



The Wondering Boy by Du Feichen

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## REGULATORY MARGIN REQUIREMENTS FOR DERIVATIVES AND LEGAL DOCUMENTATION ISSUES — FAQ

场外衍生品监管保证金要求的基础知识和重要性暨  
常见问题解答

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**With the anticipated passing of the PRC Futures and Derivatives Law in 2022, now is the time for Chinese financial institutions and their counterparties to actively focus on regulatory margin requirements for OTC derivatives and related legal documentation issues.**

Based on KWM's extensive experience in advising major international and Chinese financial institutions and corporates on these issues, below are our answers to some frequently asked questions on this important topic.

《中华人民共和国期货和衍生品法》预计将于2022年通过。因此，现在正是中国金融机构及其交易对手积极关注场外衍生品监管保证金要求和相关法律文件问题的最佳时机。

基于金杜为主要的国际及中国金融机构、企业提供相关方面咨询的丰富经验，以下是我们对于这一重要议题一些常见问题的回答。

## 1. WHAT ARE REGULATORY MARGIN REQUIREMENTS?

### 什么是监管保证金要求？

After the global financial crisis in 2008, the G20 leaders committed to develop and implement, among other derivatives regulatory reforms, regulatory margin requirements in their respective jurisdictions to reduce systemic risk and create a level playing field across the globe.

Under regulatory margin rules, counterparties to OTC derivatives are required to post and collect margin (also referred to as collateral) to and from each other. This is designed to reduce counterparty credit risk because the collateral (usually in the form of high-quality liquid assets, such as cash or highly liquid debt securities) is available to offset losses following the default of a derivatives counterparty.

Fast forward to today, most major jurisdictions have adopted and implemented regulatory margin requirements. While there are important differences in the detailed rules in each jurisdiction, the broad requirements are similar because they are largely based on the global regulatory margin standards established jointly by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions ("**Global Margin Standards**").

Like most financial regulations, the Global Margin Standards and the local regulatory margin rules implemented in each jurisdiction ("**Local Margin Rules**") are highly complicated and full of technical jargon. In this article, we will try to explain some of the key concepts and related legal documentation issues in plain language.

2008年全球金融危机后，20国集团领导人致力于在各自的司法管辖区内制定和实施一系列的监管要求(包括监管保证金要求)，以减少系统性风险并在全球范围内创造一个公平的竞争环境。

根据监管保证金规则，场外衍生品的交易方之间需要互相提供和收取保证金(也被称为担保品)。这一规则旨在减少对手方信用风险，因为担保品(通常是以优质流动性资产形式(包括现金或较高流动性债券))可用于抵御衍生品交易对手方违约后的损失。

而发展至今，大多数主要司法管辖区都已经采用并实施了监管保证金要求。虽然每个司法管辖区的详细规则有着重要差异，但其基本要求是相似的，因为它们主要都是基于巴塞尔银行监管委员会和国际证监会组织共同制定的全球监管保证金标准 ("**全球保证金标准**") 而制定的。

像大多数金融法律法规一样，全球保证金标准和每个司法管辖区内所实施的当地监管保证金规则 ("**当地保证金规则**") 非常复杂，且充斥着大量专业技术术语。在本文中，我们将尝试用简单易懂的语言解释一些关键概念和相关的法律文件问题。

## 2. WHAT IS INITIAL MARGIN (“IM”) AND VARIATION MARGIN (“VM”) AND WHAT IS THE DIFFERENCE BETWEEN THE TWO?

什么是初始保证金 (“IM”) 和变动保证金 (“VM”), 两者之间有什么区别?

Regulatory margin requirements distinguish between IM and VM.

Variation margin (“VM”) is collateral that protects derivatives counterparties from the current exposure that one counterparty has to the other. The amount of VM reflects the size of the current exposure, which can change regularly due to market movements. Therefore, VM is generally required to be exchanged daily to track changes in the mark-to-market value of derivatives and to fully collateralise the mark-to-market exposure.

Initial margin (“IM”) is collateral that protects derivatives counterparties from the potential future exposure that can arise from future changes in the mark-to-market value of the derivatives during the time it takes to close out and replace the derivatives following a counterparty default. The amount of IM reflects the size of the potential future exposure.

