ISDA® Safe, Efficient Markets

February 12, 2016

Department of the Treasury/Office of the Comptroller of the Currency
Docket No. OCC-2011-0008/RIN 1557-AD43s

Farm Credit Administration
RIN 3052-AC69

Board of Governors of the Federal Reserve System
Docket No. R-1415/RIN 7100 AD74

Federal Housing Finance Agency
RIN 2590-AA45

Federal Deposit Insurance Corporation
RIN 3064-AE21

Commodity Futures Trading Commission
RIN 3038-AC97

Addresses listed in Annex I

Re: Docket No. OCC-2011-0008/RIN 1557-AD43s; Docket No. R-1415 /RIN 7100 AD74; RIN 3064-AE21; RIN 3052-AC69; RIN 2590-AA45; RIN 3038-AC97

PRODUCT SET FOR VARIATION MARGIN UNDER MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS

Ladies and Gentlemen,

The members of the International Swaps and Derivatives Association[1] ("**ISDA**") are in the process of creating and updating systems and designing new documentation to implement the margin rules issued on uncleared derivatives by the September 1, 2016 effective date. We believe it is appropriate to update you on how our members may choose to calculate variation margin ("**VM**") when two counterparties have entered into (i) transactions that are subject to the VM requirements under the margin rules of the Prudential Regulators ("**PRs**") or the Commodity Futures Trading Commission ("**CFTC**") and (ii) transactions that are subject to VM requirements under *another*

[1] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

International Swaps and Derivatives Association, Inc.
1101 Pennsylvania Avenue, Suite 600
Washington, DC 20004
P 202 756 2980 F 202 756 0271
www.isda.org

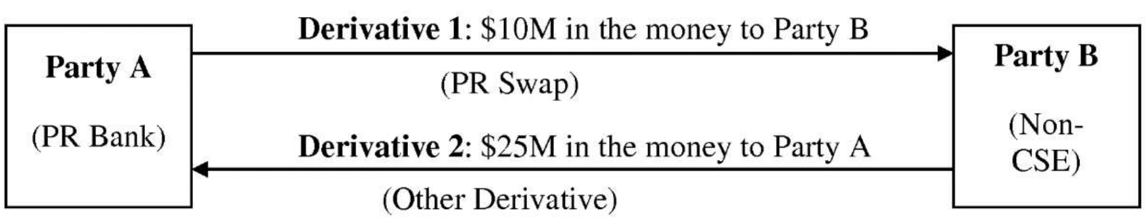
NEW YORK WASHINGTON
LONDON BRUSSELS
HONG KONG SINGAPORE
TOKYO

margin regulation (issued by a US regulator or a non-U.S. regulator) or *contractually agreed* variation margin requirements.

As explained in more detail below, we believe it is consistent with the intent of the PR and CFTC margin rules for the two counterparties to choose to **run a single VM calculation across both product groups (i.e., the two groups of transactions described in (i) and (ii) in the previous paragraph) and issue a single VM call.**

Multiple narrow product sets: no decrease of credit risk. Using multiple narrower product sets for VM would not provide any additional credit risk mitigation and could raise significant operational risks caused by gross, multiple margin movements. VM need not be segregated and the outcome following the settlement of all margin movements for the multiple, narrow product sets would be identical to the outcome for a single VM calculation on a broad product set with a single movement of VM.

Illustrative Example. The following is an example to demonstrate the point. Two counterparties are executing two derivatives with each other. Party A is a US bank regulated by the PRs and Party B is not a covered swap entity ("**CSE**") under the margin rules of the PRs or of the CFTC. Derivative 1 is a swap subject to the PR margin rules ("**PR Swap**") and is in the money to Party B. Derivative 2 is *not* subject to the PR margin rules ("**Other Derivative**"), but is either subject to another regulator's margin rules (the CFTC, the Securities and Exchange Commission or a non-US regulator) or subject to a contractual VM requirement, and is in the money to Party A.

