THE NATIONAL LAW REVIEW

Banking Regulators Adopt Swap Margin Safe Harbor

Friday, March 22, 2019

On March 15, the five US regulators (the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Farm Credit Administration, the Federal Housing Finance Agency and the Federal Deposit Insurance Corporation) that are responsible for the margin rules for uncleared swaps that apply to prudentially regulated swap dealers adopted an interim final rule designed to ensure that qualifying swaps may be transferred from a UK entity to an affiliate in the European Union or the United States without triggering new margin requirements.

The interim final rule was needed because of the position taken by the regulators that the swap margin rules will apply to a swap executed before the margin rule compliance date (a "legacy swap") if it is amended in a material way after the compliance date. Recognizing that Brexit might force some UK swap dealers to amend legacy swaps on a large scale to transfer or novate them to affiliates in other jurisdictions, the regulators took affirmative action to define circumstances in which such transfers or novations would not trigger an adverse margin result.

Article By
Guy C. Dempsey, Jr.
Katten Muchin Rosenman LLP
Corporate and Financial Weekly Digest

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The interim final rule went into effect on March 19, but the regulators are accepting comments on the interim rule until April 18 (presumably concerning ways in which the rule can be made more effective).

The interim final rule is available here.