

**UNOFFICIAL COMPARISON; SHOULD NOT BE RELIED ON AS DEFINITIVE**

It is hereby ordered, ~~pursuant to Section 3E~~ that any broker-dealer also registered as a futures commission merchant that has received approval of its margin methodology by the Commission or Commission staff prior to the date of this order is deemed to have an internal risk management program that has been approved by the Commission or the Commission staff as required by paragraph (e)(2) and Section 36(a3) of the Exchange Act, ~~this order~~. It is hereby further ordered that the following exemptions from Exchange Act requirements will apply:

(a) Exemption for dually registered clearing agencies/derivatives clearing organizations.

A clearing agency registered pursuant to Section 17A of the Exchange Act and registered as a derivatives clearing organization pursuant to Section 5b of the CEA (a “clearing agency/DCO”) ~~shall~~will be exempt from Sections 3E(b), (d), and (e) of the Exchange Act and any rules thereunder, solely to perform the functions of a clearing agency for credit default swaps (“CDS”) under a program to commingle and portfolio margin cleared CDS for cleared swaps customer and affiliate positions, subject to the following conditions:

(1) The clearing agency/DCO, ~~by the later of (i) six months after the adoption date of final rules setting forth margin and segregation requirements applicable to security-based swaps consistent with Section 3E of the Exchange Act or (ii) the compliance date of such rules, takes all necessary action within its control to obtain~~ has obtained any other relief needed to permit its clearing members that are registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the CEA (a “BD/ FCM”) (at the BD/ FCM’s election), to maintain cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS, which include both swaps ~~(as defined in Section 1(a)(47) of the CEA and the rules thereunder)~~ and security-based swaps ~~(as defined in Section 3(g)(68) of the Exchange Act and the rules thereunder)~~, in a segregated account established and maintained in accordance with Section ~~3E4d(f)~~ of the ~~Exchange Act~~CEA and ~~any~~ rules thereunder ~~(in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate)~~ for the purpose of clearing (as a clearing member of the clearing agency/DCO) such cleared swaps customer or affiliate positions under a program to commingle and portfolio margin CDS.

~~(2) The clearing agency/DCO, by the later of (i) six months after the adoption date of final rules setting forth margin and segregation requirements applicable to security-based swaps consistent with Section 3E of the Exchange Act or (ii) the compliance date of such rules, takes all necessary action within its control to establish rules and operational practices to permit a BD/FCM (at the BD/FCM’s election) to maintain customer money, securities, and property received by the BD/FCM to margin, guarantee, or secure customer positions in cleared CDS, which include both swaps and securitybased swaps, in a segregated account established and maintained in accordance with Section 3E of the Exchange Act and any rules thereunder for the purpose of clearing (as a clearing member of the clearing agency/DCO) such customer positions under a program to commingle and portfolio margin CDS. Until such rules and operational practices have been developed, pursuant to the clearing agency/DCO’s rules, clearing members that are BD/FCMs must maintain customer money, securities, and property received to margin, guarantee, or secure customer positions consisting of cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder for the purpose of clearing (as a clearing member of the clearing agency/DCO) such customer positions under a program to commingle and portfolio margin CDS.~~

~~(3) The clearing agency/DCO has obtained any other relief needed to permit a BD/FCM that is a clearing member (at the BD/FCM’s election) to maintain customer money, securities, and property received by the BD/FCM to margin, guarantee, or secure customer positions in cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder for the purpose of clearing (as a~~

~~clearing member of the clearing agency/DCO) such customer positions under a program to commingle and portfolio margin CDS.~~

(4)

(2) The clearing agency/DCO has appropriate rules and operational practices to permit a BD/FCM that is a clearing member (at the BD/FCM's election) to maintain cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate) for the purpose of clearing (as a clearing member of the clearing agency/DCO) such cleared swaps customer or affiliate positions under a program to commingle and portfolio margin CDS.