IM和VM的监管保证金要求有所不同。

变动保证金 (“VM”) 是保护衍生品交易方免受对手方当前风险敞口的担保品。VM的数额反映了当前风险敞口的大小, 而风险敞口可能因市场变动而定期产生变化。因此, 通常需要每日交换VM以对应衍生品逐日盯市价值的变化, 并使得该等逐日盯市计算的风险敞口能够获得充分的增信覆盖。

初始保证金 (“IM”) 是保护衍生品交易方在其对手方违约后进行平仓和替换衍生品所需的时间段内, 避免因衍生品逐日盯市价值的未来变化而产生的潜在风险敞口的担保品。IM的数额反映了未来潜在风险敞口的大小。

## 3. WHO IS SUBJECT TO REGULATORY MARGIN REQUIREMENTS?

谁需要遵守监管保证金要求?

Generally speaking, regulated financial institutions are **directly** subject to Local Margin Rules issued by the relevant financial regulator(s). These rules generally require a regulated financial institution to both post and collect VM and IM to and from certain types of counterparties. In this article, we shall refer to the posting and collecting of margin between two counterparties as “**exchanging**” margin.

To comply with the regulatory requirement to exchange margin, a regulated financial institution will negotiate and enter into margin documents with each of its counterparties, which will impose contractual obligations on each side to exchange margin. Therefore, even if a counterparty to a regulated financial institution is not directly subject to regulatory margin rules (e.g., because it is not financially regulated), the counterparty becomes **indirectly and contractually** subject to margin requirements by virtue of entering into margin documents with a regulated financial institution.

**Financial and non-financial counterparties:** It is important to note that a regulated financial institution is not required to exchange margin with all types of counterparties. Generally speaking, a regulated financial institution is only required to exchange margin with “financial counterparties” or certain “systemically important non-financial counterparties”. The Local Margin Rules in each jurisdiction contain detailed definitions of these key terms, which are all slightly different from each other.

It is important to note that the definition of financial counterparty can be quite broad under certain Local Margin Rules and can capture any domestic or foreign entity that mainly engages in one or more financial activities (such as banking, lending, insurance, securities, derivatives or asset management activities) – even if that entity is not regulated.

A regulated financial institution is generally **not** required to exchange margin with a counterparty which is a sovereign, central bank, public sector entity or multilateral development bank. Again, these key terms are defined somewhat differently in each jurisdiction’s Local Margin Rules.

一般来说, 受监管的金融机构将**直接**受制于相关金融监管机构发布的当地保证金规则。这些规则通常要求受监管的金融机构向某些类型的对手方交纳和收取VM和IM。在本文中, 我们将把两个交易方之间交纳和收取保证金称为“**交换**”保证金。

为遵守交换保证金的监管要求, 受监管的金融机构将与其每一个交易对手协商并签订保证金文件, 这将对每一方施加交换保证金的合同义务。因此, 即使受监管金融机构的对手方并不直接受监管保证金规则的约束 (例如, 因为它没有受到金融监管), 但由于其与受监管的金融机构签订了保证金文件, 该交易方也会间接地、在合同上受到保证金要求的约束。

**金融和非金融对手方:** 需要注意的是, 受监管的金融机构不需要与所有类型的对手方交换保证金。一般来说, 受监管的金融机构只需要与“金融对手方”或某些“具有系统重要性的非金融对手方”交换保证金。每个司法管辖区的当地保证金规则都包含了这些关键术语的详细定义, 它们各自之间都略有不同。

值得注意的是, 根据某些当地保证金规则, 金融对手方的定义可能相当广泛, 且可以包括任何主要从事一种或多种金融活动 (如银行、借贷、保险、证券、衍生品或资产管理活动) 的国内或国外实体——即使该实体并不受监管。

受监管的金融机构一般不需要与作为主权国家、中央银行、公共部门实体或多边发展银行的对手方交换保证金。同样, 这些关键术语在每个司法管辖区的当地保证金规则中都有不同的定义。

#### 4. WHAT KIND OF DERIVATIVES ARE SUBJECT TO REGULATORY MARGIN REQUIREMENTS?

什么类型的衍生品需要遵守监管保证金要求？

Regulatory margin requirements generally apply to all non-centrally cleared derivatives. For cleared derivatives, the central counterparty or clearing house will impose its own margin requirements.

