

Collateral Segregation Regimes for Uncleared Swaps

Rules	Which Swap Dealers are Subject to the Rules?	What Margin Collateral Must be Segregated?	Custody Agreement General Terms	Substitution Provisions	Who can be the Custodian?
Bank Margin Rules (proposed)	Swap Dealers and MSPs regulated by a prudential regulator	<u>Any collateral other than variation margin</u> with respect to an uncleared swap or an uncleared security-based swap <i>posted by the Swap Dealer</i> <u>Initial margin required by the Bank Margin Rules</u> with respect to an uncleared swap or a uncleared security-based swap that <i>posted by the counterparty</i>	Prohibits rehypothecation of the collateral Is a legal, valid, binding, and enforceable agreement	A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral The posting party is responsible to ensure that the substitution or reinvestment qualifies as eligible collateral and maintains a sufficient amount of initial margin	The collateral must be held at a custodian that is <u>not an affiliate</u> of the Swap Dealer or counterparty
CFTC Margin Rules (proposed)	Swap Dealers and MSPs <i>not</i> regulated by a prudential regulator	<u>All “initial margin”</u> with respect to an uncleared swap <i>posted by the Swap Dealer</i> “Initial margin” <u>required by the CFTC Margin Rules</u> with respect to an uncleared swap <i>posted by the counterparty</i> “Initial margin” means collateral collected or posted to secure potential future exposure under one or more uncleared swaps.	Prohibits rehypothecation of the collateral Is a legal, valid, binding, and enforceable agreement	The custodian agreement requires the posting party, when it substitutes or directs the reinvestment of posted collateral: to substitute or reinvest funds only in eligible collateral and maintain a sufficient amount of initial margin	The collateral must be held at a custodian that is <u>not an affiliate</u> of the Swap Dealer or counterparty
CFTC Collateral Segregation Rules (final)	All Swap Dealers and MSPs	<u>At the election of the counterparty</u> , money, securities, or property posted by the counterparty as performance bond to cover potential future exposures arising from changes in the market value of the position, [<u>other than margin required to be segregated pursuant to the CFTC Margin Rules (proposed)</u>].	The segregation must be in an account <u>segregated for and on behalf of the counterparty</u> , and designated as such If either the Swap Dealer or the counterparty is entitled to control of the collateral pursuant to a swap agreement, then that party may issue a written notice (under penalty of perjury) to the custodian to take control of the collateral Before any such notice of control, withdrawals of collateral may only be made by joint instructions	Segregated collateral may only be invested in accordance with CFTC Rule 1.25	The collateral must be held at a custodian that is a legal entity separate from the swap dealer and counterparty, but the custodian <u>may be an affiliate</u> of the Swap Dealer