ALERT MEMORANDUM

Prudential Regulators Amend Non-Cleared Swap Margin Requirements

June 30, 2020

On June 25, 2020, the Board of Governors of the Federal Reserve (the "**Federal Reserve**"), the Farm Credit Administration (the "**FCA**"), the Federal Deposit Insurance Corporation (the "**FDIC**"), the Federal Housing Finance Agency (the "**FHFA**"), and the Office of the Comptroller of the Currency (the "**OCC**" and, together with the Federal Reserve, FCA, FDIC, and FHFA, the "**Prudential Regulators**") approved final amendments (the "**Final Rule**")[1] to their margin requirements for non-cleared swaps and security-based swaps (together, "**swaps**") for swap dealers, security-based swap dealers, major swap participants and major security-based swap participants regulated by the Prudential Regulators ("**Swap Entities**") (the "**Margin Rules**"). The Final Rule (1) mostly eliminates initial margin ("**IM**") requirements for swaps between affiliates; (2) preserves legacy status for swaps that are amended to replace certain interest rate provisions or due to technical amendments, notional reductions, or portfolio compression exercises; (3) clarifies the time at which IM trading documentation must be in place; (4) finalizes, as initially adopted, the interim final rule dealing with Brexit-related issues; and (5) adds a sixth compliance phase for IM requirements.[2] The Final Rule will take effect 60 days after publication in the Federal Register.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

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The Prudential Regulators also published an interim final rule (the "**Interim Final Rule**")[3] providing Swap Entities with an additional year to comply with the IM requirements for counterparties in phases 5 and 6. The Interim Final Rule will take effect 61 days after publication in the Federal Register.

This memorandum provides an overview of the Final Rule and the Interim Final Rule. Appendix A includes a blackline showing the amendments to the Margin Rules.

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1 Margin and Capital Requirements for Covered Swap Entities, Docket No. OCC-2019-0023/RIN: 1557-AE69, Docket No. R-1682/RIN: 7100-AF62, RIN: 3064-AF08, RIN: 3052-AD38, RIN: 2590-AB02.

2 Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 9940 (Mar. 19, 2019).

3 Margin and Capital Requirements for Covered Swap Entities, Docket No. OCC-2020-0027/RIN: 1557-AE98, Docket No. R-1721/RIN: 7100-AF92, RIN: 3064-AF55, RIN: 3052-AD34, RIN: 2590-AB03.

Inter-Affiliate Swaps

- ***Background.*** Currently, the Margin Rules require a Swap Entity (often a bank) to collect IM on non-cleared swaps with an affiliate counterparty that is a Swap Entity or financial end user with a material swaps exposure (a "**covered affiliate counterparty**" and such swaps, "**covered inter-affiliate swaps**"), subject to a $20 million threshold. Any such IM must be segregated at a custodian, which for noncash IM may be the Swap Entity or an affiliate. Based on concerns regarding the impact this requirement has on centralized risk management by Swap Entities, among other considerations, in 2019 the Prudential Regulators proposed to eliminate this inter-affiliate IM collection requirement.
- ***Exemption***. The Final Rule exempts a Swap Entity from collecting IM on covered inter-affiliate swaps, subject to an aggregate limit calibrated at 15% of tier 1 capital.
  - Each Swap Entity must calculate, every business day, an IM collection amount for each covered affiliate counterparty.
  - The Swap Entity need not collect IM from any covered affiliate counterparty if the aggregate calculated amount does not exceed 15% of the Swap Entity's tier 1 capital.
  - If the aggregate calculated IM collection amount exceeds 15% percent of the Swap Entity's tier 1 capital, then the Swap Entity must collect IM (under the Margin Rules) for each new, additional covered inter-affiliate swap, from the day after execution and continuing on a daily basis, until the earlier of the (a) termination date of the covered inter-affiliate swap or (b) business day on which the aggregate calculated IM collection amount falls below 15% percent of the Swap Entity's tier 1 capital.
  - A Swap Entity will not be required to begin collecting IM on its portfolio of covered inter-affiliate swaps that were executed before the business day on which it exceeds the 15% tier 1 limit.

The Prudential Regulators observe that Swap Entities have collected inter-affiliate IM at levels that do not exceed the 15% tier 1 capital limit. Accordingly, the Final Rule does not address what approach a Swap Entity should take if it exceeds this limit as of the effectiveness of the Final Rule (*e.g.*, to what extent could such a Swap Entity release previously collected IM falling below the limit?).

