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## CLIENT ALERT

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# CFTC CROSS-BORDER GUIDANCE FREQUENTLY ASKED QUESTIONS

Section 722(d) of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) by adding section 2(i), which provides that the provisions of the CEA relating to swaps shall not apply to activities outside the United States unless those activities (1) “have a direct and significant connection with activities in, or effect on, commerce of the United States;” or (2) “contravene [Commission rules or regulations] as are necessary or appropriate to prevent the evasion of [the swaps provisions of the CEA] . . . .”

Pursuant to this statutory authority, on July 12, 2012, the Commodity Futures Trading Commission (“CFTC” or “Commission”) released a proposed interpretive guidance and policy statement (the “Guidance”) regarding the cross-border application of the swap provisions. Subsequently, the Commission finalized and voted to approve the Guidance on July 12, 2013. The Guidance includes discussion regarding the scope of the term “U.S. person,” the framework for swap dealer and major swap participant registration determinations, and the treatment of swaps for various registered and non-registered entities. The Guidance will become effective immediately upon publication in the Federal Register. Lastly, on July 12, 2013, the Commission also approved a final exemptive order with respect to certain swap requirements, providing temporary conditional relief effective on July 13, 2013, which will expire on December 31, 2013 or such earlier date as specified in the order.

## ENTITY DEFINITIONS

*1. What is the Commission’s definition of a U.S. person?*

The Commission interprets the term “U.S. person” to include, but not be limited to:

- (i) any natural person who is a resident of the United States;

- (ii) any estate of a decedent who was a resident of the United States at the time of death;
- (iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a “legal entity”), in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;<sup>1</sup>
- (iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;
- (v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;
- (vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned<sup>2</sup> by one or more persons described in prong (i), (ii), (iii), (iv), or (v), except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons;
- (vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity;<sup>3</sup> and
- (viii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi), or (vii).

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<sup>1</sup> Prong (iii) would encompass legal entities that engage in non-profit activities; U.S. state, county, and local governments, and their agencies and instrumentalities; and a legal entity that is not incorporated in the United States if it has a “principal place of business” in the United States.

<sup>2</sup> For purposes of this prong, majority-owned means the beneficial ownership of more than 50 percent of the equity or voting interests in the collective investment vehicle.

<sup>3</sup> The Commission does not intend to include in this prong those legal entities that have negligible U.S. ownership interests. Rather, if the structure of an entity is such that the U.S. owners are ultimately liable for the entity’s obligations and liabilities, such U.S. owner would be considered a U.S. person. In contrast, a limited liability corporation or a limited liability partnership would generally not be covered under this prong.

There may be situations where a person not fully described above is treated as a U.S. person by the Commission in view of the facts and circumstances, including (1) the strength of the connections between the person’s swap-related activities and U.S. commerce; (2) the extent to which such activities are conducted in the United States; (3) the importance of the United States (as compared to other jurisdictions where the person may be active) of regulating the person’s swap-related activities; (4) the likelihood that including the person within the interpretation of U.S. person could lead to regulatory conflicts; and (5) considerations of international comity.

*2. For purposes of the Commission’s Guidance, how does the Commission define a “foreign branch” of a U.S. swap dealer or U.S. major swap participant?*

A foreign branch of a U.S. swap dealer or U.S. major swap participant is: (1) subject to Regulation K, which is issued by the Federal Reserve Board, or the FDIC International Banking Regulation, or otherwise designated as a “foreign branch” by the U.S. bank’s primary regulator, (2) maintains accounts independently of the home office and of accounts of other foreign branches with the profit and loss accrued at each branch determined as a separate item for each foreign branch, and (3) subject to substantive regulation in banking or financing in the jurisdiction where it is located.

*3. Is a foreign branch of a U.S. person a “U.S. person”?*

Yes. The Commission views the activities of a foreign branch as the activities of the principal entity and, therefore, a foreign branch of a U.S. person is a U.S. person. Foreign branches of U.S. persons, however, may comply with Transaction-Level Requirements through substituted compliance, where appropriate, with respect to swaps with foreign counterparties and a foreign branch of another U.S. person.

