

CFTC Interprets Obligations to Send Initial Margin Segregation Notices and Reports

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On October 31, the Commodity Futures Trading Commission issued a staff interpretation concerning its rules that oblige swaps dealers and major swap participants to send notices to their swap counterparties informing them of their right to request segregation of initial margin (IM) (but not variation margin (VM)) with an independent custodian. The interpretation covers three main points:

1. A swap dealer or major swap participant is not required to send either (a) the annual IM segregation notice described in CFTC Regulation 23.701 (each, a “Notice”), or (b) the quarterly report described in CFTC Regulation 23.704, to a counterparty unless that counterparty is required by contract or regulation to post IM.
2. A Notice must be sent each year to a counterparty who is required to post IM even if the counterparty has already elected IM segregation in response to a prior Notice.
3. A swap dealer or major swap participant may treat the lack of a response to a Notice as an election to forego IM segregation “provided that the notice under Regulation 23.701(a) includes a prominent and unambiguous statement that failure to respond within a reasonable time period will be deemed by the SD or MSP as confirmation of receipt of the notice and an election by the counterparty not to require segregation of initial margin.”

The full text of CFTC Staff Interpretation 14-132 can be found [here](#).

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National Law Review, Volume IV, Number 311

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