- ***Segregation Requirements***. Consistent with existing rules, when a Swap Entity collects IM from covered affiliate counterparties, the IM must be segregated in accordance with the Margin Rules, except that the Swap Entity or an affiliate may act as custodian for noncash IM.
- ***Treatment of Subsidiaries***. Covered inter-affiliate swaps by any subsidiary of the Swap Entity must be counted as swaps by the parent Swap Entity, and compliance may be undertaken at the parent Swap Entity level (including if the subsidiary is itself a Swap Entity, in which case the subsidiary is exempted from inter-affiliate IM collection obligations).
- ***Credit Risk Backstop***. Notwithstanding the exemption, every Swap Entity is required to consider its relationships with all its affiliated counterparties (including covered affiliate counterparties) and collect IM at such times and in such forms and such amounts (if any) that the Swap Entity determines appropriately addresses the credit risk posed by the counterparty and the risks of its swaps with the counterparty.

The preamble to the Final Rule states this more definitively: "[T]he agencies do not assess inter-affiliate swaps to be risk-free, and there can still be circumstances in which the agencies **would expect** a [Swap Entity] to incorporate [IM] as well as variation margin into its risk management for exposures to a particular affiliate or particular swaps."[4]

- ***Broader Exemption for Certain Foreign Entities***. Certain non-U.S. Swap Entities—(a) entities organized outside the U.S. that are not subsidiaries or branches of offices of U.S.-organized entities, (b) U.S. branches and agencies of foreign banks, and (c) foreign subsidiaries of a depository institution, Edge corporation, or agreement corporation—will be exempted from inter-affiliate IM collection requirements entirely, even above the 15% tier 1 threshold, so long as the non-U.S. Swap Entity's obligations under its covered inter-affiliate swaps are not guaranteed by a U.S.-organized entity (other than a U.S. branch or agency of a foreign bank), U.S. resident natural person, or branch or office of a U.S.-organized entity.

However, if the non-U.S. Swap Entity is a subsidiary of a U.S. Swap Entity, then its covered inter-affiliate swaps must be counted as swaps by the parent Swap Entity, as noted above.

- ***Posting of IM***. No IM need be posted by a Swap Entity to a covered affiliate counterparty.
- ***Variation Margin***. Under the Final Rule, Swap Entities will continue to be required to exchange variation margin ("**VM**") with covered affiliate counterparties.
- ***Affiliate and Subsidiary Definitions***. For purposes of the Final Rule:
  - An affiliate includes a subsidiary of the Swap Entity (*i.e.*, the Swap Entity must calculate IM requirements from a subsidiary in its aggregate daily calculation, but where the subsidiary is itself a Swap Entity there is no double-counting of non-cleared swaps with the parent Swap Entity).
  - An affiliate and a subsidiary are determined not only by the consolidation provisions in the original Margin Rules, but also by a "control" test which appears to be the Federal Reserve's concept of control under Regulation Y.
- ***Interaction with Sections 23A/23B and Regulation W***. Swaps between a bank and its affiliates continue to be subject to Sections 23A and 23B of the Federal Reserve Act and the Federal Reserve's Regulation W.[5] The Dodd-Frank Act had amended Section 23A to treat a derivatives transaction between a bank and its affiliate as a covered transaction to the extent it causes the bank to have credit exposure to the affiliate, but the term "credit exposure" was not defined. In addition, the Margin Rules' imposition of two-way IM requirements on swaps between a bank Swap Entity and an unaffiliated Swap Entity or financial end user with material swaps exposure had raised questions regarding how to interpret Section 23B's "market terms" requirement in connection with swaps between a bank and its affiliate. The Federal Reserve's version of the preamble to the Final Rule provides the following guidance regarding those topics:
  - Under Section 23A, bank-affiliate derivatives generally can be valued at the bank's current exposure to the affiliate.

[4] Final Rule at 40 (emphasis added).

[5] 12 U.S.C. § 371c (Section 23A); 12 U.S.C. § 371c-1 (Section 23B); 12 CFR pt. 223 (Regulation W).

In other words, a bank must collect 23A-compliant VM from its affiliates to cover its current exposure (essentially, VM) on bank-affiliate derivatives, but generally is not required to collect IM to cover the bank's potential future exposure on the transactions.