*4. What are the factors that the Commission considers in determining whether a swap is considered to be with the foreign branch of a U.S. bank?*

If all of the following factors apply, then a swap is considered to be with the foreign branch of a U.S. bank: (1) the employees negotiating and agreeing to the terms of the swap (or, if the swap is executed electronically, managing the execution of the swap), other than employees with functions that are solely clerical or ministerial, are located in such foreign branch or in another foreign branch of the U.S. bank; (2) the foreign branch or another foreign branch is the office through which the U.S. bank makes and receives payments and deliveries under the swap on behalf of the foreign branch pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the U.S. bank is such foreign branch; (3) the swap is entered into by such foreign branch in its normal course of business; (4) the swap is treated as a swap of the foreign branch for tax purposes; and (5) the swap is reflected in the local accounts of the foreign branch.

5. *What is an affiliate conduit and what are factors the Commission considers when determining whether a non-U.S. person is an affiliate conduit?*

An affiliate conduit includes entities that function as a conduit or vehicle for U.S. persons conducting swap transactions with third-party counterparties. The factors that are relevant to considering whether a non-U.S. person is an “affiliate conduit” include: (1) the non-U.S. person is a majority-owned affiliate of a U.S. person; (2) the non-U.S. person is controlling, controlled by, or under common control with the U.S. person; (3) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person; and (iv) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third-party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates.

6. *What is a guarantee of a swap and does an entity’s status as a non-U.S. guaranteed affiliate impacts its treatment under the Guidance?*

A guarantee of a swap is a collateral promise by a guarantor to answer for the debt or obligation of a counterparty obligor under a swap. The Guidance addresses the impact of the cross-border framework on a non-U.S. person that is an affiliate of a U.S. person and is guaranteed by a U.S. person. For example, a guaranteed or conduit affiliate is expected to count all of its swap dealing transactions—whether with U.S. or non-U.S. counterparties—towards the *de minimis* threshold for swap dealer registration. Further, whether or not an entity is guaranteed by a U.S. person affects the availability of substituted compliance. *See Substituted Compliance FAQs.*

## ENTITY- AND TRANSACTION-LEVEL REQUIREMENTS

7. *What are Entity-Level Requirements?*

Entity-Level Requirements apply to a swap dealer or major swap participant as a whole. The Entity-Level Requirements are divided into two categories. The first category includes requirements related to: (1) capital adequacy, (2) chief compliance officer, (3) risk management, and (4) swap data recordkeeping. The second category includes: (1) swap data repository reporting (“SDR Reporting”), (2) certain aspects of swap data recordkeeping related to complaints, marketing, and sales materials, and (3) physical commodity large swaps trader reporting (“Large Trader Reporting”).

### 8. *What are Transaction-Level Requirements?*

Transaction-Level Requirements apply to an individual swap transaction or trading relationship, or on a transaction-by-transaction basis. The Transaction-Level Requirements are divided into two categories. All of the Transaction-Level Requirements, except external business conduct standards, are in Category A: (1) required clearing and swap processing; (2) margining (and segregation) for uncleared swaps; (3) mandatory trade execution; (4) swap trading relationship documentation; (5) portfolio reconciliation and compression; (6) real-time public reporting; (7) trade confirmation; and (8) daily trading records. External business conduct standards are in Category B.

## SUBSTITUTED COMPLIANCE

### 9. *What is the Commission's substituted compliance regime?*

Requirements under Title VII of the Dodd-Frank Act applicable to swap dealers and major swap participants (“MSPs”) apply to all registered swap dealers and MSPs, irrespective of where they are based. In certain circumstances, however, the Commission permits a non-U.S. swap dealer, non-U.S. MSP, U.S. bank that is a swap dealer or MSP with respect to its foreign branches, or non-U.S. non-registrant that is a guaranteed or conduit affiliate, to substitute compliance with the requirements of the relevant home jurisdiction’s law and regulations (or in the case of foreign branches of a bank, the foreign location of the branch) instead of complying with otherwise applicable Entity-Level Requirements and/or Transaction-Level Requirements under Commission regulations.

The Commission would have to find that such home jurisdiction’s requirements (or in the case of foreign branches of a bank, the foreign location of the branch) are comparable with and as comprehensive as the corollary area(s) of regulatory obligations encompassed by the Entity- and Transaction-Level Requirements.

### 10. *Who may request a comparability determination?*

Persons who may request a comparability determination include: (1) foreign regulators, (2) an individual non-U.S. entity, or group of non-U.S. entities; (3) a U.S. bank that is a swap dealer or major swap participant with respect to its foreign branches; or (4) a trade association, or other group, on behalf of similarly-situated entities. Persons requesting a comparability determination may want to coordinate their application with other market participants and their home regulators to simplify and streamline the process.

*11. What is the Commission's timeframe for reviewing submissions for substituted compliance?*

During the CFTC open meeting to consider the Guidance on July 12, 2013, Commissioner O'Malia requested comments from Commission staff regarding the timeframe for making substituted compliance determinations. In response, staff noted that it had received submissions from all six jurisdictions of registered swap dealers, including the European Union, Switzerland, Hong Kong, Australia, Canada, and Japan. Commission staff stated that it is in the process of reviewing these submissions, developing an understanding of the regulations, guidelines, and laws of each jurisdiction, and consulting with market participants and regulators in each jurisdiction. The Commission expects this process "will take a matter of months."

*12. Does a comparability determination apply to all persons or transactions in a particular jurisdiction?*

Yes. Following a comparability determination for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission.

*13. Will the Commission enter into any agreements with relevant foreign regulators in connection with a determination that substituted compliance is appropriate?*

The Commission expects to enter into an appropriate MOU or similar arrangement with relevant foreign regulators in connection with its substituted compliance determinations. In particular, the Commission and relevant foreign regulators will need to establish supervisory MOUs or other arrangements, providing for information sharing and cooperation in terms of supervising swap dealers and major swap participants.

*14. Is substituted compliance available to U.S. swap dealers and U.S. major swap participants?*

No. U.S. swap dealers and U.S. major swap participants are generally expected to comply in full with all of the Entity-Level Requirements and Transaction-Level Requirements without the availability of substituted compliance.

*15. Is substituted compliance available to a foreign branch of a U.S. bank that is a swap dealer or major swap participant?*

These entities are expected to comply in full with the Entity-Level Requirements without the availability of substituted compliance.

In terms of Transaction-Level Requirements, a foreign branch of a U.S. swap dealer or major swap participants ("MSPs") is expected to comply in full with Category A Transaction-Level Requirements where its counterparty is a U.S. person. However, substituted compliance is generally available to a foreign branch of a U.S. bank with regard to



Category A Transaction-Level Requirements where the counterparty to a swap transaction is a non-U.S. person or a foreign branch of a U.S. bank that is a swap dealer or MSP. Lastly, a foreign branch of a U.S. bank must comply with the Category B Transaction-Level Requirements only if the counterparty to the swap is a U.S. person.

*16. Is substituted compliance available to non-U.S. swap dealers or non-U.S. major swap participants?*

These firms are subject to all of the Entity-Level Requirements, but are eligible for substituted compliance in the following circumstances. In terms of the first category of Entity-Level Requirements, these entities are eligible for substituted compliance. With respect to SDR reporting (*i.e.* SDR Reporting and swap data recordkeeping related to complaints, marketing, and sales materials) in the second category of Entity-Level Requirements, these entities are eligible for substituted compliance solely with respect to swaps where the counterparty is a non-U.S. person that is not a guaranteed or conduit affiliate. In terms of the other Entity-Level Requirements in the second category (*i.e.* swap data recordkeeping related to complaints, marketing, and sales materials), these entities are eligible for substituted compliance solely with respect to swaps where the counterparty is a non-U.S. person.