Regulatory margin requirements generally do *not* apply to transactions such as repos and securities lending transactions that are not themselves derivatives but share some common features with derivatives.

In addition, the Local Margin Rules in many jurisdictions exclude physically settled FX forwards and FX swaps as well as certain other categories of OTC derivatives from the scope of regulatory margin requirements.

监管保证金要求一般适用于所有非集中清算型衍生品。对于清算型衍生品，中央对手方或清算所将规定其自己的保证金要求。

监管性保证金要求一般**不**适用于回购类和证券借贷交易，这些交易本身不是衍生品，但与衍生品有一些共同特征。

此外，许多司法管辖区的当地保证金规则将实物交割的外汇远期和外汇掉期以及某些其他类别的场外衍生品排除在监管保证金要求的范围之外。

#### 5. WHICH REGULATORY MARGIN RULES APPLY TO A CROSS-BORDER DERIVATIVES TRANSACTION AND WHAT IS 'SUBSTITUTED COMPLIANCE'?

跨境衍生品交易应适用什么监管保证金要求？什么是“替代性合规”？

Multiple sets of Local Margin Rules may apply to the same cross-border derivatives transaction between two parties. For example, suppose Party A is a financial institution based in Jurisdiction A and is subject to Jurisdiction A's Local Margin Rules and suppose Party B is a financial institution based in Jurisdiction B and is subject to Jurisdiction B's Local Margin Rules. If Party A and Party B enter into a derivatives transaction, that transaction may well be subject to the Local Margin Rules in both Jurisdiction A and Jurisdiction B. This is because the Local Margin Rules in many jurisdictions have some degree of extraterritorial application.

While the Local Margin Rules in many jurisdictions are broadly based on the Global Margin Standards and are therefore quite similar, there are important differences in the details. Therefore, a derivatives transaction that is subject to the Local Margin Rules of more than one jurisdiction can give rise to complex compliance issues if the applicable Local Margin Rules impose different requirements.

多套本地保证金规则可能适用于双方之间的同一宗跨境衍生品交易。例如，假设甲方是设在司法管辖区A的金融机构，受司法管辖区A的当地保证金规则约束；假设乙方是设在司法管辖区B的金融机构，受司法管辖区B的当地保证金规则约束。如果甲方和乙方进行衍生品交易，该交易很可能同时受制于司法管辖区A和司法管辖区B的当地保证金规则。这是因为许多司法管辖区的当地保证金规则具有一定程度的域外适用性。

虽然许多司法管辖区的当地保证金规则大都以全球保证金标准为基础因而十分相似，但在它们细节上有较大不同。因此，如果适用的当地保证金规则规定了不同的要求，受多于一个司法管辖区当地保证金规则约束的衍生品交易将会引起复杂的合规问题。

**Substituted compliance:** Fortunately, many jurisdictions have developed a mechanism for addressing these types of compliance issues. This mechanism is commonly referred to as ‘substituted compliance’ and it involves a financial regulator in one jurisdiction (Jurisdiction A) determining that the Local Margin Rules in another jurisdiction (Jurisdiction B) is comparable or equivalent to its own Local Margin Rules. On the basis of this comparability or equivalence determination, the financial regulator in Jurisdiction A may allow a financial institution regulated by it to satisfy regulatory margin requirements in Jurisdiction A by complying with Jurisdiction B’s Local Margin Rules instead of Jurisdiction A’s Local Margin Rules.

In the example given above, if substituted compliance is available, then Party A and Party B can choose to comply with only Jurisdiction B’s Local Margin Rules, and this would automatically result in deemed compliance with Jurisdiction A’s Local Margin Rules. This way, the application of multiple sets of duplicative or conflicting regulatory margin requirements to the same transaction can be avoided.

Each jurisdiction’s Local Margin Rules contain detailed requirements that must be satisfied in order for substituted compliance to be applicable. These requirements should be carefully reviewed before relying on substituted compliance.