- For purposes of Section 23B, the Federal Reserve would "in many cases" find it reasonable to conclude that a bank-affiliate swap with no IM requirement is at least as favorable to the bank as a comparable bank-non-affiliate swap with two-way IM requirements. The reasonableness of this opinion is based on the Federal Reserve's belief that two counterparties in the market often give each other roughly equivalent value in IM. Therefore, "[i]n the Board's view, situations where the bank and affiliate each agree not to require an equivalent exchange of [IM] . . . will generally create a set of contractual terms that is roughly equally favorable to the bank as a two-way [IM] regime."[6]
- However, the Federal Reserve warns that some cases of bank-affiliate swap arrangements without IM could raise issues under Section 23B, and banks should determine whether certain factors should result in the receipt of IM under Section 23B, including the relative creditworthiness of the bank vs. the affiliate, whether the bank-affiliate swap portfolio is more likely to create potential future exposure of the bank to the affiliate or vice versa, and whether or not the affiliate requires IM from the bank under the swap arrangement.

As a result of the Federal Reserve's interpretation of Section 23B, banks will need to adopt policies, procedures, and controls that address these considerations for when a bank may need, under Section 23B, to collect IM from its affiliates.

Amendments to Legacy Swaps to Replace Certain Interest Rate Provisions

- ***Background***. The Margin Rules do not apply to swaps entered into prior their compliance dates, *i.e.*, legacy swaps. When they originally adopted the Margin Rules, the Prudential Regulators declined to adopt guidance classifying certain types of amended or novated swaps as legacy swaps. As a result, there have been significant questions regarding what types of amendments to legacy swaps trigger application of the Margin Rules.
- ***Safe Harbor***. Amendments to all categories of non-cleared legacy swaps that are made solely to accommodate the replacement of (1) an interbank offered rate ("**IBOR**"), (2) any other interest rate that a Swap Entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment, or (3) any other interest rate that succeeds a rate referenced in (1) or (2) will not cause a loss of legacy status.

One commenter requested the relief be extended to cover amendments made solely to accommodate the replacement of any reference instrument, such as iTraxx, reasonably expected to be discontinued or reasonably determined to have lost its relevance as a reliable benchmark due to a significant impairment. The Prudential Regulators declined to make this change, as there is no current expectation or indication that any major non-interest rate reference instrument is expected to be discontinued. However, they noted that they may reconsider their position in the future if any expectation of discontinuation arises. In addition, the Prudential Regulators

[6] Final Rule at 39-40.

departed from the proposed rule to allow legacy swaps to be amended to reflect changes to the discount interest rate used by some central counterparties.

  - Any new intermediate or permanent interest rate does not have to be viewed by the market as a "successor" to the IBOR or other discontinued rate that is being replaced. Instead, the counterparties to the swap contract simply must agree on the appropriate replacement interest rate.
  - Under the Final Rule, these amendments may be made to the legacy swap by adherence to a protocol, other type of amendment of an existing contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract.
  - Amendments to accommodate replacement of an interest rate may also be effectuated through portfolio compression between or among Swap Entities and their counterparties driven by the sole purpose of replacing an interest rate.

The Prudential Regulators rejected commenters request to extend relief from the Margin Rules' IM and VM requirements to non-legacy swaps designed to transition an existing swap, or entered into solely for managing the transition, away from IBORs. Commenters suggested this expansion would facilitate the use of basis swaps to offset IBOR exposure from legacy swaps against new exposure to a risk-free rate. However, the Prudential Regulators did not think this approach would be effective in resolving the issue of a discontinued interest rate, as Swap Entities with basis swaps would still bear the risk of the relevant interest rate being discontinued.

- ***Follow-on Amendments***. The Final Rule allows "follow-on" amendments that accommodate replacement of an interest rate to be made to legacy swaps without causing a loss of legacy status.
  - These amendments <u>may</u> incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates.
  - These amendments may <u>not</u> extend the swap's maturity or increase the swap's total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement. Swaps resulting from a portfolio compression are subject to a similar limitation.

In the proposed rule, the safe harbor for legacy swaps would have been unavailable if the amendments extended the maturity or increased the total effective notional amount of the swap, regardless of the reason for the change. Commenters raised concerns with this restriction since market conventions are not yet well established or expected with respect to the transition away from IBORs. Based on these comments, the Prudential Regulators modified the Final Rule to allow for extensions of maturity or increases in total effective notional amounts as necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

Market conventions could include changes in day count conventions, settlement date, or final payment date.