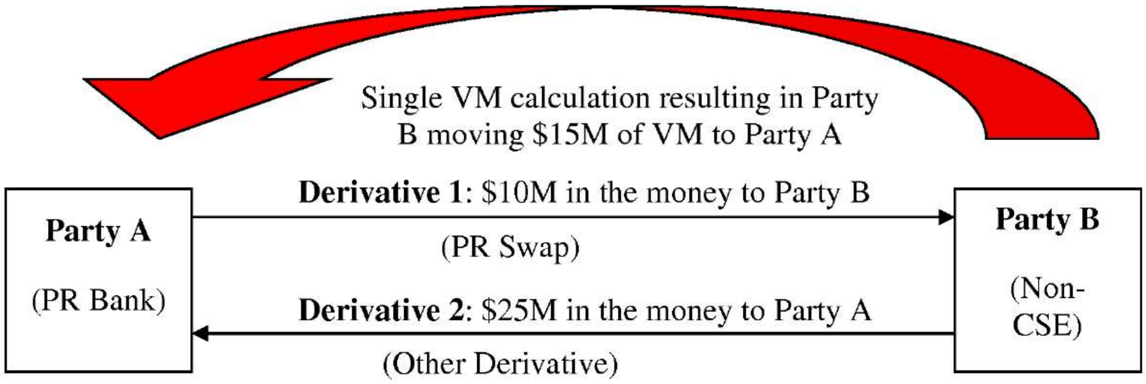


The "Other Derivative" could be, for example, equity options, physically settled foreign exchange forwards and swaps and any legacy positions executed prior to the effective dates for the mandatory exchange of VM. Any transactions without a regulatory or contractual VM requirement would be excluded from this VM calculation.

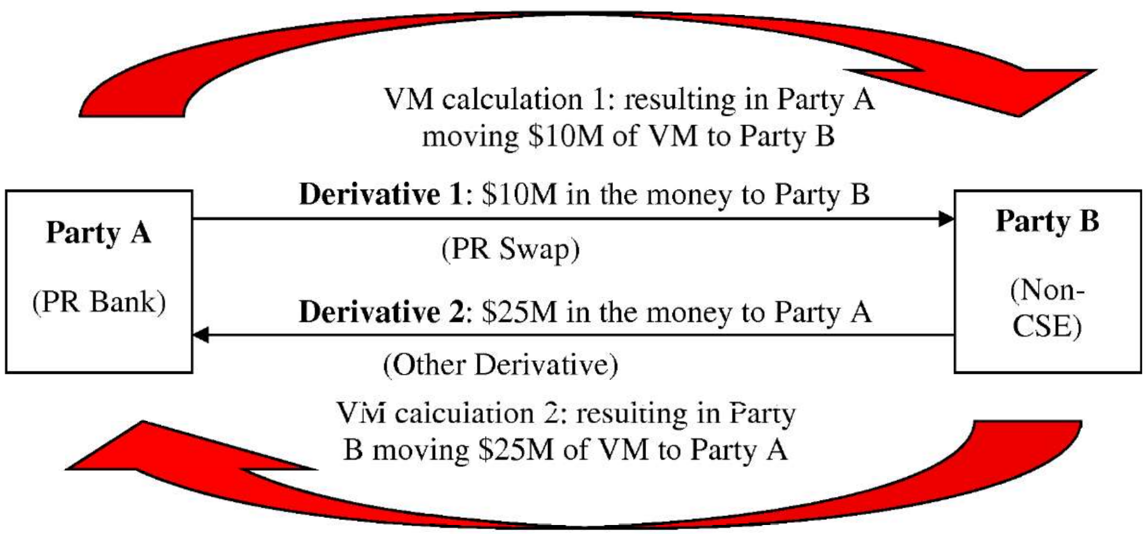
International Swaps and Derivatives Association, Inc.
1101 Pennsylvania Avenue, Suite 600
Washington, DC 20004
P 202 756 2980 F 202 756 0271
www.isda.org

NEW YORK WASHINGTON
LONDON BRUSSELS
HONG KONG SINGAPORE
TOKYO

ISDA members are implementing the margin rules to allow netting of exposures so that a single VM payment may be made between the counterparties. In our example, a single collateral movement would be made from Party B to Party A for $15M.



If these two positions were not included in the same product set, then the parties would be forced to create two separate netting sets that would each drive a margin obligation and collateral movement. The overall net amount of VM exchanged however would be identical (i.e. Party A will be a net receiver of $15M of collateral from Party B).



As illustrated by the example above, use of narrow sets of products for a VM call would result in (i) significantly increased operational and settlement risk, particularly across different time zones; (ii) significantly increased resource requirements (systems and personnel required to issue, agree and satisfy margin calls); (iii) more complex documentation; and (iv) increased liquidity requirements.

Conflicting Regulations. Use of narrow product sets raises difficult issues if the two parties are subject to two different margin rules with different VM product sets. For example, in inter-affiliate transactions between a CFTC-regulated swap dealer and a PR-regulated swap dealer, security-based swaps ("**SBS**") would be included in the VM set for one dealer but not the other. Another example arises in transactions between a US swap dealer and an EU financial counterparty: the EU proposal for uncleared swap margin[2] includes certain products in the VM product set, such as equity options and physically settled foreign exchange swaps, that are excluded from the PR and CFTC VM product sets. The PR and CFTC rules do not provide a way to resolve such a regulatory conflict between two different VM product sets. We submit that the appropriate calculation of VM for purposes of credit risk mitigation is based on the broad product set including products subject to VM requirements under any of the applicable margin rules (or subject to contractually agreed VM requirements.)

Consistent with the PR and CFTC Margin Rules. The Preamble to the PR and the CFTC rules explains that the regulators do "not believe that it would be appropriate for margin requirements for [uncleared swaps] to be offset by netting other products or exposures across markets against other products that may present different concerns about safety and soundness or financial stability, or that are not subject to similar associated margin requirements." [3] However, many out-of-scope products that are traded under ISDA Masters raise very similar concerns about safety and soundness as the concerns raised by swaps and are subject to similar margin requirements. For example, for purposes of the CFTC's rules, SBS are out of scope but raise many of the same risks and are subject to the same statutory margin requirements as swaps. Another example is physically settled foreign exchange swaps and forwards, which are also out of scope for the margin rules but are subject to supervisory guidance requirements for margin and have a similar risk profile as certain other swaps. Therefore, we do not believe this rationale should prevent the use of a broad product set.

Also, the use of a broad product set for VM is consistent with the purpose of the margin rules. The Preamble to the PR Rules states that the margin standards imposed under Dodd-Frank "are intended to offset the greater risk to the swap entity and the financial system arising from non-cleared swaps".[4] If they use a broad product set, swap entities would impose VM and netting arrangements on out-of-scope products as well as on swaps, thereby reducing risk to the swap entities and the financial system.

The rule itself does not explicitly prohibit the netting of products other than swaps for purposes of determining VM.[5] We submit that the rule should be interpreted to mean that other products can

[2] Second Consultation Paper on the draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP, issued by various EU regulators (June 10, 2015).

[3] CFTC: 81 FR 651; PRs: 80 FR 74 868, 9.

[4] PRs: 80 FR 74 841.

[5] CFTC: Sec. 23.153(d); PRs: Sec. _.5(a).

be netted against swaps and SBS for purposes of calculating VM if those products are subject to the same VM requirements as swaps (or SBS) and are documented under an eligible master netting agreement.

Prior Discussion. In previous discussions, ISDA raised the issue of using a broad product set for IM and VM. This letter focuses solely on the applicable product set for VM. As our members implement the margin rules, they have become increasingly aware of the issues described above in determining VM solely on the basis of a a narrow product set.

Conclusion. We therefore respectfully advise you that ISDA members may choose to follow the procedure described above to determine the product set for VM calculations for a counterparty pair under the applicable margin rules. We emphasize that, for the reasons stated above, for ISDA members that choose to use a broad product set, any change which would require such members to use narrow product sets will result in much greater complexity of implementation and therefore will require significant amounts of time and coordination to implement.

* * *

ISDA appreciates the opportunity to submit this letter.

Sincerely,

Mary P. Johannes
Senior Director and Head of ISDA WGMR Initiative
International Swaps and Derivatives Association, Inc. (ISDA)
1101 Pennsylvania Avenue, NW, Suite 600, Washington, DC 20004
+1 202-756-4541 (o)
+1 646-732-6625 (m)
mjohannes@isda.org

ISDA®

Annex I

ADDRESSES

Legislative and Regulatory Activities Division Office of the Comptroller of the Currency 400 7th St, SW, Suite 3E-218 Mail Stop 9W-11 Washington, D.C. 20219 cc: Jamey Basham	Barry F. Mardock, Deputy Director Office of Regulatory Policy Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
Robert deV. Frierson, Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551 cc: Sean D. Campbell	Alfred M. Pollard, General Counsel Federal Housing Finance Agency Constitution Center (OGC Eighth Floor) 400 7th St, SW Washington, DC 20024
Robert E. Feldman, Executive Secretary Federal Deposit Insurance Corporation 550 17th Street, NW Washington, DC 20429 cc: Bobby Bean	Commodity Futures Trading Commission Christopher Kirkpatrick, Secretary Three Lafayette Center 155 21st Street, NW Washington, DC 20581 CC: John Lawton