**‘Strictest of’ approach:** Where substituted compliance is not available (in whole or in part), then as a practical matter, the parties to a cross-border derivatives transaction will need to comply with the strictest requirement imposed by all of the applicable Local Margin Rules. By complying with the strictest requirement, the parties will, as a matter of logic, be complying with the less strict requirements imposed by the other applicable Local Margin Rules.

The standard margin documents developed by the derivatives industry (discussed below) contain provisions which allow parties to rely on substituted compliance or the ‘strictest of’ approach (as the case may be) to comply with multiple sets of applicable Local Margin Rules.

**替代性合规:** 幸运的是,许多司法管辖区已经实施了一种机制来解决这些类型的合规问题。这种机制通常被称为“替代性合规”,它指的是一个司法管辖区(司法管辖区A)的金融监管机构确定另一个司法管辖区(司法管辖区B)的当地保证金规则与自己的当地保证金规则具有可比性或等同性。根据这种可比性或等同性的判断,司法管辖区A的金融监管机构可以允许受其监管的金融机构通过遵守司法管辖区B的当地保证金规则而不是司法管辖区A的当地保证金规则来满足司法管辖区A的监管保证金要求。

在上面的例子中,如果替代性合规可行,那么甲方和乙方可以选择只遵守管辖区B的当地保证金规则,且这将自动使司法管辖区A的当地保证金规则被视为已遵守。因此,就可以避免对同一衍生品交易适用多套重复或冲突的监管保证金要求。

每个司法管辖区的当地保证金规则都包含详细的要求,必须满足这些要求才能适用替代性合规。在依赖替代性合规之前,应仔细审查这些要求。

**遵守最严格的要求:**如果替代性合规全部或部分不适用,那么实际上,跨境衍生品交易各方将需要遵守所有适用的当地保证金规则所规定中最严格的要求。通过遵守最严格的要求,逻辑上,各方将自动遵守其他适用的当地保证金规则所规定的较不严格的要求。

衍生品行业制定的标准保证金文件(将在下文讨论)包含允许各方依靠替代性合规或遵守最严格要求的方法(视情况而定)以遵守多套适用的地方保证金规则的条款。

## 6. WHAT LEGAL DOCUMENTS ARE NEEDED TO COMPLY WITH REGULATORY MARGIN REQUIREMENTS?

### 需要哪些法律文件来遵守监管保证金要求?

To comply with regulatory margin requirements, regulated financial institutions need to enter into a large number of new legal documents with their counterparties. These legal documents impose, among other things, detailed VM and IM calculation and exchange obligations on both parties.

The International Swaps and Derivatives Association (“ISDA”) has developed industry standard margin documents that are designed to comply with applicable Local Margin Rules. Since VM and IM are calculated differently and are required to be held in different ways, there are separate sets of legal documents for VM and IM.

Despite the development and widespread use of standard margin documents, these legal documents are highly complicated and heavily negotiated, because each document allows the parties to make a large number of elections and further amendments to tailor for their specific commercial and regulatory circumstances.

The process of negotiating margin documents is comparable to negotiating an ISDA schedule or the elections and variables paragraph of a Credit Support Annex (“CSA”). However, the process can be much more complicated because, as explained below, multiple margin documents are required to comply with the VM and IM requirements. Accordingly, many financial institutions and their counterparties engage external law firms to assist with margin documentation, negotiation and related legal and compliance issues.

**Overview of standard VM documents:** To help parties comply with VM requirements, ISDA has published, among other things, the English law governed ISDA 2016 Credit Support Annex for Variation Margin (“VM CSA”). The VM CSA is based on the ISDA 1995 English law CSA and is an annex to the ISDA Schedule. Like the 1995 CSA, the VM CSA involves the outright transfer of legal and beneficial title in the collateral from the transferor to the transferee, while the transferee has a contractual obligation to deliver equivalent credit support to the transferor in certain circumstances. The elections and variables paragraph of the VM CSA allows parties to specify eligible collateral types (subject to regulatory restrictions) and make other elections or amendments to meet applicable commercial and regulatory requirements.