The Prudential Regulators declined, however, to permit an extension of the remaining maturity of a legacy swap for liquidity or similar reasons (*e.g.*, to match a benchmark tenor), stating that it could lead to inappropriate extensions or evasion of the Margin Rules.

- ***Exemptions for Commercial and Cooperative End Users***. One commenter requested clarification on the treatment of non-cleared swaps that are exempt from the Margin Rules under the commercial and cooperative end-user exemption, if such swaps are amended to accommodate changes to referenced benchmark interest rates.
    - The Prudential Regulators clarified that commercial and cooperative end-user swaps will remain exempt regardless of changes to referenced benchmark interest rates if the swaps are effectuated under the terms of U.S. Commodity Futures Trading Commission ("**CFTC**") Letter No. 19-28[7] or CFTC Letter 19-26.[8]

CFTC Letters No. 19-28 and No. 19-26 provide relief from the CFTC's mandatory clearing and margin requirements for non-cleared swaps where the counterparties previously relied on the end-user exemptions in the Commodity Exchange Act and applicable CFTC regulations.

In order to qualify for no-action relief under these letters, the swap must be (1) amended solely to replace, or accommodate the replacement of, an impaired reference rate and (2) amended prior to December 31, 2021, such that it again qualifies for the end-user exemptions.

Amendments to Legacy Swaps for Technical or Risk-Reduction Reasons

- ***Technical Changes***. The Final Rule recognizes the legacy status of a non-cleared swap that has been amended to reflect technical changes, such as addresses, the identities of parties for delivery of formal notices, and other administrative or operational provisions.
    - However, these changes may not alter the non-cleared swap's underlying asset or reference, the remaining maturity, or the total effective notional amount.

Based on comments received, the Prudential Regulators clarified that the Final Rule aligns with CFTC Letter No. 19-13.[9] In this letter, the CFTC took a no-action position on legacy swaps that are amended, "provided that no term is amended that would affect the economic obligations of the parties or the valuation" of the swap, subject to certain conditions.[10]

[7] CFTC Letter No. 19-28 (Dec. 17, 2019).

[8] CFTC Letter No. 19-26 (Dec. 17, 2019).

[9] CFTC Letter No. 19-13 (June 6, 2019).

[10] *Id.* at 8.

The conditions include:

1. The records of the legacy swap that exist in the trading and/or recordkeeping systems of the Swap Entity are amended solely to reflect the reduced notional amount of the legacy swap;

2. The stated portion of the legacy swap that is terminated or novated by such Swap Entity is fully terminated between the Swap Entity and its original counterparty, apart from the stated portion that is the stub; and

- ***Reduction in Notional Amount***. The Final Rule recognizes the legacy status of a non-cleared swap that has been amended solely to reduce its notional amount.
    - However, all payment obligations attached to the total effective notional amount being eliminated as a result of the amendment must be either fully terminated or fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.
- ***Portfolio Compression Exercises.*** The Final Rule recognizes the legacy status of non-cleared swaps that have been amended to reduce risk or remain risk-neutral through portfolio compression between or among Swap Entities and their counterparties.
    - However, the non-cleared swaps resulting from the portfolio compression must not (1) exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap, or (2) exceed the longest remaining maturity of all swaps submitted to the compression exercise.

The Prudential Regulators modified the Final Rule to separate portfolio compressions for the purposes of replacing an interest rate (as discussed above) from those for other risk-reducing or risk-neutral purposes.

IM Documentation Requirements

- The Final Rule specifies that IM trading documentation is not required to be in place prior to the time that IM is required to be collected or posted under the Margin Rules.
- The Prudential Regulators also reaffirmed their statement in the preamble to the rule proposal that custody agreements are required to be in place only (1) after IM is required to be collected or posted pursuant to the Margin Rules, or (2) when IM is posted by a Swap Entity beyond an amount required by the Margin Rules.

Brexit Interim Final Rule

- The Prudential Regulators issued an interim final rule, which became effective on March 19, 2019, to provide certainty for Swap Entities as they prepared for Brexit.[11] Specifically, the interim final rule provided a Swap Entity with the ability to continue to service its cross-border clients if the U.K. withdrew from the E.U. without a Withdrawal Agreement.
    - A Withdrawal Agreement between the U.K. and E.U. was ratified in January 2020.[12]

The sole commenter on the interim final rule requested that swaps with a flip clause be excluded. As this was an issue outside of the scope of the rule, the Prudential Regulators finalized the rule as adopted.

