
 - (c) a branch or office of an entity organized under US law

Initial Margin

(i) **Collecting IM:**

- CFTC Swap Entities must collect IM from foreign affiliates that are both:
 - (a) Financial End-Users
 - (b) Not subject to comparable IM collection requirements on their own outward-facing swaps with Financial End-Users
- Otherwise, CFTC Swap Entity **need not** collect IM from an affiliate if the following conditions are satisfied:
 - (a) Inter-affiliate swap is subject to a centralized risk-management program meeting certain conditions
 - (b) VM is exchanged with respect to the inter-affiliate swap

(ii) **Posting IM:** CFTC Swap Entities need only post IM to its affiliates that are PR Swap/SBS Entities

Initial Margin

SEC SBS Entities are not required to collect IM from affiliates

Initial Margin

- FCs/NFCs+ must collect IM from affiliates in accordance with the EU/UK Margin Rules, unless they qualify for the intra-group exemption⁴²
- Parties can qualify for an exemption from EU/UK Margin Rules for intra-group transactions if there are both:
 - (i) Adequate risk management procedures in place⁴³
 - (ii) No actual or foreseeable practical⁴⁴ or legal⁴⁵ impediments to the prompt transfer of parties' own funds or repayment of liabilities existing between the parties
- **Affiliates that are both Established (a) in the same EU Member State or (b) in the UK:**
 - (i) No positive decision of the national competent authority (**NCA**) is required
 - (ii) The exemption applies automatically, *provided that* there is no current or foreseen practical or legal impediment to the prompt transfer of funds or repayment of liabilities between the affiliates
- **Affiliates Established in different EU Member States:**
 - (i) **Both Affiliates Are FC:** A positive decision of **both** relevant NCAs is required for a total or partial exemption
 - (ii) **Both Affiliates Are NFC+:** Counterparties must notify their respective NCAs of their intention to apply the exemption
 - Exemption shall be valid, **unless** either NCA **does not** agree within three months of such notification
 - (iii) **One FC Affiliate Facing an NFC+ Affiliate:** A positive decision of the FC's NCA is required for a total or partial exemption
- **Transitional Exemptions where one counterparty is located in a third country in respect of which no equivalence decision has been made**
 - Transitional exemption from IM collection requirements, pending equivalence determinations, until 30 June 2022
 - Following an equivalence decision, transitional exemption from intra-group IM posting requirements until the later of:
 - (i) Four months after the date of entry into force of such equivalence decision
 - (ii) The relevant IM compliance date (see below)

Upon the entry into force of such equivalence decision, parties to intra-group transactions must make another application to the relevant NCAs in order to benefit from any transitional exemption.

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

V. INTER-AFFILIATE TRANSACTIONS (continued)

Rule (continued)	<u>Variation Margin</u> PR Swap/SBS Entities must post and collect VM for inter-affiliate uncleared swaps/SBS	<u>Variation Margin</u> CFTC Swap Entities must post and collect VM for inter-affiliate uncleared swaps	<u>Variation Margin</u> SEC SBS Entities must post and collect VM for inter-affiliate uncleared SBS	<u>Variation Margin</u> Same as for IM (except that the reference to “IM compliance date” above should be read as “VM compliance date”) ⁴⁶
IM Threshold Amount (if applicable)	US\$20 million (resulting from all uncleared swaps/SBS with such affiliate)	US\$50 million (i.e., no special treatment for inter-affiliate swaps)	N/A	€10 million (resulting from all uncleared OTC derivatives with such affiliate)
IM Calculation (if applicable)	<p>(i) Approved Proprietary IM Model:</p> <ul style="list-style-type: none"> Holding period equal to the shorter of: <ul style="list-style-type: none"> (a) Five business days (b) The maturity of such inter-affiliate uncleared swap/SBS or the applicable netting portfolio If holding period for netting portfolio calculated in this way, such netting portfolio must be identified and separated from any other netting portfolio for purposes of calculating and complying with the IM requirements under the PR Margin Rules <p>(ii) Other Internal IM Model: To the extent that a PR Swap/SBS Entity uses an internal IM model that does not conform with the PR Margin Rules requirements, such PR Swap/SBS Entity must calculate (on a daily basis) the IM amount to be collected with respect to its uncleared swaps/SBS with a given affiliate, by using the standardized IM schedule and multiplying the gross IM by 0.7</p>	No special treatment of inter-affiliate swaps in calculating IM	N/A	No special treatment of intra-group uncleared OTC derivatives in calculating IM (except insofar as the lower IM Threshold Amount applies)
Segregation (if applicable)	Custodian for non-cash Eligible Collateral collected from the PR Swap/SBS Entity's affiliate to satisfy the IM requirements may be such PR Swap/SBS Entity or an affiliate thereof	Custodian for Eligible Collateral collected by a CFTC Swap Entity from its affiliate to satisfy the IM requirements may be such CFTC Swap Entity or an affiliate thereof	N/A	No special treatment of intra-group uncleared OTC derivatives with respect to the segregation of Eligible Collateral collected from affiliates as IM under the EU/UK Margin Rules

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

VI. NETTING

IM Calculation	<p><u>Standardized IM Schedule</u> 60% benefit of cross-asset netting</p>	<p><u>Standardized IM Schedule</u> An SEC SBS Entity may include the effect of a qualified netting agreement that allows netting of gross receivables and gross payables when calculating IM and VM under the SEC Margin Rules. In order to do so:</p> <ul style="list-style-type: none"> • The netting agreement must be legally enforceable, including in insolvency proceedings; • The gross receivables and gross payables must be able to be determined at any time; and • The SEC SBS Entity must monitor its exposure to the counterparty on a net basis for risk management purposes 	<p><u>Standardized IM Schedule</u> 60% benefit of cross-asset netting</p>
	<p><u>Approved Proprietary IM Model</u> Swap Entity can net all uncleared swaps/SBS with a counterparty under an EMNA within, but not across, the following broad risk categories</p> <ul style="list-style-type: none"> • Commodity • Credit • Equity • FX and interest rates 	<p><u>Approved Proprietary IM Model</u> An SEC SBS Entity may include the effect of a qualified netting agreement that allows netting of gross receivables and gross payables when calculating IM and VM under the SEC Margin Rules. In order to do so:</p> <ul style="list-style-type: none"> • The netting agreement must be legally enforceable, including in insolvency proceedings; • The gross receivables and gross payables must be able to be determined at any time; and • The SEC SBS Entity must monitor its exposure to the counterparty on a net basis for risk management purposes <p>The SEC Margin Rules permit an Approved Proprietary Margin Model to recognize empirical correlations within each broad risk category, but not across broad risk categories.</p>	<p><u>Approved Proprietary IM Model</u> Counterparties can net all uncleared swaps under an EMNA within, but not across, the following asset classes:</p> <ul style="list-style-type: none"> • Interest rates, currency and inflation • Equity • Credit • Commodities and Gold • Other

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

VI. NETTING (continued)

Portfolio Margining	<p>For purposes of portfolio margining, counterparties may enter into EMNAs that separately account for pre- and post-compliance date positions</p> <ul style="list-style-type: none"> No exemption for new swaps/SBS arising from post-compliance date amendments to and novations or compressions of uncleared swaps/SBS that were entered into prior to the applicable compliance date(s)⁴⁷ 	<p>In adopting the SEC Margin Rules, the SEC indicated that it intends to continue coordinating with the CFTC to address portfolio margining of SBS and swaps by nonbank SBSDs and swap dealers.</p>	<p>For purposes of portfolio margining, counterparties may enter into EMNAs that separately account for pre- and post-compliance date positions</p> <ul style="list-style-type: none"> The position related to post-compliance date amendments to and novations or compressions of legacy uncleared OTC derivatives is not clear under the EU/UK Margin Rules Such trades may either: <ul style="list-style-type: none"> Remain legacy trades that are not subject to margin requirements Come under regulatory scrutiny if amendments are questionable, appear to be efforts to avoid application of the EU/UK Margin Rules and/or result in a significantly larger credit risk to a counterparty (<i>i.e.</i>, substantial increases to the legacy trade's notional amount)
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VII. COMPLIANCE SCHEDULE

Phased-in Compliance Dates	<table border="1"> <thead> <tr> <th>Notional Amount</th> <th>VM Compliance Date</th> <th>IM Compliance Date</th> </tr> </thead> <tbody> <tr> <td>> US\$3 trillion</td> <td>September 1, 2016</td> <td>September 1, 2016⁴⁸</td> </tr> <tr> <td>> US\$2.25 trillion</td> <td>March 1, 2017</td> <td>September 1, 2017</td> </tr> <tr> <td>> US\$1.5 trillion</td> <td>March 1, 2017</td> <td>September 1, 2018</td> </tr> <tr> <td>> US\$750 billion</td> <td>March 1, 2017</td> <td>September 1, 2019</td> </tr> <tr> <td>> US\$50 billion</td> <td>March 1, 2017</td> <td>September 1, 2021</td> </tr> <tr> <td>> US\$8 billion</td> <td>March 1, 2017</td> <td>September 1, 2022⁴⁹</td> </tr> <tr> <td>≤ US\$8 billion</td> <td>March 1, 2017</td> <td>N/A*</td> </tr> </tbody> </table> <p>* As of September 1, 2022, all PR/CFTC Swap Entities are subject to IM requirements notwithstanding Notional Amount</p>	Notional Amount	VM Compliance Date	IM Compliance Date	> US\$3 trillion	September 1, 2016	September 1, 2016 ⁴⁸	> US\$2.25 trillion	March 1, 2017	September 1, 2017	> US\$1.5 trillion	March 1, 2017	September 1, 2018	> US\$750 billion	March 1, 2017	September 1, 2019	> US\$50 billion	March 1, 2017	September 1, 2021	> US\$8 billion	March 1, 2017	September 1, 2022 ⁴⁹	≤ US\$8 billion	March 1, 2017	N/A*	<p>VM Compliance Date: October 6, 2021</p> <table border="1"> <thead> <tr> <th>Notional Amount</th> <th>IM Compliance Date</th> </tr> </thead> <tbody> <tr> <td>> US\$50 billion</td> <td>October 6, 2021</td> </tr> <tr> <td>≤ US\$50 billion</td> <td>September 1, 2022⁵⁰</td> </tr> </tbody> </table>	Notional Amount	IM Compliance Date	> US\$50 billion	October 6, 2021	≤ US\$50 billion	September 1, 2022 ⁵⁰	<table border="1"> <thead> <tr> <th>Notional Amount</th> <th>VM Compliance Date</th> <th>IM Compliance Date</th> </tr> </thead> <tbody> <tr> <td>> €3 trillion</td> <td>February 4, 2017</td> <td>February 4, 2017</td> </tr> <tr> <td>> €2.25 trillion</td> <td>March 1, 2017</td> <td>September 1, 2017</td> </tr> <tr> <td>> €1.5 trillion</td> <td>March 1, 2017</td> <td>September 1, 2018</td> </tr> <tr> <td>> €750 billion</td> <td>March 1, 2017</td> <td>September 1, 2019</td> </tr> <tr> <td>> €50 billion</td> <td>March 1, 2017</td> <td>September 1, 2021</td> </tr> <tr> <td>> €8 billion</td> <td>March 1, 2017</td> <td>September 1, 2022</td> </tr> <tr> <td>≤ €8 billion</td> <td>March 1, 2017</td> <td>N/A</td> </tr> </tbody> </table>	Notional Amount	VM Compliance Date	IM Compliance Date	> €3 trillion	February 4, 2017	February 4, 2017	> €2.25 trillion	March 1, 2017	September 1, 2017	> €1.5 trillion	March 1, 2017	September 1, 2018	> €750 billion	March 1, 2017	September 1, 2019	> €50 billion	March 1, 2017	September 1, 2021	> €8 billion	March 1, 2017	September 1, 2022	≤ €8 billion	March 1, 2017	N/A
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	<p>Notional Amount Calculation</p> <p>Average daily notional amount of uncleared swaps, uncleared SBS, FX forwards and FX swaps (computed for business days only) for each counterparty (aggregated with its respective affiliates), calculated over each business day in the previous March, April and May.</p> <ul style="list-style-type: none"> Inter-affiliate transactions need only be counted once Uncleared swaps/SBS entered into with Exempted End-Users would not be included in calculation <p>SBS that either (x) are exempt pursuant to the SEC clearing exemption for affiliates of end-users or (y) satisfy the criteria for the SEC's end-user exception for clearing would not be included in the calculation</p>	<p>Notional Amount Calculation</p> <p>Daily Aggregate Average Notional Amount of non-cleared swaps, non-cleared SBS, foreign exchange swaps, and foreign exchange forwards in March, April, and May 2021</p>	<p>Notional Amount Calculation</p> <p>Aggregate Average Notional Amount (AANA) for each counterparty (aggregated with its respective worldwide corporate group⁵¹), calculated as of the last business day of the previous March, April and May</p> <ul style="list-style-type: none"> Intra-group transactions (regardless of whether qualifying for exemption under the EU/UK Margin Rules) need only be counted once Calculation would include transactions that are permanently/ temporarily exempt from IM/VM requirements under the EU/UK Margin Rules (<i>i.e.</i>, physically-settled FX swaps and forwards, Currency Swaps,⁵² Covered Bond Swaps, derivatives with exempted counterparties, exempted intra-group transactions, hedging trades, etc.) The following would not be considered OTC derivatives and would therefore not be included in AANA calculation: <ul style="list-style-type: none"> Exchange-traded derivatives on a non-EU/UK equivalent market, as applicable Exchange-traded derivatives trades on an EU/UK-regulated market, as applicable 																																																						