为了遵守监管保证金要求,受监管的金融机构需要与他们的对手方签订大量新的法律文件。这些法律文件对双方规定了详细的VM和IM计算和交换义务等要求。

国际掉期与衍生工具协会 (INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, “ISDA”) 已经制定了行业标准保证金文件,旨在遵守适用的当地保证金规则。由于VM和IM的计算方式不同,所要求的持有方式不同,因此VM和IM有各自不同的法律文件。

尽管标准保证金文件得到了市场参与者的广泛使用,但有些法律文件非常复杂且须经过大量的谈判,因每份文件都允许双方进行多种选择和进一步的修订,以适应其独特的商业和监管环境。

保证金文件的谈判过程与ISDA补充协议或信用支持附件 (“CSA”) 的谈判过程相类似。然而前者可能要复杂得多,因为正如下文所解释的,为遵守VM和IM的要求,交易双方需要签订多种不同类型的保证金文件。因此,许多金融机构及其对手方会聘请外部律所协助其处理保证金文件、谈判和相关的法律及合规问题。

**标准VM文件概述:**为帮助双方遵守VM要求,ISDA发布了受英国法律管辖的ISDA 2016年版变动保证金信用支持附件 (“VM CSA”) 等标准文件。VM CSA基于ISDA 1995年版的英国法CSA而制,是ISDA补充协议的一个附件。与1995年版CSA一样,VM CSA涉及转让方将担保品的法定和实益所有权直接转让给受让方,而受让方在合同上有义务在特定情况下向转让方提供同等的信用支持。VM CSA允许双方指定合格担保品的类型(受限于监管限制),并做出其他选择或修订以满足适用的商业和监管要求。



**Overview of standard IM documents:** The Local Margin Rules in most jurisdictions generally require IM to be held in a segregated account and not to be rehypothecated, repledged or reused (“**Segregation Requirement**”). Specifically, IM should be held in an account with an independent third-party custodian which is segregated from the proprietary assets of the collateral taker and custodian, and adequately protected from insolvency of the collateral provider, collateral taker and custodian. The Segregation Requirement which applies to IM (but not VM) means that IM arrangements are documented separately from VM arrangements.

To help parties comply with IM requirements, ISDA has developed a wide range of standard IM documents designed to work with different types of custodians and governing laws. For example, ISDA has developed IM documents for circumstances where the custodian is a bank and where the custodian is an international central securities depository (“**ICSD**”) such as Euroclear or Clearstream.

As far as the English law documents are concerned, ISDA’s ‘flagship’ IM document is the 2018 Credit Support Deed (“**CSD**”) for Initial Margin (“**IM CSD**”). The IM CSD is based on the ISDA 1995 English law CSD and is therefore a separate security document executed as a deed and *not* forming part of the ISDA Master Agreement. Instead of relying on title transfer, the IM CSD involves creating a security interest over the segregated account and the collateral held in it. Significantly, pursuant to regulatory margin requirements, IM must generally be transferred on a two-way gross basis, which means that each counterparty must transfer collateral to the other counterparty’s segregated account and these two separate transfer obligations cannot be netted or set off against each other. The elections and variables paragraph of the IM CSD allows parties to make various elections and amendments to meet applicable commercial and regulatory requirements.

**标准IM文件的概述:**大多数司法管辖区的当地保证金规则通常要求在一个隔离的账户中持有IM,并且IM不得被再抵押、再质押或再使用(“**隔离要求**”)。具体而言,IM应存放在于独立第三方托管人处开立的账户中,该账户与担保品接收方和托管人的自有资产相隔离,且充分远离担保品提供方、担保品接收方和托管人的破产风险。隔离要求适用于IM而非VM,因此IM和VM有各自不同的法律文件。

为帮助双方遵守IM要求,ISDA制定了一系列标准的IM文件,旨在与不同类型的托管人与管辖法律相配合。例如,ISDA已经为托管人是银行和托管人是国际性中央证券存管机构(INTERNATIONAL CENTRAL SECURITIES DEPOSITORY,“**ICSD**”) (如欧洲清算银行(“**欧清**”)或明讯银行(“**明讯**”))的情况制定了IM文件。

