

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 45

[Docket No. OCC-2011-0008]

RIN 1557-AD43

### BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

#### 12 CFR Part 237

[Docket No. R-1415]

RIN 7100 AD74

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 324

RIN 3064-AD79

### FARM CREDIT ADMINISTRATION

#### 12 CFR Part 624

RIN 3052-AC69

### FEDERAL HOUSING FINANCE AGENCY

#### 12 CFR Part 1221

RIN 2590-AA45

### Margin and Capital Requirements for Covered Swap Entities; Reopening of Comment Period

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

**ACTION:** Reopening of comment period for proposed rule.

**SUMMARY:** The OCC, Board, FDIC, FCA, and FHFA (collectively, the Agencies) are reopening the comment period for the proposed rule published in the

**Federal Register** on May 11, 2011 (76 FR 27564) to establish minimum margin and capital requirements for uncleared swaps and security-based swaps entered into by swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator (Proposed Margin Rule). Reopening the comment period that expired on July 11, 2011 will allow interested persons additional time to analyze and comment on the Proposed Margin Rule in light of the consultative document on margin requirements for non-centrally-cleared derivatives recently published for comment by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO).

**DATES:** Comments must be received on or before November 26, 2012.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies.

Commenters are encouraged to use the title "Margin and Capital Requirements for Covered Swap Entities" to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding.

*Office of the Comptroller of the Currency:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Margin and Capital Requirements" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to <http://www.regulations.gov>. Select "Document Type" of "Proposed Rules," and in the "Enter Keyword or ID Box," enter Docket ID "OCC-2011-0008," and click "Search." On "View By Relevance" tab at the bottom of screen, in the "Agency" column, locate the Proposed Rule for the OCC, in the "Action" column, click on "Submit a Comment" or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Email:*

[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

- *Fax:* (202) 874-5274.

- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

*Instructions:* You must include "OCC" as the agency name and "Docket ID OCC-2011-0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Select "Document Type" of "Public Submissions," and in the "Enter Keyword or ID Box," enter Docket ID "OCC-2011-0008," and click "Search." Comments will be listed under "View By Relevance" tab at the bottom of screen. If comments from more than one agency are listed, the "Agency" column will indicate which comments were received by the OCC.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in

order to inspect and photocopy comments.

- *Docket*: You may also view or request available background documents and project summaries using the methods described above.

*Board of Governors of the Federal Reserve System*: You may submit comments, identified by Docket No. R-1415 and RIN 7100 AD74, by any of the following methods:

- *Agency Web Site*: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email*: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *Fax*: (202) 452-3819 or (202) 452-3102.

- *Mail*: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

*Federal Deposit Insurance Corporation*: You may submit comments, identified by RIN3064 AD-79, by any of the following methods:

- *Agency Web Site*: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web Site.

- *Email*: [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number on the subject line of the message.

- *Mail*: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- *Hand Delivery*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

*Instructions*: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>,

including any personal information provided.

*Farm Credit Administration*: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email*: Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- *FCA Web site*: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail*: Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

*Federal Housing Finance Agency*: You may submit your written comments on the proposed rulemaking, identified by regulatory information number (RIN) 2590-AA45, by any of the following methods:

- *Email*: Comments to Alfred M. Pollard, General Counsel, may be sent by email at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include "RIN 2590-AA45" in the subject line of the message.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the Agency. Please

include "RIN 2590-AA45" in the subject line of the message.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA45, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

- *Hand Delivery/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA45, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address (mailing or email), and telephone numbers, on the FHFA Web site at <http://www.fhfa.gov>. Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10:00 a.m. and 3:00 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649-3804.

**FOR FURTHER INFORMATION CONTACT:**

*OCC*: Jamey Basham, Assistant Director, Legislative and Regulatory Activities Division (202) 874-5090, Marvin Shaw, Counsel, Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division (202) 874-5090, or Kurt Wilhelm, Director, Financial Markets Group (202) 874-4479, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

*Board*: Sean D. Campbell, Deputy Associate Director, Division of Research and Statistics, (202) 452-3761; Jordan Bleicher, Division of Banking Supervision and Regulation, (202) 973-6123; or Christopher M. Paridon, Counsel, (202) 452-3274 or Anna M. Harrington, Attorney, (202) 452-6406, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