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

Phased-in Compliance Dates <i>(continued)</i>				<ul style="list-style-type: none"> • Centrally Cleared OTC Derivatives: OTC derivatives that are centrally cleared (<i>i.e.</i>, when it is cleared by an authorised CCP or a recognised third-country CCP) would not qualify as non-centrally cleared OTC derivatives and therefore would not be included in AANA calculation <ul style="list-style-type: none"> - If an OTC derivative is cleared outside of the EU or UK by a non-recognised non-EU or non-UK CCP, it may still be “non-centrally cleared” for the purposes of EMIR and may need to be taken into account in the AANA calculation⁵³ <p>There are separate AANA calculations for IM and VM; both entities must be above the relevant AANA threshold for the EU/UK Margin Rules to apply</p>
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VIII. CROSS-BORDER APPLICATION

Exemption/ Exclusion	<p>Uncleared swaps/SBS for which neither the counterparty nor the FCSE, nor any party providing a guarantee of either party's relevant uncleared swap obligations, falls under the following categories:</p> <ul style="list-style-type: none"> • A US entity (including a US branch, agency or subsidiary of a foreign bank) • A natural person who is a US resident • A branch or office of a US entity • A Swap/SBS Entity that is a subsidiary of a US entity 	<p>Uncleared swap of a CFTC Swap Entity that is not a US person (a Non-US CFTC Swap Entity), where the following conditions are met:</p> <ul style="list-style-type: none"> • Neither counterparty is a US person • Neither counterparty's relevant uncleared swap obligations are guaranteed by a US person • Neither counterparty is either: <ul style="list-style-type: none"> (i) A Foreign Consolidated Subsidiary (an FCS)⁵⁴ (ii) A US branch of a Non-US CFTC Swap Entity <p>* Exclusion not available for certain inter-affiliate uncleared swaps</p>	None ⁵⁵	<ul style="list-style-type: none"> • Uncleared derivatives entered into between two TCEs (regardless of whether they are TCE (FC/NFC+)) if both: <ul style="list-style-type: none"> (i) The contract does not have a direct, substantial or foreseeable effect within the EU or the UK, as applicable⁵⁶ (ii) The application of margin-related obligations is not necessary or appropriate to prevent evasion of EMIR or UK EMIR, as applicable • Uncleared derivatives entered into between an EU/UK counterparty and a TCE in a jurisdiction where each of the following conditions are met: <ul style="list-style-type: none"> (i) Legal reviews confirm that either (a) the netting agreement and the exchange of collateral agreements cannot be legally enforced at all times with certainty or (b) segregation compliant with the EU/UK Margin Rules is not possible (ii) The collection of collateral in accordance with the EU/UK Margin Rules (<i>i.e.</i>, on a gross basis) is not possible (iii) Group aggregate notional where no margin collected, divided by group aggregate notional (excluding intra-group transactions) < 2.5% <ul style="list-style-type: none"> ▪ EU/UK counterparty's trades with a TCE in a non-netting jurisdiction may not exceed this 2.5% ratio • An EU/UK counterparty is not required to post IM/VM to (but must collect IM/VM on a gross basis from) a TCE counterparty in a jurisdiction where legal reviews confirm that either: <ul style="list-style-type: none"> (i) The netting agreement and the exchange of collateral agreements cannot be legally enforced at all times with certainty (ii) Segregation compliant with the EU/UK Margin Rules is not possible
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US Margin Rules¹

PR Margin Rules⁴

CFTC Margin Rules⁵

SEC Margin Rules⁶

EU Margin Rules²

UK Margin Rules³

VIII. CROSS-BORDER APPLICATION (continued)

Availability of Substituted Compliance

Initial Margin

Substituted compliance may be available with respect to the **collection** (but not posting) of IM by a PR Swap/SBS Entity for uncleared swaps/SBS meeting the following conditions:

- PR Swap/SBS Entity is a Foreign PR Swap/SBS Entity
- Neither party's relevant uncleared swap/SBS obligations are guaranteed by any of the following:
 - (i) An entity organized under US law (excluding a US branch or agency of a foreign bank)
 - (ii) A natural person who is a US resident
 - (iii) A branch or office of an entity organized under US law

Initial Margin

Both Posting and Collection: Substituted compliance may be available for uncleared swaps meeting the following conditions:

- CFTC Swap Entity is a non-US person (including a US branch thereof or an FCS) (**Non-US CFTC Swap Entity**)
- Non-US CFTC Swap Entity's relevant uncleared swap obligations **are not** guaranteed by a US person
- Counterparty is neither:
 - (i) CFTC Swap Entity that is a US person (a **US CFTC Swap Entity**)
 - (ii) Non-US CFTC Swap Entity whose relevant swap obligations are guaranteed by a US person

IM Posting Only: Substituted compliance may be available for the following uncleared swap transactions:

- (i) US CFTC Swap Entity facing (ii) non-US person counterparty (including a Non-US CFTC Swap Entity) whose relevant uncleared swap obligations **are not** guaranteed by a US person
- (i) Non-US CFTC Swap Entity whose relevant swap obligations are guaranteed by a US person facing (ii) a non-US person counterparty (including a Non-US CFTC Swap Entity) whose relevant uncleared swap obligations **are not** guaranteed by a US person

IM Collection Only: Substituted compliance may be available with respect to an uncleared swap satisfying the following conditions:

- The relevant uncleared swap obligations of the FCS or US branch of a Non-US CFTC Swap Entity **are not** guaranteed by a US person
- Counterparty is either:
 - (i) US CFTC Swap Entity
 - (ii) Non-US CFTC Swap Entity whose relevant uncleared swap obligations are guaranteed by a US person

Initial Margin

Substituted compliance may be available to a SEC SBS Entity that is not a U.S. person provided a substituted compliance determination has been made

Initial Margin

If a cross-border uncleared OTC derivative is subject to the EU Margin Rules, substituted compliance may be available each time the EU adopts explicit decisions on the equivalent of third-country regimes in accordance with Article 13 of EMIR

- If a TCE (FC/NFC+) is guaranteed by an EU entity, substituted compliance **is not** available

Initial Margin

If a cross-border uncleared OTC derivative is subject to the UK Margin Rules, substituted compliance may be available each time the UK adopts explicit decisions on the equivalent of third-country regimes in accordance with Article 13 of UK EMIR

- If a TCE (FC/NFC+) is guaranteed by a UK entity, substituted compliance **is not** available

US Margin Rules ¹			EU Margin Rules ²	UK Margin Rules ³
PR Margin Rules ⁴	CFTC Margin Rules ⁵	SEC Margin Rules ⁶		

VIII. CROSS-BORDER APPLICATION *(continued)*

<p>Availability of Substituted Compliance <i>(continued)</i></p>	<p><u>Variation Margin</u> No substituted compliance with respect to VM posting/collection requirements under PR Margin Rules</p>	<p><u>Variation Margin</u> Substituted compliance may be available with respect to both the <u>posting and collection</u> of VM for uncleared swaps meeting the following conditions:</p> <ul style="list-style-type: none"> • CFTC Swap Entity is a Non-US CFTC Swap Entity • Non-US CFTC Swap Entity's relevant uncleared swap obligations <u>are not</u> guaranteed by a US person • Counterparty is neither: <ul style="list-style-type: none"> (i) US CFTC Swap Entity (ii) Non-US CFTC Swap Entity whose relevant swap obligations are guaranteed by a US person 	<p><u>Variation Margin</u> Substituted compliance may be available to a SEC SBS Entity that is not a U.S. person</p>	<p><u>Variation Margin</u> Same as for IM</p>	
<p>Substituted Compliance Determinations to Date</p>	<p>None</p>	<ul style="list-style-type: none"> • Japan⁵⁷ • EU⁵⁸ • Australia⁵⁹ 	<ul style="list-style-type: none"> • France⁶⁰ • Germany⁶¹ • Spain⁶² • United Kingdom⁶³ 	<ul style="list-style-type: none"> • Full equivalence: Japan⁶⁴ • Equivalence with exceptions: US (CFTC Margin Rules only)⁶⁵ 	<ul style="list-style-type: none"> • Full equivalence: Japan⁶⁶ • Equivalence with exceptions: EU⁶⁷ and US (CFTC Margin Rules only)⁶⁸

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Endnotes

¹ **US Margin Rules** refers, collectively, to the PR Margin Rules, the CFTC Margin Rules and the SEC Margin Rules.

² **EU Margin Rules** refers to EU Delegated Regulation 2016/2251, the regulation that specifies margin requirements for uncleared OTC derivatives adopted by the European Commission (**EC**) on October 4, 2016 and published in the Official Journal of the European Union (**EU Journal**) on December 15, 2016. The EU Margin Rules entered into force on January 4, 2017 (*i.e.*, 20 days after their publication in the EU Journal).

³ **UK Margin Rules** refers to the onshored UK version of the EU Margin Rules as it forms part of UK law pursuant to the European Union (Withdrawal) Act 2018 (**EUWA**).

⁴ **PR Margin Rules** refers to the margin requirements for uncleared swaps/SBS finalized jointly by the **Prudential Regulators** (*i.e.*, the Board of Governors of the Federal Reserve System (the **FRB**), the Office of the Comptroller of the Currency (the **OCC**), the Federal Deposit Insurance Corporation (the **FDIC**), the Farm Credit Administration (the **FCA**) and the Federal Housing Finance Agency (the **FHFA**)).

⁵ **CFTC Margin Rules** refers to the margin requirements for uncleared swaps finalized by the US Commodity Futures Trading Commission (the **CFTC**).

⁶ **SEC Margin Rules** means the margin requirements for SBS finalized by the Securities and Exchange Commission (the **SEC**).

⁷ **Swap Entities** refers to CFTC-registered swap dealers and major swap participants.

⁸ **SBS Entities** refers to SEC-registered security-based swap dealers (**SBSDs**) and major security-based swap participants (**MSBSPs**).

⁹ A Swap/SBS Entity is **prudentially regulated** if it is subject to regulatory oversight by (i) the FRB, (ii) the OCC, (iii) the FDIC, (iv) the FCA or (v) the FHFA. See FN4 of the PR Margin Rules adopting release for a detailed discussion on how to determine whether a Swap/SBS Entity is subject to prudential regulatory oversight.

¹⁰ **Financial Counterparties** or **FCs** refers to investment firms, credit institutions, insurance undertakings, reinsurance undertakings, undertakings for collective investments in transferrable securities (**UCITS**) and their managers (unless the UCITS is set up exclusively for employee share purchase plans), institutions for occupational retirement provision, alternative investment funds (**AIFs**) established in the EU or managed by EU alternative investment fund managers (**AIFMs**) (unless the AIF is set up exclusively for employee share purchase plans, or is a securitization special purpose entity) and central securities depositories (where applicable, authorised pursuant to relevant EU directives). On June 17, 2019, *Regulation (EU) No 2019/834 of the European Parliament and of the Council of 20 May 2019 (EMIR REFIT)* came into force, amending *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, Central Counterparties and Trade Repositories* (referred to as the **European Market Infrastructure Regulation** or **EMIR**). EMIR REFIT also introduced a new category of FC being **Small Financial Counterparties** or **SFCs** which are FCs whose derivative volumes are below clearing thresholds, meaning that they are not subject to the clearing obligation under EMIR. However, such SFCs would nonetheless remain subject to the EMIR Margin Rules by virtue of being FCs. EMIR has been onshored into UK legislation pursuant to the EUWA (**UK EMIR**). FCs and SFCs are subject to the same obligations under UK EMIR as they are under EMIR and EMIR REFIT, but FCs under UK EMIR also capture AIFs established in the UK or managed by UK AIFMs. FCs under UK EMIR would be treated as TCEs for purposes of EMIR, and FCs under EMIR would be treated as TCEs for purposes of UK EMIR.

¹¹ **Non-Financial Counterparty** or **NFC** refers to an undertaking established in the EU or, in respect of UK EMIR, in the UK, other than an FC or a central counterparty. NFCs are divided into the categories of NFC+ and NFC-, depending on whether they are above or below the clearing threshold. The **clearing threshold** is €1 billion for each of credit and equity derivatives and €3 billion for each of interest rate, FX, commodity and other derivatives. Contracts objectively measurable as reducing risks relating to commercial and treasury financing activity are **excluded** from these clearing threshold calculations. EMIR REFIT includes an amendment providing that NFCs (i) are only subject to mandatory clearing under EMIR for those categories of OTC derivatives for which (a) a clearing mandate exists and (b) the NFC exceeds the clearing threshold, but (ii) would not be subject to mandatory clearing under EMIR for other classes of derivatives which are subject to mandatory clearing, but for which the NFC is below the clearing threshold. Notwithstanding this amendment to EMIR (which also applies under UK EMIR), an NFC that exceeds the clearing threshold for any class of OTC derivatives nonetheless remains subject to the EU Margin Rules or UK Margin Rules, as applicable, as an NFC+ (as opposed to being subject to the EU or UK Margin Rules for only those classes of OTC derivatives which are subject to the clearing mandate and for which the NFC has exceeded the clearing threshold).

¹² Trades between two TCEs (FC/NFC+) are in scope with respect to EMIR or UK EMIR, as applicable, if either (i) there is a “direct, substantial and foreseeable effect” within the EU or UK, as applicable or (ii) the application of margin-related obligations is necessary to prevent evasion of EMIR or UK EMIR.

¹³ **FX Products** refers to physically-settled FX forwards and FX swaps and the fixed, physically-settled exchange of principal in cross-currency swaps.

¹⁴ On 18 February 2021, EMIR was amended to include an “opt-out” from requirements to post or collect VM in respect of physically settled FX swaps and physically settled FX forwards, except where both counterparties are investment firms or credit institutions under the EU Capital Requirements Regulations (or third country equivalents). The same “opt-out” provisions were incorporated into UK EMIR on 30 June 2021. Only the exchange of principal in Currency Swaps is exempt from the IM requirements; the interest rate component of Currency Swaps are subject to the IM requirements.

¹⁵ EU Margin Rules and UK Margin Rules contemplate delayed implementation of IM/VM requirements for single stock equity options and options on equity indices until January 4, 2024.

¹⁶ **Exempted End-Users** means: (i) commercial end-users, including treasury affiliates (that qualify for the end-user exception to mandatory clearing) acting as agent; (ii) financial institutions (*i.e.*, small banks, savings associations, Farm Credit System institutions, credit unions) with total assets of US\$10 billion or less; (iii) certain financial cooperatives hedging the risks associated with originating loans for their members; and (iv) certain captive finance companies.

¹⁷ In general, the term “commercial end user” means a counterparty that is not a financial entity; is using SBS to hedge or mitigate commercial risk; and that notifies the SEC, in a manner set forth by the SEC, how it generally meets its financial obligations associated with entering into non-cleared SBS. At present, the SEC has not finalized rules implementing this clearing exception for commercial end-users.

¹⁸ In particular, the IM and VM requirements of the SEC Margin Rules do not apply to an account of a counterparty that is the Bank for International Settlements or the European Stability Mechanism, or is the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the US government is a shareholder or contributing member.

¹⁹ See Part V (*Inter-Affiliate Transactions*) above for more detail.