(3) The rules of the clearing agency/ DCO require that each cleared swaps customer and affiliate of the BD/FCM participating in a program to commingle and portfolio margin CDS ~~shall~~must be an "eligible contract participant" as defined in Section 1a(18) of the CEA.

(b) Exemption for certain BD/FCMs that elect to offer a program to commingle and portfolio margin cleared swaps customer and affiliate positions in cleared CDS ~~in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder~~. Solely to perform the functions of a BD/ FCM for cleared CDS, with respect to any cleared swaps customer or affiliate money, securities, and property received by the BD/FCM to margin, guarantee, or secure cleared swaps customer or affiliate positions in security-based-swaps included in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate) under a program to commingle and portfolio margin cleared swaps customer or affiliate positions in CDS, a BD/FCM ~~shall~~will be exempt from Exchange Act Sections 3E(b), (d), and (e), and Section 15(c)(3) and Rule 15c3-3 thereunder and any requirement to treat an affiliate (as defined in association with the definition of "~~Cleared Swaps Proprietary Account~~cleared swaps proprietary account" pursuant to CFTC Rule 22.1) as a customer for purposes of Section 8 of the Exchange Act and Exchange Act Rules 8c-1 and 15c2-1 thereunder, subject to the following conditions:

(1) With respect to cleared swaps customers that are not affiliates of the BD/FCM,

(i) ~~the~~The BD/FCM ~~shall~~must maintain cleared swaps customer money, securities, and property received to margin, guarantee or secure cleared swaps customer positions consisting of cleared CDS, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder for the purpose of clearing (as a clearing member or through a clearing member of a clearing agency/DCO operating pursuant to the exemption in paragraph (a) above) such cleared swaps customer positions under a program to commingle and portfolio margin CDS; and

(ii) ~~the~~The BD/FCM ~~shall~~must enter into a non-conforming subordination agreement with each cleared swaps customer by no later than February 1, 2022. The agreement must contain a specific acknowledgment by the cleared swaps customer that ~~such~~the money, securities or property identified in paragraph (b)(1)(i) of this order will not receive customer treatment under the Exchange Act or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the BD/ FCM and that such money, securities or property will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the cleared swaps customer that ~~all of its~~ claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the BD/FCM with respect to ~~such~~the money, securities, or property

~~against the BD/FCM identified in paragraph (b)(1)(i) of this order~~ will be subordinated to the claims of ~~other~~ securities customers and security-based swap customers ~~not operating under a program to commingle and portfolio margin CDS pursuant to this Order.~~

(2) With respect to ~~customers that are~~ affiliates of the BD/FCM,

(i) The BD/FCM maintains money, securities, and property of affiliates received to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, in a ~~Cleared Swaps Proprietary Account~~ cleared swaps proprietary account for the purpose of clearing (as a clearing member of a clearing agency/DCO operating pursuant to the exemption in paragraph (a) above) such positions under a program to commingle and portfolio margin CDS;

(ii) The BD/FCM enters into a nonconforming subordination agreement with each affiliate by no later than February 1, 2022. The agreement must contain a specific acknowledgment by the affiliate that ~~such~~ the money, securities or property identified in paragraph (b)(2)(i) of this order will not receive customer treatment under the Exchange Act or SIPA or be treated as “customer property” as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM, and that such money, securities or property will be held in a proprietary account in accordance with the CFTC requirements and will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the affiliate that ~~all of its~~ claims to “customer property” as defined in SIPA or 11 U.S.C. 741 against the BD/FCM with respect to ~~such~~ the money, securities, or property ~~against the BD/FCM identified in paragraph (b)(2)(i) of this order~~ will be subordinated to the claims of ~~other~~ securities customers and security-based swap customers ~~not operating under a program to commingle and portfolio margin CDS pursuant to this Order~~; and

(iii) The BD/FCM obtains from the affiliate an opinion of counsel that the affiliate is legally authorized to ~~subordinate all of its claims against the BD/FCM to those~~ enter into the subordination agreement required by paragraph (b)(2)(ii) of ~~customers~~ this order.

