

§ 45.5 Netting arrangements, minimum transfer amount and satisfaction of collecting and posting requirements.

(a) *Netting arrangements.* (1) For purposes of calculating and complying with the initial margin requirements of § 45.3 using an initial margin model as described in § 45.8, or with the variation margin requirements of § 45.4, a covered swap entity may net non-cleared swaps or non-cleared security-based swaps in accordance with this subsection.

(2) To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may calculate and comply with the applicable requirements of this part on an aggregate net basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement, subject to paragraph (a)(3) of this section.

(3)(i) Except as permitted in paragraph (a)(3)(ii) of this section, if an eligible master netting agreement covers non-cleared swaps and non-cleared security-based swaps entered into on or after the applicable compliance date set forth in § 45.1(e) or (g), all the non-cleared swaps and non-cleared security-based swaps covered by that agreement are subject to the requirements of this part and included in the aggregate netting portfolio for the purposes of calculating and complying with the margin requirements of this part.

(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of "Eligible master netting agreement" in § 45.2 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other non-cleared swaps or non-cleared security-based swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any non-cleared swap or non-cleared security-based swap entered into on or after the applicable compliance date set forth in § 45.1(e) or (g) is subject to the requirements of this part. Any such

netting portfolio that contains only non-cleared swaps or non-cleared security-based swaps entered into before the applicable compliance date is not subject to the requirements of this part.

(4) If a covered swap entity cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in this section meets the definition of eligible master netting agreement set forth in § 45.2, the covered swap entity must treat the non-cleared swaps and non-cleared security based swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of this part to collect margin, but the covered swap entity may net those non-cleared swaps and non-cleared security-based swaps in accordance with paragraphs (a)(1) through (3) of this section for the purposes of calculating and complying with the requirements of this part to post margin.

(b) *Minimum transfer amount.* Notwithstanding § 45.3 or § 45.4, a covered swap entity is not required to collect or post margin pursuant to this part with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to this part to be collected or posted and that has not yet been collected or posted with respect to the counterparty is greater than \$500,000.

(c) *Satisfaction of collecting and posting requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty under § 45.3, § 45.4, or § 45.6(e) if:

(1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the OCC that it has made appropriate efforts to collect or post the required margin; or

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(ii) Commenced termination of the non-cleared swap or non-cleared security-based swap with the counterparty promptly following the applicable cure period and notification requirements.

§ 45.6 Eligible collateral.

(a) *Non-cleared swaps and non-cleared security-based swaps with a swap entity.* For a non-cleared swap or non-cleared security-based swap with a swap entity, a covered swap entity shall collect initial margin and variation margin required pursuant to this part solely in the form of the following types of collateral:

(1) Immediately available cash funds that are denominated in:

(i) U.S. dollars or another major currency; or

(ii) The currency of settlement for the non-cleared swap or non-cleared security-based swap;

(2) With respect to initial margin only:

(i) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(ii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;

(iii) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § 45.12;

(iv) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(v) A publicly traded debt security that meets the terms of 12 CFR part 1

and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(vi) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(vii) A security solely in the form of:

(A) Publicly traded debt not otherwise described in paragraph (a)(2) of this section that meets the terms of 12 CFR part 1 and is not an asset-backed security;

(B) Publicly traded common equity that is included in:

(1) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by the OCC; or

(2) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(viii) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if:

(A) The fund's investments are limited to the following:

(1) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(2) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap