



CFTC OPEN MEETING

OVERVIEW

For questions on the note below, please contact Daniel Austin or [Graham Harper](#) at (202) 547-3035.

Yesterday, the CFTC held an [open meeting](#) to consider two final rules on system safeguards testing requirements and a comparability determination for Japan uncleared swap margin rules for substituted compliance purposes.

Key Takeaways

- Both final rules on system safeguard testing requirements (one specific to DCOs, one for other covered entities) were unanimously approved.
 - [Rules Fact Sheet](#)
 - [Rules Q&A](#)
- The comparability determination for Japan's uncleared swap margin rules was approved 2-1, with Commissioner Bowen dissenting.
 - [Determination Fact Sheet](#)
- Chairman Massad previewed the Commission's planned agenda for the remainder of 2016, which included:
 - Final rule on position limits
 - Supplemental proposal to Reg AT
 - Re-proposal of non-bank SD and MSP capital requirements (the original proposal from 2011 can be found [here](#))
 - Proposed changes related to SEF trading
 - Final clearing determination for additional IRS (proposed determination can be found [here](#))
 - Proposed changes to cross-border application of swap rules
 - Proposed changes to reporting rules

SUMMARY

Opening Statements and Testimony

[Chairman Timothy Massad](#)

The risk of cyberattack probably represents the single greatest threat to the stability and integrity of our markets today. The measures we will consider today add greater definition by setting some principles-based standards rooted in industry best practices. These new rules will serve as a strong and important complement to the many other steps being taken by regulators and market

participants to address cybersecurity. The Commission will also consider a measure that will further our commitment to international cooperation and harmonization – a comparability determination with respect to Japan’s rules on margin for uncleared swaps.

Commissioner Sharon Bowen

Cybersecurity is a top concern for American financial firms. These rules are a good step forward in addressing these concerns. First, they set up a comprehensive testing regime. Second, there is a focus on governance, for instance, that firm’s Board of Directors receive and review all reports setting forth the results of all testing. Third, these rulemakings are largely based on accepted best practices for cybersecurity.

Commissioner Chris Giancarlo

Commissioner Giancarlo expressed concerns about the system safeguards’ cost impact on smaller DCOs. Cyber and system security is one of the most important issues facing markets today in terms of integrity and financial stability. It is right that the Commission implements rules requiring DCOs and other registrants to conduct regular testing of their systems. The independent contractor and employee-testing requirement is especially costly for these small DCOs. Commissioner Giancarlo supported the final DCO system safeguards rule despite concerns about its costs.

Final Rules – System Safeguards Testing Requirements [Division of Market Oversight] and System Safeguards Testing Requirements for Derivatives Clearing Organizations [Division of Clearing and Risk]

The final rules enhance and clarify existing requirements relating to cybersecurity testing and system safeguards risk analysis, and also specify and define five types of cybersecurity testing essential to a sound system safeguards program: (1) vulnerability testing, (2) penetration testing, (3) controls testing, (4) security incident response plan testing, and (5) enterprise technology risk assessment. For specified registrants, the rules provide minimum frequency requirements for testing and requirements to engage independent contractors to conduct some of the required testing. The rules also clarify rule provisions relating to the scope of system safeguards testing, internal reporting and review of testing results, and remediation of identified vulnerabilities and deficiencies.

Discussion and Vote

There were no questions, and both final rules were unanimously approved.

Comparability Determination for Japan Uncleared Swap Margin Rules for Substituted Compliance Purposes

In June 2016, the Japan Financial Services Agency (JFSA) submitted a request pursuant to the cross-border margin rule that the CFTC determine that laws and regulations applicable in Japan provide a sufficient basis for an affirmative finding of comparability with respect to margin requirements for uncleared swaps applicable to certain SDs and MSPs registered with the CFTC. The Commission found the margin requirements for uncleared swaps under the laws and regulations of Japan comparable to those under the CEA and CFTC regulations.

Discussion and Vote

The comparability determination for Japan uncleared swap margin rules was approved by a vote of 2-1, with Commissioner Bowen dissenting.

Chairman Massad: The Chairman defended the determination, saying “the margin requirements achieve comparable outcomes,” but did concede there were some differences in response to comments from Bowen.

Commissioner Giancarlo: The approach the Commission established to address cross-border application of margin requirements for uncleared swaps was overly complex and unduly narrow. His concern was that the Commission’s “element-by-element” methodology for determining when substituted compliance with a foreign regulator’s margin regime would be permitted is contrary to the principles-based, holistic analysis the Commission has used in the past in certain circumstances. He felt this approach could result in an impracticable patchwork of U.S. and foreign regulations for cross-border transactions but voted in favor of the determination despite these concerns.

Commissioner Bowen: Commissioner Bowen did not support the comparability determination, citing concerns mainly centered on differences in how customer collateral is segregated. She highlighted key differences in the margin rule that she felt would leave American companies operating under Japanese law vulnerable to bankruptcy, and state the Commission could have instead provided a partial comparability determination that would have still required compliance with parts of US law where she felt Japanese standards were insufficient.