In terms of Transaction-Level Requirements, the availability of substituted compliance depends in part on the type of counterparty to the swap transaction. In a swap between a non-U.S. swap dealer or non-U.S. major swap participant and a U.S. person, the parties are required to comply with Category A Transaction-Level Requirements, and substituted compliance for Category A Transaction-Level Requirements generally is not available. The Commission notes, however, that with respect to a swap executed anonymously between any non-U.S. person and a U.S. person on a registered DCM or SEF and cleared, the non-U.S. person is generally considered to have satisfied each of the eight Category A Transaction-Level Requirements as a result of being executed on a DCM or SEF. In other words, neither party would have to take any further steps to comply with the Category A Transaction-Level Requirements in connection with such transaction.

In a swap between a non-U.S. swap dealer or non-U.S. major swap participant and a foreign branch of a U.S. bank that is a swap dealer or major swap participant, substituted compliance is available for Category A Transaction-Level Requirements.

In a swap between a non-U.S. swap dealer or non-U.S. major swap participant and a non-U.S. person that is guaranteed or conduit affiliate, the parties are required to comply with Category A Transaction-Level Requirements, but substituted compliance may be available. Conversely, in a swap between a non-U.S. swap dealer or non-U.S. major swap participant and a non-U.S. person that is not guaranteed or conduit affiliate, the parties are not expected to comply with Category A Transaction-Level Requirements.

In terms of Category B Transaction-Level Requirements, where a swap is between a non-U.S. swap dealer or non-U.S. major swap participant and a U.S. person, the parties must comply with the Category B Transaction-Level Requirements. These requirements, however, do not apply to a swap between such entities that is executed anonymously on a registered DCM or SEF and cleared. Conversely, in terms of a swap between a non-U.S. swap dealer or non-U.S. major swap participant and a non-U.S. counterparty, the parties to the swap are not required to comply with Category B Transaction-Level Requirements.

*17. What is the impact of the Commission's Guidance on market participants that are not registered as a swap dealer or major swap participant?*

Several of the Commission regulations—including those related to required clearing, trade execution, real-time public reporting, large trader reporting, SDR reporting, and swap data recordkeeping (“Non-Registrant Requirements”)—apply to non-registrants.

In terms of swaps between non-registrants where at least one is a U.S. person, the parties to the swap must comply with the Non-Registrant Requirements and substituted compliance is not available. The Commission notes, however, that when a swap is executed anonymously on a registered DCM or SEF between two non-registrants and cleared by a registered DCO, and at least one of the counterparties to the swap is a U.S. person, neither party to the swap is required to comply with the Non-Registrant Requirements that would otherwise apply to the swap, with the exception of large trader reporting, SDR reporting, and swap data recordkeeping.

In terms of swaps between non-registrants that are both non-U.S. persons, the Non-Registrant Requirements are inapplicable, with the exception of the large trader reporting and recordkeeping requirements. However, for a swap between two non-registrants that are not U.S. persons, and both counterparties to the swap are guaranteed or conduit affiliate, the Non-Registrant Requirements apply, though the parties are eligible for substituted compliance. Lastly, with respect to swaps between two non-registrants, where neither or only one party is a guaranteed or conduit affiliate, the parties are generally not required to comply with the Non-Registrant Requirements.<sup>4</sup>

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<sup>4</sup> The parties would be required to comply only with the conditions of the Inter-Affiliate Exemption, including the treatment of outward-facing swaps condition and large trader reporting.



## REGISTERED SERVICE PROVIDERS

*18. Does the Guidance clarify the impact of the Commission’s cross-border approach on registered service providers, including SDRs and SEFs?*

No. Unlike the SEC’s cross-border proposal, the CFTC’s Guidance does not focus upon the impact of the cross-border framework on registered service providers. Rather, the Guidance focuses upon the application of swaps provisions to various counterparties. As a result, it is yet unclear how the Commission will handle issues involving, for example, the potential registration and regulation (if any) of foreign-based registered service providers.

*19. What is the significance of certain swaps executed anonymously on a SEF, DCM, or FBOT and cleared?*

In terms of a non-U.S. person’s registration threshold for swap dealing activity, if a non-U.S. person that is not guaranteed by a U.S. person enters into swaps anonymously on a registered DCM, SEF, or FBOT, and such swaps are cleared, the non-U.S. person generally is not required to count such swaps against its *de minimis* threshold.

