

COVID-19 NEWS OF INTEREST

# CFTC Unanimously Approves an Interim Final Rule Extending Phase 5 Compliance Date of Initial Margin Requirements for Uncleared Swaps

June 9, 2020

## AUTHORS

**Alessandro Turina** | **Conrad G. Bahlke** | **Alcide D. King**

---

The Commodity Futures Trading Commission (the “Commission”) recently unanimously approved an interim final rule (the “Interim Final Rule”) that amends the margin requirements (the “CFTC Margin Rule”) for uncleared swaps for swap dealers (“SDs”) and major swap participants (“MSPs”) for which there is no prudential regulator (such covered swap entities collectively, “CSEs”). The Interim Final Rule extends the compliance date from September 1, 2020 to September 1, 2021, for CSEs posting and collecting initial margin from and to financial end-users with material swaps exposure (“Covered Counterparties”) meeting the Phase 5 Threshold described below. The Commission is promulgating the Interim Final Rule in response to operational challenges encountered by certain entities subject to the CFTC Margin Rule as a result of the coronavirus disease 2019 (the “COVID-19”) pandemic. In addition, the revised Phase 5 compliance date under the Interim Final Rule is consistent with the revised compliance date for similarly situated covered entities in the revised Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (together, the “BCBS/IOSCO”) framework for margin requirements for non-centrally cleared derivatives.

The Interim Final Rule becomes effective upon its publication in the Federal Register, and the public comment period will remain open for 60 days after the Interim Final Rule is published.

---

# CFTC Unanimously Approves an Interim Final Rule Extending Phase 5 Compliance Date of Initial Margin Requirements for Uncleared Swaps

## Background

In September 2013, the BCBS/IOSCO created an international framework for margin requirements for uncleared derivatives (the “BCBS/IOSCO framework”). In November 2015, the prudential regulators issued final margin requirements for CSEs that were substantially similar to the BCBS/IOSCO framework (the “PR framework”). In response to the creation of the BCBS/IOSCO framework and the PR Framework, the Commission, on January 6, 2016, issued rules directing CSEs to collect and post initial margin and variation margin for uncleared swaps and incorporated the implementation schedule set forth in the March 2015 version of the BCBS/IOSCO framework, including the phasing-in of margin requirements over time depending on the notional amounts of swaps entered into by a Covered Counterparty of a CSE. The BCBS/IOSCO further amended the framework in July 2019 to extend the final compliance date of the implementation schedule to September 1, 2021. In response to the BCBS/IOSCO revision, the Commission issued a final rule in April 2020 to amend the compliance schedule for initial margin requirements under the CFTC Margin Rule to be consistent with the BCBS/IOSCO framework (the “April 2020 Final Rule”). The April 2020 Final Rule extended the Commission’s implementation schedule by one year and separated the last compliance phase, which covers swaps between CSEs and Covered Counterparties with an average daily aggregate notional amount (“AANA”) of non-centrally cleared derivatives between \$8 billion and \$750 billion, into two compliance phases. Under the April 2020 Final Rule, CSEs and Covered Counterparties with an AANA between \$50 billion and \$750 billion (“Phase 5 Threshold”) must post and collect initial margin starting on September 1, 2020. Other remaining CSEs and Covered Counterparties must post and collect initial margin starting on September 1, 2021 (“Phase 6 Compliance Date”).

To address operational challenges encountered by certain entities due to the COVID-19 pandemic, the BCBS/IOSCO, on April 3, 2020, further revised the implementation schedule to extend the initial margin compliance date to September 1, 2021 for swaps between CSEs and Covered Counterparties with an AANA of non-centrally cleared derivatives between €50 billion and €750 billion. In addition, the initial margin compliance date was revised to September 1, 2022 for swaps between CSEs and Covered Counterparties with an AANA of non-centrally cleared derivatives between €8 billion and €50 billion.

The Interim Final Rule does not address the Commission’s Phase 6 Compliance Date. The Phase 6 Compliance Date remains September 1, 2021, which is the same date as the revised Phase 5 compliance date. The Commission notes in the Interim Final Rule that it intends to address the Phase 6 Compliance Date via a notice of proposed rulemaking and public comment process in the near term.

---

## CFTC Unanimously Approves an Interim Final Rule Extending Phase 5 Compliance Date of Initial Margin Requirements for Uncleared Swaps

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters, and CFTC and bank regulation. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

---

**Alessandro Turina**

212 728 8737

aturina@willkie.com

**Conrad G. Bahlke**

212 728 8233

cbahlke@willkie.com

**Alcide D. King**

212 728 8374

aking@willkie.com

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).