3. All other material terms (as such term is defined in CFTC Regulation 23.500(g)) of the stub remain the same as the terms of the legacy swap.

[11] Margin and Capital Requirements for Covered Swap Entities, 84 Fed. Reg. 9940 (Mar. 19, 2019).

[12] *See* European Council Press Release "Brexit: Council adopts decision to conclude the withdraw agreement" (Jan. 30, 2020), available at https://www.consilium.europa.eu/en/press/press-releases/2020/01/30/brexit-council-adoptsdecision-to-conclude-the-withdrawal-agreement/.

Additional Compliance Date for IM Requirements

- The Final Rule extends compliance with IM requirements to September 1, 2021 for counterparties with an average daily aggregate notional amount ("**AANA**") of non-cleared swaps from $8 billion to $50 billion.

> Commenters noted calculation of the AANA for these counterparties would be based on June, July, and August of the previous calendar year (*i.e.*, 2020). This is inconsistent with the Basel Committee on Banking Supervision and International Organization of Securities Commissions ("**BCBS/IOSCO**") Framework, which calculates the AANA based on March, April, and May of the same year. However, the Prudential Regulators declined to make an aligning change.

Interim Final Rule for IM Requirements

- The Prudential Regulators adopted an interim final rule extending by one year the implementation deadlines for IM requirements for phases 5 (for counterparties with AANA between $50 billion and $750 billion) and 6 (for counterparties with an AANA between $8 billion and $50 billion) due to the COVID-19 pandemic.[13]
    - The effective date for phase 5 is now September 1, 2021, and the effective date for phase 6 is now September 1, 2022.
    - However, Swap Entities and their counterparties may voluntarily comply with IM requirements prior to these mandatory compliance dates.
- This extension aligns with that granted by BCBS/IOSCO for its IM implementation schedule and rule amendments and proposals from the CFTC.[14]

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[13] Margin and Capital Requirements for Covered Swap Entities, Docket No. OCC-2020-0027/RIN: 1557-AE98, Docket No. R-1721/RIN: 7100-AF92, RIN: 3064-AF55, RIN: 3052-AD34, RIN: 2590-AB03.

[14] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 19878 (Apr. 9, 2020) (final rule to add Phase 6 to compliance schedule for CFTC margin rules); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN: 3038-[] (interim final rule to defer compliance date of Phase 5 of CFTC margin rules to September 1, 2021); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN: 3038-AE89 (proposed rule to defer compliance date of Phase 6 of CFTC margin rules to September 1, 2022).

APPENDIX A

MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

§_.1 Authority, purpose, scope, exemptions and compliance dates.

(a) ***Authority.*** This part is issued under the authority of 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.*, 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o-10(e).

(b) ***Purpose.*** Section 4s of the Commodity Exchange Act of 1936 (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10) require the OCC to establish capital and margin requirements for any for any national bank or subsidiary thereof, Federal savings association or subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act of 1936 and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) ***Scope.*** This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (e) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

(d) ***Exemptions*** -

(1) ***Swaps.*** The requirements of this part (except for §_.12) shall not apply to a non-cleared swap if the counterparty:

(i) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(A)) and implementing regulations;

(ii) Qualifies for an exemption from clearing under a rule, regulation, or order that the Commodity Futures Trading Commission issued pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act of 1936 (7 U.S.C. 6(c)(1)) concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(1)(A)); or

(iii) Satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) and implementing regulations.

(2) ***Security-based swaps.*** The requirements of this part (except for §_.12) shall not apply to a non-cleared security-based swap if the counterparty:

(i) Qualifies for an exception from clearing under section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) and implementing regulations; or

(ii) Satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(4)) and implementing regulations.

(e) ***Compliance dates***.

(1) September 1, 2016 with respect to the requirements in §_.3 for initial margin and §_.4 for variation margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2016 that exceeds $3 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(1)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(2) March 1, 2017 with respect to the requirements in §_.4 for variation margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(3) September 1, 2017 with respect to the requirements in §_.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2017 that exceeds $2.25 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(3)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(4) September 1, 2018 with respect to the requirements in §_.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2018 that exceeds $1.5 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(4)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(5) September 1, 2019 with respect to the requirements in §_.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2019 that exceeds $0.75 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(5)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(6) September 1, 2020 with respect to ~~the~~ requirements in §_.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty~~.~~, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in §_.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

~~**(7)** For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of Title 12, as applicable.~~

(f) Once a covered swap entity must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps with respect to a particular counterparty based on the compliance dates in paragraph (e) of this section, the covered swap entity shall remain subject to the requirements of this part with respect to that counterparty.