*FDIC*: Bobby R. Bean, Associate Director, Capital Market Branch, (202) 898-6705, John Feid, Senior Policy Analyst, (202) 898-8649, Division of Risk Management Supervision, Thomas F. Hearn, Counsel, (202) 898-6967, or Ryan K. Clougherty, Senior Attorney, (202) 898-3843, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**FCA:** William G. Dunn, Acting Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4434, Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4280, TTY (703) 883-4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**FHFA:** Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649-3196, [Robert.Collender@fhfa.gov](mailto:Robert.Collender@fhfa.gov), or Peggy Balsawer, Assistant General Counsel, Office of General Counsel, (202) 649-3060, [Peggy.Balsawer@fhfa.gov](mailto:Peggy.Balsawer@fhfa.gov), (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 11, 2011, the Agencies published in the **Federal Register** a notice of proposed rulemaking that would establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator, as required under sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).<sup>1</sup> Sections 731 and 764 of the Dodd-Frank Act add a new section 4s to the Commodity Exchange Act and a new section 15F to the Securities Exchange Act of 1934, respectively, which require the registration and regulation of swap dealers and major swap participants and security-based swap dealers and major security-based swap participants (collectively, swap entities). For certain types of swap entities that are prudentially regulated by one of the Agencies, sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing: (i) Capital requirements and (ii) initial and variation margin

requirements on all non-cleared swaps and non-cleared security-based swaps.<sup>2</sup>

##### II. Reopening of Comment Period and Request for Comment

The original comment period to the Proposed Margin Rule closed on June 24, 2011.<sup>3</sup> In order to allow interested persons additional time to analyze the proposed rule and prepare their comments, the Agencies extended the comment period until July 11, 2011.<sup>4</sup> In the Proposed Margin Rule, the Agencies noted that applying the proposed margin requirements to transactions involving foreign swap entities or foreign counterparties could subject those transactions to multiple, and potentially conflicting, margin requirements established by U.S. and foreign regulators and could raise questions of competitive equality among U.S. and foreign firms. Margin standards that are developed and harmonized on an international basis could help address those issues.

In October 2011, the BCBS and IOSCO established a Working Group on Margin Requirements to develop harmonized international margin standards for non-cleared swaps. On July 6, 2012, BCBS and IOSCO published a Consultative Document entitled “Margin requirements for non-centrally-cleared derivatives” (Consultative Document) that outlines possible margin requirements for non-centrally-cleared derivatives.<sup>5</sup> The Consultative Document addresses a number of topics, including: (i) The instruments that would be subject to margin requirements; (ii) the market participants that would be subject to margin requirements; (iii) initial margin and variation margin methodology; (iv) eligible collateral; (v) treatment of provided margin; (vi) treatment of inter-

<sup>2</sup> Sections 731 and 764 of the Dodd-Frank Act also require the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) to separately adopt rules imposing capital and margin requirements for swap entities for which there is no prudential regulator. See 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78o-8(e)(2)(B). The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements. See 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78o-8(e)(2)(A), 78o-8(e)(3)(D). Staff of the Agencies consulted with staff of the CFTC and SEC in developing the proposed rule.

<sup>3</sup> See 76 FR 27564 (May 11, 2011).

<sup>4</sup> See 76 FR 37029 (June 24, 2011).

<sup>5</sup> See BCBS and IOSCO, Margin requirements for non-centrally-cleared derivatives (July 6, 2012), available at [www.bis.org/publ/bcb226.pdf](http://www.bis.org/publ/bcb226.pdf).

affiliate transactions; and (vii) treatment of cross-border transactions.

BCBS and IOSCO are requesting comment on the initial proposals set forth in the Consultative Document by September 28, 2012. It is expected that, after reviewing and evaluating any comments received, the BCBS and IOSCO will issue final policy recommendations for margin requirements for non-centrally-cleared derivatives. As part of the international efforts to implement consistent global standards for non-centrally-cleared derivatives, the Agencies intend to consider the final policy recommendations set forth by the BCBS and IOSCO when adopting final U.S. rules for margin for non-cleared swaps.

Accordingly, the Agencies believe it is appropriate to reopen the comment period for the Proposed Margin Rule in order to give interested persons additional time to analyze the Proposed Margin Rule in light of the Consultative Document and an opportunity to comment on the Consultative Document and Proposed Margin Rule concurrently.<sup>6</sup>

Therefore, the Agencies are reopening the comment period until November 26, 2012, for all aspects of the Proposed Margin Rule.

Dated: September 25, 2012.

**Thomas Curry,**  
*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary under delegated authority, September 18, 2012.

**Robert deV. Frierson,**  
*Secretary of the Board.*

Dated at Washington, DC, this 29th of August 2012.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**  
*Assistant Executive Secretary.*

Dated: September 7, 2012.

**Dale L. Aultman,**  
*Secretary, Farm Credit Administration Board.*

Dated: September 5, 2012.

**Edward J. DeMarco,**  
*Acting Director, Federal Housing Finance Agency.*

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<sup>6</sup> On July 12, 2012, the CFTC reopened the comment period on its proposed margin rule under section 731 and 764 of the Dodd-Frank Act. See 76 FR 41109 (July 12, 2012).

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).