Statement by FDIC Chairman Jelena McWilliams on the Final Rule and Interim Final Rule: Margin and Capital Requirements for Covered Swap Entities

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The mandatory exchange of initial and variation margin for non-cleared swaps is a critical regulatory requirement that reduces the ability of firms to take on excessive risks through swaps without sufficient financial resources. After issuing regulations to implement these requirements nearly five years ago, the FDIC, along with the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Housing Finance Agency, and the Farm Credit Administration (agencies), are considering several targeted changes today, including a modification to the requirement that an insured depository institution (IDI) collect initial margin from affiliates.

In addition to requiring the exchange of initial and variation margin with unaffiliated counterparties, the agencies' 2015 rule requires that IDIs collect initial and variation margin from affiliates. The internationally agreed upon framework did not require initial margin for swaps with affiliates, and foreign jurisdictions generally do not require it, nor do the Securities and Exchange Commission or Commodity Futures Trading Commission in the United States.

Recognizing that banking organizations use inter-affiliate swaps for internal risk management purposes, the agencies issued a proposal last year that would have repealed the requirement that IDIs collect initial margin from affiliates. Balancing these internal risk management benefits with the potential risks that could arise from an excessive amount of inter-affiliate derivatives exposures, the final rule would require an IDI to continue to calculate inter-affiliate initial margin requirements, but would not require collection of initial margin from affiliates until the aggregate amount of such initial margin exceeds 15% of the IDI's tier 1 capital. This rule would protect the Deposit Insurance Fund by preventing banking organizations from transferring significant levels of risk to IDIs while also facilitating prudent risk management through inter-affiliate swaps. Importantly, under the rule, all non-cleared swaps – including those with affiliates – would remain subject to variation margin, which is calculated and transferred on a daily basis based on the value of the contract.

The agencies are considering several other targeted changes to the margin framework, including a one-year extension of the deadline for smaller entities to comply with initial margin requirements. This extension, which accounts for the impact of COVID-19, aligns with the recent announcement by the Basel Committee on Banking Supervision and International Organization of Securities Commissions.[1] In addition, the rule would address the LIBOR transition by ensuring that legacy swaps retain their legacy status under the margin framework if they are amended to replace a discontinued rate.

I support this rule, and I would like to thank the staff who worked to finalize it in a thoughtful and balanced manner.

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[1] *See* Basel Committee and IOSCO announce deferral of final implementation phases of the margin requirements for non-centrally cleared derivatives (Apr. 3, 2020), available at https://www.bis.org/press/p200403a.htm.