Please note that the comments expressed herein are solely my personal views

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- 17 CFR Parts 23 and 190
- RIN Number 3038–AD28
- Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy.

You are proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Specifically, the proposed rules impose requirements on swap dealers (SDs) and major swap participants (MSPs) with respect to the treatment of collateral posted by their counterparties to margin, guarantee, or secure uncleared swaps. Additionally, such proposed rules ensure that, for purposes of subchapter IV of chapter 7 of the Bankruptcy Code: Securities held in a portfolio margining account that is a futures account constitute "customer property"; and owners of such account constitute "customers".

I fully support these pragmatic and common sense proposals. I would only suggest that you should make the following change for completeness and in order to obviate the need for further clarification: under § 23.600 Definitions, I would recommend that you should specifically reference that Initial Margin is posted at the commencement or outset[1] of the swap transaction, to distinguish it from Variation Margin.

[1] This is how initial margin is usually defined. For example see Notice of proposed rulemaking: Margin and Capital Requirements for Covered Swap Entities, Agencies, April 2011; "Initial margin means eligible collateral that is pledged in connection with **entering into a swap**…" (my emphasis).

You have not proposed any particular disclosure requirements with respect to the notification of right to segregation. In answer to your specific question here: should the SD or MSP be required to disclose the cost of segregation, whether the cost of fees to be paid to the custodian (if the SD or MSP is aware of the amount of such fees), or differences in the terms of the swap that the SD or MSP is willing to offer to the counterparty if the counterparty elects or renounces the right to segregation? I would suggest that full disclosure should be required here, including all explicit and implicit costs of segregation. This would formalise the market practice and ensure that informed decisions were being made.

Proposed Regulation 23.601(c) requires that such notification be made to certain senior decisionmakers, in descending order of preference. Notification is made to the Chief Risk Officer, or the Chief Executive Officer, or to the highest level decisionmaker for the counterparty. I agree that this list of decisionmakers is appropriate for all entities.

Yours sincerely

Chris Barnard