

SUMMARY OF CHAIRMAN MASSAD’S JUNE 9TH COMMENTS ON UNCLEARED MARGIN IN CERTAIN CROSS-BORDER SITUATIONS¹

KEY PRINCIPLES

- 1) U.S. margin rules apply if a counterparty has its obligations guaranteed by, or its financial results consolidated with, a U.S. Person.
- 2) U.S. margin rules are designed to mitigate systemic risk presented to U.S. markets vis-à-vis the swap dealing activity of a U.S. swap dealer or a non-U.S. swap dealer with obligations guaranteed by, or financials consolidated with, a U.S. person. Accordingly, the CFTC appears to be considering an application of U.S. rules to the collection of margin by a swap dealer, even if the counterparty to the swap is a non-U.S. person.

Counterparty A	Counterparty B	Would U.S. or Non-U.S. Margin Rules Apply?
U.S. swap dealer	Non-U.S. person, obligations not guaranteed by, or financials not consolidated with, U.S. Person ²	U.S. margin rules would apply to margin <i>collected</i> by the swap dealer. Non-U.S. margin rules would apply (<i>i.e.</i> , substituted compliance) to margin <i>posted</i> by the swap dealer
Non-U.S. swap dealer <i>with</i> obligations guaranteed by U.S. person or with financials consolidated with U.S. person	Non-U.S. person, obligations not guaranteed by, or financials not consolidated with, U.S. Person	Same as before
Non-U.S. swap dealer, but no guarantee by or consolidation of dealer’s financials with U.S. person	Non-U.S. Person obligations not guaranteed by, or financials not consolidated with, U.S. Person	Non-U.S. margin rules would apply to margin posted <i>or</i> collected by the Non-U.S. swap dealer
Same as before	U.S. swap dealer or Non-U.S. swap dealer with guarantee by, or consolidation with, U.S. person	U.S. margin rules apply

¹ Perkins Coie LLP (“Perkins Coie”) has prepared this document as a courtesy for the readers of The Derivatives and Repo Report. At the time that this document was prepared, the CFTC had not yet issued a Proposed rule or requested comments on a proposed rule . This document is not an official publication of the CFTC and should not be relied on by any party as legal advice. Any party reviewing these documents should seek the advice of legal counsel as to the status of any proposed changes or the effect of those proposed changes on their business.

² The actual language used in the speech was that, “U.S. swap dealers would be required to comply with the [CFTC’s margin rule] in all their transactions, but in their transactions with certain non-U.S. counterparties, they would be entitled to substituted compliance with respect to margin they post, but not the margin they collect.” Based upon that language and the overall context of the comments, we have inferred that the substituted compliance would only be available if the non-U.S. person does not have either a guarantee from a U.S. person or have its financial statements consolidated with a U.S. person.