²⁰ Note that EMIR does not apply to the entities listed in Article 1(4) of EMIR and, with the exception of the reporting obligations under Article 9, EMIR also does not apply to the entities listed in Article 1(5) of EMIR. UK EMIR does not apply to the entities listed in Article 1(4) of UK EMIR and, with the exception of the reporting obligations under Article 9, UK EMIR also does not apply to the entities listed in Article 1(5) of UK EMIR.

²¹ Indeed, in adopting the SEC Margin Rules, the SEC acknowledged that the main differences between the SEC Margin Rules and the PR Margin Rules and CFTC Margin Rules are that the SEC Margin Rules: (i) do not require (but permit) nonbank SBSBs to collect IM from counterparties that are financial market intermediaries (including swap dealer and SBSB counterparties); (ii) do not require (but permit) nonbank SBSBs to post IM to a counterparty; (iii) do not contain exceptions from the requirement to collect IM for counterparties that are financial end-users that do not have material exposures to SBS and swaps; and (iv) do not require (but permit) IM to be held at a third-party custodian.

²² EMIR REFIT introduced (at Article 1(9)) a procedure for the development of regulatory technical standards specifying initial and ongoing supervision of risk management procedures relating to the level and type of collateral and segregation arrangements, including IM models. This same provision is incorporated in Articles 11(14) and 11(15) of UK EMIR.

²³ Financial Market Intermediary refers to an SBSB, swap dealer, broker or dealer, futures commission merchant, bank, foreign bank, or foreign broker or dealer.

²⁴ Specifically, the IM requirements of the SEC Margin Rules do not apply to an account of a counterparty that is a central government (including the US government) or an agency, department, ministry, or central bank of a central government if the SBSB has determined that the counterparty has only a minimal amount of credit risk pursuant to policies and procedures or credit risk models in accordance with the SEC net capital requirements for SBSBs.

²⁵ **Material Swaps Exposure Calculation Under US Margin Rules:** A Financial End-User with Material Swaps Exposure is an entity that has an average daily aggregate notional amount of uncleared swaps, uncleared SBS, FX forwards and FX swaps with all counterparties for June, July and August of the previous calendar year (calculated only for business days), aggregated with the Financial End-User's affiliates, that exceeds US\$8 billion. On December 8, 2020, the CFTC proposed, adopted amendments that align the methodology for Material Swaps Exposure for purposes of the CFTC Margin Rules more closely with the approach in the EU and under the BCBS/IOSCO Framework, namely based on an average of month-end dates for March, April, and May of the current year with September 1 as the compliance date after phase in instead of January 1. The Prudential Regulators are yet to propose analogous changes to calculation of Material Swaps Exposure under the PR Margin Rules.

²⁶ **Material Swaps Exposure Calculation Under EU/UK Margin Rules:** An FC/NFC+ Counterparty with Material Swaps Exposure is an entity that has an AANA (defined in Part VII (*Compliance Schedule*) above) exceeding €8 billion (dynamic assessment every year), aggregated with all uncleared OTC derivatives of such FC/NFC+ Counterparty's worldwide corporate group. For purposes of determining whether an FC/NFC+ Counterparty has Material Swaps Exposure, AANA includes all intra-group uncleared OTC derivative transactions, which are counted only once. AANA is recorded on the last business day in March, April and May of each year. Therefore, for Phase 6 IM (which comes into effect on 1 September 2022), the AANA of the relevant group will be calculated in March, April and May of 2022 (i.e. the same calendar year in which obligations to post IM begin). Following the final Phase 6 phase-in, the requirement to collect IM remains subject to a notional amount threshold on a year on year basis. No IM is required to be collected for new contracts from January of each year where one of the counterparties has, or belongs to a group which has, an AANA of uncleared OTC derivatives for the months March, April and May of the preceding year below €8 billion.

²⁷ **Separately Managed Account** means an account managed by an asset manager and governed by an investment management agreement that grants the asset manager authority with respect to a specified amount of assets under management (including authority to enter into swaps). On December 8, 2020, the CFTC adopted regulatory amendments codifying prior no-action relief and allowing CFTC Swap Entities to apply an MTA of US\$50,000 for each Separately Managed Account. The amendments also allow a CFTC Swap Entity and a counterparty that is a CFTC Swap Entity or Financial End-User to agree to have separate MTAs for IM and VM.

²⁸ Both the EU Margin Rules and UK Margin Rules permit parties to agree separate minimum transfer amounts for IM and VM, provided that the aggregate value of those minimum transfer amounts does not exceed EUR 500,000.

²⁹ **IM Threshold Amount Under US Margin Rules:** Aggregate credit exposure resulting from all uncleared swaps and uncleared SBS between (i) a Swap Entity or any of its affiliates and (ii) a counterparty or any of its affiliates, **excluding** any uncleared swaps or uncleared SBS entered into with Exempted End-Users. Note that calculation of IM Threshold Amount under the US Margin Rules **excludes** physically-settled FX forwards and swaps.

³⁰ **IM Threshold Amount Under SEC Margin Rules:** Aggregate credit exposure resulting from all uncleared swaps and uncleared SBS between (i) a SEC SBS Entity or any of its affiliates and (ii) a counterparty or any of its affiliates, **excluding** any uncleared swaps or uncleared SBS entered into with Exempted End-Users.

³¹ **IM Threshold Amount Under EU/UK Margin Rules:** The amount of the initial margin that does not need to be collected between the counterparties which is calculated on the basis of all uncleared derivatives between (i) an FC/NFC+ or any of its affiliates and (ii) a counterparty or any of its affiliates, excluding any uncleared derivatives entered into with NFC- or TCE (NFC-), and excluding Exempted Products.

³² A counterparty may calculate the amount of IM to be collected using either (i) the Standardized Approach, (ii) an IM Model or (iii) both.