(3) The BD/FCM ~~requires minimum margin levels with respect to any customer transaction in a program~~ has adopted an internal risk management program that is reasonably designed to identify, measure, and manage the risks arising from its program to allow cleared swaps customers and affiliates to commingle and portfolio margin CDS ~~at least equal to the amount determined using a margin methodology established and maintained by the BD/FCM~~ that has been approved in advance by the Commission or the Commission staff and meets the standards in paragraph (c) of this order.

(4) The BD/FCM must be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and ~~shall~~ must be in compliance with applicable clearing agency/DCO rules and CFTC requirements (including segregation and related books and records provisions) for accounts established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder (in the case of cleared swaps customers) and for cleared swaps proprietary accounts (in the case of affiliates), and subject to a program to commingle and portfolio margin CDS.

(5) Each cleared swaps customer and affiliate of the BD/FCM participating in a program to commingle and portfolio margin CDS is an “eligible contract participant” as defined in Section 1a(18) of the CEA.

(6) Before receiving any money, securities, or property of a cleared swaps customer or affiliate to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS, the BD/FCM must

furnish to the cleared swaps customer or affiliate a disclosure document containing the following information:

- (i) ~~A~~ statement indicating that the cleared swaps customer's or affiliate's money, securities, and property will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA (in the case of a cleared swaps customer) or a cleared swaps proprietary account (in the case of an affiliate), and that the cleared swaps customer or affiliate has elected to seek protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such money, securities, and property; and
- (ii) ~~A~~ statement that the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such cleared swaps customer or affiliate money, securities, and property.

(c) Standards for internal risk management program. The internal risk management program required pursuant to paragraph (b)(3) of this order must have the following standards in place:

(1) Internal Risk Model. The BD/FCM must calculate a future credit exposure for each cleared swaps customer and affiliate (each a "counterparty") using its own proprietary methodology ("internal risk model") subject to the following minimum quantitative and qualitative model standards:

(i) Quantitative Requirements.

(A) The internal risk model must estimate a potential future exposure over a minimum 10-day horizon and 99% confidence level and capture all material risk factors, including but not limited to general movements in credit spread term structure, basis risk between index and single name positions, and interest rate risk;

(B) The internal risk model must include a concentration/liquidity requirement; and

(C) The internal risk model must include a jump-to-default requirement for the sale of CDS protection equal to the largest loss of a single name exposure assuming a conservative recovery rate that may not exceed 40%.

(ii) Qualitative Requirements.

(A) The internal risk model must be adequately documented and the documentation must provide a description of the model assumptions, data inputs, parameters, and methodologies employed to measure risk;

(B) The internal risk model must be subject to an annual model review by a model group that is independent of the business function;

(C) The internal risk model must be subject to at least quarterly backtesting by counterparty or account; and

(D) The BD/FCM must provide written notice to the Commission or Commission staff prior to implementing any material change to its internal risk model.

(2) Minimum Risk Management System Standards.

(A) The BD/FCM must maintain risk management system standards to measure and manage risk exposure arising from counterparties' CDS portfolios that are independent of any central counterparty margin methodology;

(B) The BD/FCM must have an internal credit risk rating model that assesses the credit risk of each individual counterparty;

(C) The BD/FCM's monitoring of credit risk must include the prudent setting of an exposure limit for each individual counterparty and the exposure limit must be reviewed if the counterparty's credit risk profile changes and at least quarterly;

(D) The BD/FCM must have the ability to limit or reduce the exposure to a counterparty through the collection of additional margin;

(E) The BD/FCM must have documented procedures to value positions conservatively in view of current market prices and the amount that might be realized upon liquidation; and

(F) The BD/FCM must have welldefined procedures and systems in place for the daily collection and payment of initial and variation margin.

(3) Monthly Reporting. The BD/FCM must report to the Commission and FINRA staffs on a monthly basis within 5 business days after month end or as otherwise requested details of its top 25 counterparties' portfolios as measured by net credit exposure as well as the top 25 counterparties' portfolios as measured by gross notional amount.