就英国法文件而言,ISDA的“旗舰性”IM文件是2018年版初始保证金信用支持契据(“**IM CSD**”)。IM CSD基于ISDA 1995年版英国法CSD而制,因此是一份单独的担保文件,其作为契据执行,不构成ISDA主协议的一部分。IM CSD不依靠担保品的所有权转让,而是对独立账户和其中的担保品设立担保权益。

重要的是,根据监管保证金要求,IM通常须以毛额进行双向转让,这意味着每个交易方必须将担保品转让到对手方的隔离账户中,且这两个单独的转让义务不能相互抵销。IM CSD允许双方进行各种选择和修订,以满足适用的商业和监管要求。

**Bank custodian IM documents:** Besides the IM CSD, ISDA has published the Bank Custodian Collateral Transfer Agreement for IM (“**Bank Custodian CTA**”) and separate corresponding Bank Custodian Security Agreements (each a “**Bank Custodian SA**”) governed by the laws of different jurisdictions. In essence, the Bank Custodian CTA and Bank Custodian SA represent the two halves of the IM CSD: (1) the Bank Custodian CTA governs the mechanical and operational aspects of the margin exchange process and is subject to the same governing law as the relevant ISDA Master Agreement; and (2) the Bank Custodian SA relates to the creation and enforcement of the security interest and is governed by the law where the segregated account is located.

In addition to the Bank Custodian CTA and SA, the collateral provider, collateral taker and bank custodian will also need to enter into an account control agreement (“**ACA**”). The ACA governs, among other things, the circumstances and manner in which the collateral provider or collateral taker can exercise exclusive control over the segregated account and instruct the custodian to transfer collateral out of the account. Major custodians have published standard form ACAs, which are subject to certain elections that the parties can make to reflect their commercial and regulatory needs. Also, the collateral provider will enter into a custody agreement governing the terms of the custody account it has with the bank custodian. To comply with regulatory margin requirements, IM will be transferred from the collateral provider’s custody account into the segregated account.

**Euroclear and Clearstream IM documents:** Where the custodian is not a bank but Euroclear or Clearstream, the parties would enter into (1) the ISDA Euroclear CTA and SA or (2) the ISDA Clearstream CTA and SA, as the case may be. The credit support document is split into a CTA and SA for similar reasons as in the bank custodian context. The Euroclear and Clearstream IM documents are designed to specifically work with the Euroclear and Clearstream membership documents, respectively. Therefore, the elections and variations provisions in the Euroclear and Clearstream IM documents are somewhat different to those found in the bank custodian IM documents. In addition, Euroclear or Clearstream (as the case may be) may also ask parties to enter into a Collateral Management Services Agreement with it.

**银行托管人IM文件:**除了IM CSD之外,ISDA还发布了适用于IM的银行托管人担保品交换协议(“**银行托管人CTA**”)和与其相配套的、由不同司法管辖区法律管辖的银行托管人担保协议(“**银行托管人SA**”)。实质上,银行托管人CTA和银行托管人SA代表了IM CSD的两个部分:(1)银行托管人CTA规定了保证金的交换流程,并受到与相关ISDA主协议相同的管辖法的约束;及(2)银行托管人SA涉及担保权益的设立和处置,并受隔离账户所在地法律的管辖。

除了银行托管人CTA和SA之外,担保品提供方、担保品接收方和银行托管人还需要签署一份账户控制协议(“**ACA**”)。ACA规定了,担保品提供方或担保品接收方可以对隔离账户行使排他性控制权并指示托管人将担保品转出账户的情形和方式等。主要的托管人已经公布了标准格式的ACA,各方可以根据自己的商业和监管需求在ACA中进行特定的选择。另外,担保品提供方将签署一份托管协议以管理其在银行托管人处所开立的托管账户。为遵守监管保证金要求,IM将从担保品提供方的托管账户转入隔离账户。

**欧清和明讯IM文件:**如果托管人不是普通的商业银行而是欧清或明讯,各方将视情况而定签署(1)ISDA欧清CTA和SA或(2)ISDA明讯CTA和SA。与银行托管人IM文件类似,欧清/明讯CTA和SA代表了IM CSD的两个部分。欧清和明讯IM文件旨在分别与欧清和明讯的会员文件进行配合。因此,欧清和明讯IM文件中的选项与银行托管人IM文件中的选项有一些差异。欧清与明讯也可能需要与各交易对手签署担保品管理服务协议。





