In the last week, the Commodity Futures Trading Commission (CFTC) has received a flurry of comment letters concerning its capital rules for swap dealers originally proposed in 2016. Two of these merit special attention.

The first letter, dated March 2, came from the National Futures Association (NFA), the self-regulatory group that, under the proposed rules, has been assigned the task of approving internal models that CFTC-regulated swap dealers want to use to calculate their market and credit risk capital charges instead of using standardized rule-based charges. The NFA letter states that completion of its assigned task in a timely fashion will be difficult without several changes to the CFTC’s position, including permitting the use of a model without NFA approval, if the model has been approved by a foreign regulator of a non-US swap dealer or by the prudential regulator of a bank swap dealer affiliate of a US swap dealer. The NFA goes on to say that, even if the CFTC follows the NFA’s suggestions to reduce the number of swaps dealers needing model approval, the CFTC should set a compliance date for the capital rules that is no less than 15 months after their effective date to give sufficient time for the validation process.

The second letter, dated March 3, was submitted jointly by the Institute of International Bankers, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association. This 74 page document explains in great detail why the submitters believe that the proposed rules would, if
adopted without modification, “have a significant negative impact on U.S. swap markets.” They point out in particular, with examples, that the proposed minimum capital requirement based on 8 percent of the theoretical initial margin associated with covered derivatives does not take into account the effect of risk-mitigating hedges and collateral and could therefore discourage prudent risk management.

A copy of the NFA letter is available here.

A copy of the industry group letter is available here.

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