Further, as noted in the *Substituted Compliance* FAQs, entities may be considered to have satisfied certain swaps requirements by executing a swap anonymously on a registered DCM or SEF and clearing such swap. For example, with respect to a swap executed anonymously between any non-U.S. person and a U.S. person on a registered DCM or SEF and cleared, the non-U.S. person is generally considered to have satisfied each of the eight Category A Transaction-Level Requirements as a result of being executed on a DCM or SEF. In other words, neither party would have to take any further steps to comply with the Category A Transaction-Level Requirements in connection with such transaction.

*20. Are the SDR reporting and real-time public reporting requirements eligible for substituted compliance?*

SDR reporting and real-time public reporting are generally eligible for substituted compliance for certain entities, provided that that Commission has direct access (including electronic access) to the relevant swap data<sup>5</sup> that is stored at the foreign trade repository. Direct access generally includes, at a minimum, real time, direct electronic access to the data and the absence of any legal impediments to the Commission’s access to the data.

*21. Will the Commission grant relief to European Union-regulated multilateral trading facilities and trading platforms?*

The Commission states that it will, through staff no-action letters, extend appropriate time-limited transitional relief to certain European Union-regulated multilateral trading facilities (MTFs), in the event that the Commission’s trade

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<sup>5</sup> The Guidance is unclear as to whether the Commission expects to have direct access to “the *relevant* data that is stored at the foreign trade depository” or “*all* of the reported swap data elements that are stored in a foreign trade repository” (emphasis added).

execution requirement is triggered before March 15, 2014. Such relief would be available through March 15th for MTFs that have multilateral trading schemes, a sufficient level of pre- and post-trade price transparency, non-discriminatory access by market participants, and an appropriate level of oversight. Further, the Commission will consult with the European Commission to consider extending regulatory relief to European Union-regulated trading platforms that are subject to requirements that achieve regulatory outcomes that are comparable to those achieved by the requirements for SEFs. Both parties will assess progress in January 2014.

## SEC CROSS-BORDER PROPOSAL

*22. What action has the Securities and Exchange Commission (“SEC”) taken with respect to the cross-border application of security-based swap regulations?*

On May 1, 2013, the SEC proposed rules and interpretive guidance for parties to cross-border security-based (“SB”) swap transactions, which include a proposed definition of the term “U.S. person” and address which regulatory requirements apply when a transaction occurs partially within and outside of the United States. The proposed rules also discuss a substituted compliance framework for cross-border SB swap transactions in certain circumstances.

The SEC’s proposed cross-border approach differs from the CFTC’s Guidance in several significant ways. For example, the SEC’s and the CFTC’s respective definitions of the term “U.S. person” differ and, notably, the SEC’s proposed rules include a discussion of the impact of the cross-border framework on registered service providers, such as SB swap clearing agencies, SB swap data repositories, and SB swap execution facilities. The CFTC’s Guidance, on the other hand, focuses primarily on the impact of the cross-border framework on counterparties to a transaction with respect to Entity- and Transaction-Level Requirements.

*23. The SEC released its proposed cross-border framework in the form of a rulemaking, whereas the CFTC has released an “interpretive guidance and policy statement.” What are the implications of releasing the cross-border framework through interpretive guidance as opposed to formal administrative rulemaking?*

The Commission states that the Guidance, “[u]nlike a binding rule,” is “a statement of the Commission’s general policy regarding cross-border swap activities and allows for flexibility in application to various situations.” However, by issuing its cross-border framework through the form of interpretive guidance, the Commission has avoided subjecting its cross-border approach to the requirements of the Administrative Procedure Act, including the Commodity Exchange Act requirement that the Commission conduct a cost-benefit analysis.

## EXEMPTIVE ORDER

### *24. What is the Commission exemptive relief with respect to compliance with certain swap regulations?*

On July 12, 2013, the Commission approved a final exemptive order with respect to certain swap requirements (“Exemptive Order”), providing temporary conditional relief effective on July 13, 2013, which will expire on December 31, 2013 or such earlier date as specified in the Exemptive Order.