## 7. WHAT IF A DERIVATIVE COUNTERPARTY IS BASED IN A NON-NETTING JURISDICTION?

如果衍生品交易对手方位于非净额结算管辖区该怎么办？

Under the Local Margin Rules in *certain* jurisdictions, a regulated financial institution may not be required to exchange margin with a counterparty that is based in a “*non-netting jurisdiction*”, being a jurisdiction where a ‘clean’ industry netting opinion has not been issued. A number of specific conditions must be satisfied for the ‘non-netting jurisdiction’ exemption to apply. For example, under *certain* Local Margin Rules, the exemption is only available if, among other things, a legal review confirms that netting cannot be enforced in the non-netting jurisdiction with certainty at all times and the amount of derivatives relying on the exemption is below a prescribed cap.

There have been significant developments in recent years in relation to the legal and regulatory framework for the enforceability of netting in the People’s Republic of China (“*PRC*”). The release of the draft *PRC Futures and Derivatives Law* for public consultation in 2021 marked a milestone in the *PRC*’s legal reforms on netting. In preparation for the passing of the *PRC Futures and Derivatives Law* later this year, international financial institutions should carefully re-assess their margin arrangements with their *PRC*-based counterparties. We have been working closely with our financial institution clients to get ready to negotiate and enter into margin documentation with their major international counterparties.

根据某些司法管辖区的当地保证金规则，受监管的金融机构可能不需要与位于“**非净额结算管辖区**”（即没有“干净的”净额结算行业法律意见书的司法管辖区）的对手方交换保证金。若要适用该等“非净额结算管辖区”的豁免，必须满足若干具体条件。例如，根据某些当地保证金规则，只有在法律审查意见确认净额结算无法在该非净额结算管辖区内被执行，且依赖于该豁免的衍生品交易数额低于所规定上限的情况下，豁免方可适用。

近年来，中国有关净额结算可执行性的法律及监管框架有了重大发展。2021年，《**中华人民共和国期货和衍生品法**》征求意见稿草案的发布，标志着中国净额结算法律改革的一个里程碑。为迎接今年早些时候《**中华人民共和国期货与衍生品法**》的正式通过，国际金融机构应谨慎地重新评估其与中国对手方的保证金安排。我们一直同我们的金融机构客户紧密合作，准备好与其主要国际对手方进行谈判并签署有关保证金文件。

## 8. WHERE CAN I LEARN MORE ABOUT REGULATORY MARGIN REQUIREMENTS AND LEGAL DOCUMENTATION ISSUES?

我在哪里可以更多地了解监管保证金要求和法律文件问题？

We at KWM are here to help you. KWM regularly assists international and PRC-based financial institutions and corporates with ISDA/NAMFII, CSA, VM and IM margin document negotiations, as well as with designing and documenting innovative and complex cross-border derivatives products. We also regularly advise international and PRC-based clients on margin and other regulatory requirements that apply to derivatives transactions.

KWM is ISDA's legal counsel in the PRC and has been actively participating in legal developments relating to the enforceability of close-out netting, collateral segregation and title transfer arrangements in the PRC. We are familiar with the unique issues faced by PRC-based financial institutions and their counterparties and would be pleased to share our insights with you. Please feel free to contact our core team members below.

金杜愿意为您提供帮助。金杜经常协助国际和中国的金融机构及企业进行ISDA、NAMFII、CSA、VM与IM保证金文件的谈判。我们在最为复杂和最具创新性的跨境衍生工具和结构化融资领域引领市场。我们还经常向国际和中国的客户提供有关衍生品交易保证金和其他监管要求的法律服务。

金杜是ISDA在中国的法律顾问，并一直积极参与中国的终止净额结算可执行性、担保品隔离和所有权转让安排的有关法律发展。我们熟悉中国的金融机构及其对手方所面临的独特情况，并很乐意与您分享我们的见解。请随时联系我们的核心团队成员（联系方式如下）。

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