(g)

(1) If a covered swap entity's counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to stricter margin requirements under this part (such as if the counterparty's status changes from a financial end user without material swaps exposure to a financial end user with material swaps exposure), then the covered swap entity shall comply with the stricter margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status.

(2) If a covered swap entity's counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to less strict margin requirements under this part (such as if the counterparty's status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding non-cleared swap or non-cleared security-based swap entered into after the applicable compliance date in paragraph (e) of this section and before the counterparty changed its status.

(h) ***Legacy swaps***. Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if ~~changes are made to it~~ amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

~~**(1)** [Reserved]~~

(2) The non-cleared swap or non-cleared security based swap was amended under the following conditions:

(i) The swap was originally entered into before the relevant compliance date established in paragraph (e) of this section and one party to the swap booked it at, or otherwise held it at, an entity (including a branch or other authorized form of establishment) located in the United Kingdom;

(ii) The entity in the United Kingdom subsequently arranged to amend the swap, solely for the purpose of transferring it to an affiliate, or a branch or other authorized form of establishment, located in any European Union member state or the United States, in connection with the entity's planning for or response to the event described in paragraph (h)(2)(iii) of this section, and the transferee is:

(A) A covered swap entity, or

(B) A covered swap entity's counterparty to the swap, and the counterparty represents to the covered swap entity that the counterparty performed the transfer in compliance with the requirements of paragraphs (h)(2)(i) and (ii) of this section;

(iii) The law of the European Union ceases to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, without conclusion of a Withdrawal Agreement between the United Kingdom and the European Union pursuant to Article 50(2);

(iv) The amendments do not modify any of the following: The payment amount calculation methods, the maturity date, or the notional amount of the swap;

(v) The amendments cause the transfer to take effect on or after the date of the event described in paragraph (h)(2)(iii) of this section transpires; and

(iv) The amendments cause the transfer to take effect by the later of:

(A) The date that is one year after the date of the event described in paragraph (h)(2)(iii); or

(B) Such other date permitted by transitional provisions under Article 35 of Commission Delegated Regulation (E.U.) No. 2016/2251, as amended.

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or

reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph is not subject to the limitations in paragraph (h)(4) but any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression may not have a longer maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared

security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

[. . .]

§_.9 Cross-border application of margin requirements.

(a) ***Transactions to which this rule does not apply***. The requirements of §§_.3 through_.8 and §§_.10 through_.12 shall not apply to any foreign non-cleared swap or foreign non-cleared security-based swap of a foreign covered swap entity.

(b) For purposes of this section, a *foreign non-cleared swap* or *foreign non-cleared security-based swap* is any non-cleared swap or non-cleared security-based swap with respect to which neither the counterparty to the foreign covered swap entity nor any party that provides a guarantee of either party's obligations under the non-cleared swap or non-cleared security-based swap is:

(1) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) A swap entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(c) For purposes of this section, a *foreign covered swap entity* is any covered swap entity that is not:

(1) An entity organized under the laws of the United States or any State, including a U.S. branch, agency, or subsidiary of a foreign bank;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) An entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(d) ***Transactions for which substituted compliance determination may apply*** **-**

(1) ***Determinations and reliance***. For non-cleared swaps and non-cleared security-based swaps entered into by covered swap entities described in paragraph (d)(3) of this section, a covered swap entity may satisfy the provisions of this part by complying with the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that the prudential regulators jointly, conditionally or unconditionally, determine by public order satisfy the corresponding requirements of §§_.3 through_.8 and §§_.10 through_.12.

(2) ***Standard***. In determining whether to make a determination under paragraph (d)(1) of this section, the prudential regulators will consider whether the requirements of such foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps applicable to such covered swap entities are comparable to the otherwise applicable requirements of this part and appropriate for the safe and sound operation of the covered swap entity, taking into account the risks associated with non-cleared swaps and non-cleared security-based swaps.

(3) ***Covered swap entities eligible for substituted compliance***. A covered swap entity may rely on a determination under paragraph (d)(1) of this section only if:

(i) The covered swap entity's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (other than a U.S. branch or agency of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State; and

(ii) The covered swap entity is:

(A) A foreign covered swap entity;

(B) A U.S. branch or agency of a foreign bank; or

(C) An entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation.