³³ Note that, under both the US Margin Rules and the EU/UK Margin Rules, approved proprietary IM models may be either developed by the counterparty or provided by a third party. On December 8, 2020, the CFTC adopted amendments to the CFTC Margin Rules that would deem a CFTC Swap Entity to comply with its IM calculation requirements by using the IM amount calculated by a Swap/SBS Entity counterparty using risk-based proprietary model approved by the CFTC or the Prudential Regulators.

³⁴ In particular, the third-party custodian must be a bank as defined in section 3(a)(6) of the Exchange Act or a registered US clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies.

³⁵ On 30 June 2021, a joint policy statement published by the PRA and FCA came into force amending new PRA and FCA Standard Instruments that amended the UK Margin Rules. These Standard Instruments extended certain temporary transitional reliefs so that units or shares in EEA UCITS will continue to qualify as eligible collateral until 31 December 2022.

³⁶ The use of internal or external credit assessment process remains subject to a minimum level of credit quality. Credit institutions authorised under *Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on Prudential Requirements for Credit Institutions and Investment Firms (CRR)* or the onshored UK version of the CRR (**UK CRR**) are allowed to use internal-ratings-based (**IRB**) approaches using **Credit Quality Steps** and agree these with their counterparties. If there is no approved IRB approach for the collateral or if the two counterparties do not agree on the use of the IRB approach developed by one counterparty, the two counterparties can define a list of eligible collateral relying on the external credit assessments of recognized external credit assessment institutions.

³⁷ Concentration limits for sovereign debt securities **only** apply to trades between systemically important counterparties (including, but not limited to, systemically important banks) and **do not** apply to trades between them and smaller counterparties.

³⁸ For an SBSB that is a broker-dealer, the net capital requirements are those for broker-dealers, which are found in Exchange Act Rule 15c3-1 and set out the relevant standardized deductions. For an SBSB that is not a broker-dealer and that is not prudentially regulated, the net capital requirements are found in Exchange Act 18a-1, and cross-reference the standardized deductions under the net capital requirements for broker-dealers. The standardized deductions in Exchange Act Rule 15c3-1 are relatively complex, with different percentage haircuts applying depending on both instrument type and maturity.

³⁹ Where the relevant agreement **does not** identify a termination currency, the Haircut shall apply to the market value of all the assets posted as IM.

⁴⁰ In particular, the third party custodian must be a bank as defined in section 3(a)(6) of the Exchange Act or a registered US clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies.

⁴¹ **Foreign Covered Swap Entity or FCSE** means a PR Swap/SBS Entity that **is not** (i) a US entity (including a US branch, agency or subsidiary of a foreign bank), (ii) a branch or office of a US entity or (iii) an entity that is a subsidiary of a US entity.

⁴² Note that parties were completely exempt from the EU Margin Rules for intra-group transactions until July 4, 2017.

⁴³ The risk management procedures shall be adequately sound, robust and consistent with the level of complexity of the derivative transaction and shall ensure the regular monitoring of exposures arising under intra-group transactions and the timely settlement of obligations resulting from such intra-group uncleared OTC derivatives.

⁴⁴ Practical impediments include insufficient unencumbered/liquid assets to the counterparty when due and operational impediments which delay or prevent transfers or repayments when due.

⁴⁵ Legal impediments include: (i) currency/exchange controls;(ii) regulatory/administrative/legal/contractual frameworks that prevent mutual financial support or significantly affect transfer of funds intra-group; (iii) any condition for early intervention, recovery and resolution is met which results in supervisor foreseeing an impediment to prompt transfer of own funds or repayment of liabilities; (iv) minority interests that limit decision-making power; and (v) the purpose or the legal structure of the counterparty, as defined in its statutes, instruments of incorporation and internal rules.

⁴⁶ On January 20, 2017, the EC published an amendment in the EU Journal to the EU Margin Rules, which applies retroactively from January 4, 2017, correcting the transitional exemption from the posting of VM in EU/non-EU intra-group transactions to mirror that which had been included for the posting of IM in EU/non-EU intra-group transactions under the EU Margin Rules.

⁴⁷ The Prudential Regulators and the CFTC have adopted rules clarifying that an amendment to a legacy swap solely for the purpose of complying with rulemakings promulgated in respect of “qualified financial contracts” by the FRB, the OCC and the FDIC.

⁴⁸ On September 1, 2016, DSIO issued a time-limited no-action letter stating that it would not recommend an enforcement action by the CFTC against a CFTC Swap Entity subject to the September 1, 2016 compliance date for the CFTC Margin Rules, for failing to fully comply with the CFTC’s custodial arrangement requirements during the initial 30 days of implementation (*i.e.*, through October 3, 2016), provided that the CFTC Swap Entity is otherwise (i) collecting and posting margin in accordance with the CFTC Margin Rules, (ii) working in good faith to complete custodial arrangements in satisfaction of the CFTC Margin Rules and (iii) meeting certain other requirements. Note that this no-action relief expired on October 3, 2016.

⁴⁹ The Prudential Regulators have adopted an interim final rule extending the Phase 6 IM compliance date to September 1, 2022. On October 15, 2020, the CFTC adopted a final rule extending the Phase 6 IM compliance date to September 1, 2022 for entities subject to the CFTC Margin Rules.

⁵⁰ The compliance date for the SEC Margin Rules was October 6, 2021. However, pursuant to no-action relief granted by the SEC, an SEC SBS Entity need not collect IM from a “Phase 6+ Counterparty” in connection with non-cleared SBS entered into with such counterparty before September 1, 2022. The SEC granted this no-action relief on August 5, 2021 in response to a request from ISDA and SIFMA.

⁵¹ UCITS and AIFs managed by AIFMs authorised or registered in the EU or UK, as applicable, shall be considered distinct entities and treated separately if the funds are distinct segregated pools of assets for the purposes of the fund’s insolvency or bankruptcy and the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

⁵² **Currency Swaps** refers to uncleared OTC derivative contracts under which counterparties exchange solely the principal amount and any interest payments in one currency, for the principal amount and any interest payments in another currency, at specified points in time according to a specified formula.