(4) ***Compliance with foreign margin collection requirement***. A covered swap entity satisfies its requirement to post initial margin under §_.3(b) by posting to its counterparty initial margin in the form and amount, and at such times, that its counterparty is required to collect pursuant to a foreign regulatory framework, provided that the counterparty is subject to the foreign regulatory framework and the prudential regulators have made a determination under paragraph (d)(1) of this section, unless otherwise stated in that determination, and the counterparty's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(i) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(ii) A branch or office of an entity organized under the laws of the United States or any State.

(e) ***Requests for determinations***.

(1) A covered swap entity described in paragraph (d)(3) of this section may request that the prudential regulators make a determination pursuant to this section. A request for a determination must include a description of:

(i) The scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps;

(ii) The specific provisions of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that govern:

(A) The scope of transactions covered;

(B) The determination of the amount of initial margin and variation margin required and how that amount is calculated;

(C) The timing of margin requirements;

(D) Any documentation requirements;

(E) The forms of eligible collateral;

(F) Any segregation and rehypothecation requirements; and

(G) The approval process and standards for models used in calculating initial margin and variation margin;

(iii) The supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap or non-cleared security-based swap regulatory framework and how that framework applies to the non-cleared swaps or non-cleared security-based swaps of the covered swap entity; and

(iv) Any other descriptions and documentation that the prudential regulators determine are appropriate.

(2) A covered swap entity described in paragraph (d)(3) of this section may make a request under this section only if the non-cleared swap or non-cleared security-based swap activities of the covered swap entity are directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

(f) ***Segregation unavailable.*** Sections_.3(b) and_.7 do not apply to a non-cleared swap or non-cleared security-based swap entered into by:

(1) A foreign branch of a covered swap entity that is a depository institution; or

(2) A covered swap entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation, if:

(i) Inherent limitations in the legal or operational infrastructure in the foreign jurisdiction make it impracticable for the covered swap entity and the counterparty to post any form of eligible initial margin collateral recognized pursuant to §_.6(b) in compliance with the segregation requirements of §_.7;

(ii) The covered swap entity is subject to foreign regulatory restrictions that require the covered swap entity to transact in the non-cleared swap or non-cleared security-based swap with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the non-cleared swap or non-cleared security-based swap outside the jurisdiction;

(iii) The counterparty to the non-cleared swap or non-cleared security-based swap is not, and the counterparty's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State;

(iv) The covered swap entity collects initial margin for the non-cleared swap or non-cleared security-based swap in accordance with §_.3(a) in the form of cash pursuant to §_.6(b)(1), and posts and collects variation margin in accordance with §_.4(a) in the form of cash pursuant to §_.6(b)(1); and

(v) The OCC provides the covered swap entity with prior written approval for the covered swap entity's reliance on this paragraph (f) for the foreign jurisdiction.

(g) *Guarantee* means an arrangement pursuant to which one party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a third-party guarantor, with respect to its counterparty's obligations under the non-cleared swap or non-cleared security-based swap. For these purposes, a party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the non-cleared swap or non-cleared security-based swap. In addition, any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other third party guarantor with respect to the counterparty's obligations under the non-cleared swap or non-cleared security-based swap, such arrangement will be deemed a guarantee of the counterparty's obligations under the non-cleared swap or non-cleared security-based swap by the other guarantor.

(h)(1) A covered swap entity described in §_.9(d)(3)(i)-(ii) is not subject to the requirements of §_.3(a) or §_.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) for purposes of §_.9(h)(1), "affiliate" has the same meaning provided in §_.11(d).

§_.10 Documentation of margin matters.

A covered swap entity shall execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that:

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this ~~part~~subpart, and at such time as initial margin or variation margin is required to be collected or posted under §_.3 or §_.4, as applicable; and

(b) Specifies:

(1) The methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements; and

(2) The procedures by which any disputes concerning the valuation of non-cleared swaps or non-cleared security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved; and

(c) Describes the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps and non-cleared security based swaps entered into between the covered swap entity and the counterparty.

§_.11 Special rules for affiliates~~.~~

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under §_.11(a)(1) does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under §_.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under §_.11(a)(1) exceeds 15 percent of the covered swap entity's tier 1 capital:

~~**(a) Affiliates**. This part applies to a non-cleared swap or non-cleared security-based swap of a covered swap entity with its affiliate, unless the swap or security-based swap is excluded from coverage under §_.1(d) or as otherwise provided in this section. To the extent of any inconsistency between this section and any other provision of this part, this section will apply.~~

~~**(b) Initial margin –**~~

(~~1~~i) ~~Posting of initial margin~~. ~~The requirement for a~~The covered swap entity ~~to post~~shall collect initial margin under §_.3(~~b~~a) does not apply with respect to any for each additional non-cleared swap ~~or~~and non-cleared security-based swap executed that business day with a counterparty that is ~~an affiliate. A covered~~a swap entity ~~shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a~~or financial end user with a material swaps exposure ~~pursuant to §_.3(b) and provide documentation of such amount to each~~and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily

basis~~.~~ as required under §_.3(c), until the earlier of:

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

~~**(2)** Initial margin threshold amount. For purposes of calculating the amount of initial margin to be collected from an affiliate counterparty in accordance with §_.3(a) or calculating the amount of initial margin that would have been posted to an affiliate counterparty in accordance with paragraph (b)(1) of this section, the initial margin threshold amount is an aggregate credit exposure of $20 million resulting from all non-cleared swaps and non-cleared security-based swaps between the covered swap entity and that affiliate. For purposes of this calculation, an entity shall not count a non-cleared swap or non-cleared security-based swap that is exempt pursuant to §_.1(d).~~

(B) The business day on which the aggregate of all initial margin collection amounts calculated under §_.11(a)(1) falls below 15 percent of the covered swap entity's tier 1 capital;

~~**(c)** Variation margin. A covered swap entity shall collect and post variation margin with respect to a non-cleared swap or non-cleared security-based swap with any counterparty that is an affiliate as provided in §_.4.~~

(~~d~~ii) ~~Custodian for non-cash collateral.~~Notwithstanding §_.7(b), to the extent ~~that a~~the covered swap entity collects initial margin ~~required by~~ §_.3(a) from an affiliate with respect to any non-cleared swap or non-cleared security-based swap pursuant to §_.11(a)(3)(i) in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity~~.~~;

(4) For purposes of §_.11(a), "tier 1 capital" means the sum of common equity tier 1 capital as defined in 12 CFR 3.20(b) and additional tier 1 capital as defined in 12 CFR 3.20(c), as reported in the institution's most recent Consolidated Reports of Income and Condition (Call Report); and

(5) If any subsidiary of the covered swap entity (including a subsidiary described in section_.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity:

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this section_.11(a); and

~~**(e)** Model holding period and netting -~~

~~**(1)** Model holding period. For any non-cleared swap or non-cleared security-based swap (or netting portfolio) between a covered swap entity and an affiliate that would be subject to the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 or section 3C(a)(1) of the Securities Exchange Act of 1934 but for an exemption under section 2(h)(7)(C)(iii) or (D) or section 4(c)(1) of the Commodity Exchange Act of 1936 or regulations of the Commodity Futures Trading Commission or section 3C(g)(4) of the Securities Exchange Act of 1934 or regulations of the U.S. Securities and Exchange Commission, the covered swap entity's initial margin model calculation as described in §_.8(d)(1) may use a holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap (or netting portfolio).~~

~~**(2)** Netting arrangements. Any netting portfolio that contains any non-cleared swap or non-cleared security-based swap with a model holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap pursuant to paragraph (e)(1) of this section must be identified and separate from any other netting portfolio for purposes of calculating and complying with the initial margin requirements of this part.~~

(~~f~~ii) ~~Standardized amounts. If~~If the subsidiary is itself a covered swap entity~~'s initial margin model does not conform to~~, the compliance by its parent covered swap entity with this section_.11(a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of ~~§_.8,~~ this section_.11(a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under §_.3(a) from an affiliate.

(b) The requirement for a covered swap entity ~~shall calculate the amount of~~to post initial margin required to be collected ~~for one or more~~ under §_.3(b) does not apply with respect to any non-cleared swap~~s~~ or non-cleared security-based swap~~s~~ with a ~~given affiliate counterparty pursuant to section §_.3 on a daily basis pursuant to appendix A with the gross initial margin multiplied by 0.7~~counterparty that is an affiliate.

(c) Section_.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An *affiliate* means:(i) An affiliate as defined in §_.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in §_.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.