⁵³ There are arguments that “non-centrally cleared” means “not cleared anywhere (irrespective of the non-EU/UK CCP’s status under EMIR/UK EMIR, as applicable),” but there is no clear guidance on this. As a result, market participants sometimes run parallel AANA calculations.

⁵⁴ **Foreign Consolidated Subsidiary** means a Non-US CFTC Swap Entity in which an ultimate parent entity (*i.e.*, the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with US GAAP) that is a US person has a controlling financial interest (in accordance with US GAAP), such that the US ultimate parent entity includes the Non-US CFTC Swap Entity’s operating results, financial position and statement of cash flows in the US ultimate parent entity’s consolidated financial statements (in accordance with US GAAP).

⁵⁵ Unlike the PR Margin Rules and the CFTC Margin Rules, the SEC Margin Rules operate as “entity-level” requirements applicable to all SEC SBS Entities rather than as selectively applying on a transaction-by-transaction basis depending on the cross-border status of the transaction counterparties. That is, as a default matter, all SEC SBS Entities are required to comply with the SEC Margin Rules. However, non-US SEC SBS Entities are permitted to rely on substituted compliance with applicable foreign margin requirements provided the SEC has issued a comparability determination with respect to the relevant jurisdiction.

⁵⁶ An uncleared OTC derivative contract between two TCEs will be considered to have **direct, substantial or foreseeable effect within the EU or the UK, as applicable**, when (i) at least one of the TCE counterparties benefits from a guarantee from an EU/UK FC for a notional amount of at least €8 billion and the contract would constitute at least 5% of current exposures in the uncleared OTC derivative contracts of the guarantor or (ii)(a) the two TCE counterparties enter into the uncleared OTC derivative contract through their EU or UK branches and (b) would qualify as FCs if they were established in the EU or UK, as applicable (*i.e.*, are both TCEs (FC)).

⁵⁷ On September 8, 2016, the CFTC issued a comparability determination applicable to CFTC Swap Entities, in respect of the margin requirements for uncleared OTC derivatives promulgated by the Japan Financial Services Agency (**JFSA**) (**Japanese Margin Rules**). The CFTC issued an amended comparability determination in respect of the Japanese Margin Rules on March 26, 2019. As amended, the CFTC’s comparability determination generally found the Japanese Margin Rules comparable to the CFTC Margin Rules for substituted compliance purposes, to the extent that the uncleared swap transactions in question are subject to IM and/or VM posting/collection requirements, as applicable, under both the Japanese Margin Rules and the CFTC Margin Rules.

⁵⁸ On October 13, 2017, the CFTC issued a comparability determination applicable to CFTC Swap Entities, in respect of the EU Margin Rules. The CFTC generally found the EU Margin Rules comparable to the CFTC Margin Rules for substituted compliance purposes, to the extent that the uncleared swap transactions in question are subject to IM and/or VM posting/collection requirements, as applicable, under both the EU Margin Rules and the CFTC Margin Rules. **Please refer to our *Client Alert on the CFTC’s comparability determination for a more detailed discussion*: <https://www.lw.com/thoughtLeadership/CFTC-publishes-comparability-determination-EU-margin-rules>.**

⁵⁹ On March 27, 2019, the CFTC issued a comparability determination applicable to CFTC Swap Entities, in respect of the margin requirements for uncleared swaps under the laws of Australia and the regulations of the Australian Prudential Regulation Authority (**APRA**) (**Australian Margin Rules**). The CFTC generally found the Australian Margin Rules comparable in outcome to the CFTC Margin Rules for substituted compliance purposes.

⁶⁰ On July 23, 2021, the SEC adopted an order permitting, subject to certain conditions, substituted compliance with French and EU Margin Rules in response to an application from the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel et de Résolution.

⁶¹ On October 22, 2021, the SEC adopted an order permitting, subject to certain conditions, substituted compliance with German and EU Margin Rules in response to an application from the Bundesanstalt für Finanzdienstleistungsaufsicht (**BaFin**).

⁶² On October 22, 2021, the SEC adopted an order permitting, subject to certain conditions, substituted compliance with Spanish and EU Margin Rules in response to an application from the Comisión Nacional del Mercado de Valores (**CNMV**).

⁶³ On July 30, 2021, the SEC adopted an order permitting, subject to certain conditions, substituted compliance with UK margin requirements in response to an application from the United Kingdom Financial Conduct Authority (FCA).

⁶⁴ On April 25, 2019, the EC published a decision recognizing equivalence of the Japanese Margin Rules with respect to the EU Margin Rules (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0684&from=EN>).

⁶⁵ On October 13, 2017, the EC published a decision recognizing equivalence of the CFTC Margin Rules with respect to the EU Margin Rules (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1857&from=EN>); please note, however, that the PR Margin Rules were outside the scope of the EC’s equivalence decision. Accordingly, compliance by CFTC Swap Entities with the CFTC Margin Rules (but **not** by PR Swap/SBS Entities with the PR Margin Rules), in respect of uncleared OTC derivative transactions **that are subject to margin requirements under both the EU Margin Rules and the CFTC Margin Rules**, and to which at least one of the counterparties is established in the United States, shall constitute compliance with the EU Margin Rules, effective November 3, 2017.

⁶⁶ On 23 October 2020, the United Kingdom and Japan reached an agreement for a comprehensive economic partnership between the two countries, which included equivalence in respect of the UK and Japanese Margin Rules.

⁶⁷ On November 9 2020, the UK Chancellor announced that the UK would grant a package of equivalence decisions to the EU, including partial equivalence of the EU Margin Rules.

⁶⁸ On February 25 2019, the CFTC, together with the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority issued a joint statement recognizing equivalence of the CFTC Margin Rules with respect to the UK Margin Rules.