Of note, the Exemptive Order permits market participants to continue applying the definition of the term “U.S. person” contained in a prior January exemptive order until 75 days after the Guidance is published in the Federal Register.

With respect to Entity-Level Requirements, the Commission also provides that non-U.S. swap dealers and non-U.S. MSPs in Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland may delay compliance with the majority of Entity-Level Requirements for which substituted compliance is permitted under the Guidance until the earlier of: (1) December 21, 2013, or (2) 30 days following the issuance of a substituted compliance determination for the relevant Entity-Level Requirement of the jurisdiction in which the non-U.S. swap dealer or MSP is established.

With respect to SDR Reporting requirements, however, non-U.S. swap dealers and non-U.S. MSPs in Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland—which are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company—may delay compliance for swaps with non-U.S. counterparties until the earlier of: (1) December 21, 2013, or (2) 30 days following the issuance of a relevant substituted compliance determination, provided that, during the relief period, (1) such entities are in compliance with the swap data recordkeeping and reporting requirements of their home jurisdictions; or (2) where no swap data reporting requirements have been implemented in their home jurisdictions, such entities comply with the recordkeeping requirements of Commission Regulations 45.2, 45.6, 46.2, and 46.4.

With respect to Transaction-Level Requirements, generally, a non-U.S. swap dealer or non-U.S. MSP in Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland may comply with any law and regulation of the jurisdiction in which it is established in lieu of complying with any Transaction-Level Requirement for which substituted compliance is possible under the Guidance until the earlier of: (1) December 21, 2013, or (2) 30 days following the issuance of a substituted compliance determination for the relevant regulatory requirement of the jurisdiction in which such entity is established.

Similarly, a foreign branch of a U.S. swap dealer or MSP located in Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland may generally comply with any law and regulations of the jurisdiction in which it is located in lieu of complying with any Transaction-Level Requirement for which substituted compliance is possible under the Guidance until the earlier of: (1) December 21, 2013, or (2) 30 days following the issuance of a substituted compliance determination for the relevant regulatory requirement.

## SUMMARY OF APPLICATION OF ENTITY- AND TRANSACTION-LEVEL REQUIREMENTS

### 25. Summary: Application of Entity-Level Requirements to Swap Dealers and Major Swap Participants

U.S. Swap Dealer or MSP <ul style="list-style-type: none"> <li>▪ Including an affiliate of a non-U.S. person</li> <li>▪ Applies when acting through a foreign branch</li> </ul>	Apply
Non-U.S. Swap Dealer or MSP <ul style="list-style-type: none"> <li>▪ Including an affiliate of a U.S. person</li> </ul>	First Category: Substituted Compliance  Second Category: Applies for U.S. counterparties <ul style="list-style-type: none"> <li>▪ Substituted Compliance for SDR reporting with non-U.S. counterparties that are not guaranteed or conduit affiliates</li> <li>▪ Substituted compliance (except for Large Trader Reporting) with non-U.S. counterparties</li> </ul>

### 26. Summary: Application of the Category A Transaction-Level Requirements to Swap Dealers and Major Swap Participants

	U.S. Person (other than Foreign Branch of U.S. Bank that is a Swap Dealer or MSP)	Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Non-U.S. Person Guaranteed by, or Affiliate Conduit of, a U.S. Person	Non-U.S. Person Not Guaranteed by, and Not an Affiliate Conduit of, a U.S. Person
U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person)	Apply	Apply	Apply	Apply
Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Apply	Substituted Compliance	Substituted Compliance	Substituted Compliance

Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person)	Apply	Substituted Compliance	Substituted Compliance	Do Not Apply
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27. Summary: Application of the Category B Transaction-Level Requirements to Swap Dealers and MSPs

	U.S. Person (other than Foreign Branch of U.S. Bank that is a Swap Dealer or MSP)	Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Non-U.S. Person Guaranteed by, or Affiliate Conduit of, a U.S. Person	Non-U.S. Person Not Guaranteed by, and Not an Affiliate Conduit of, a U.S. Person
U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person)	Apply	Apply	Apply	Apply
U.S. Swap Dealer or MSP (if it solicits/negotiates through a foreign subsidiary or affiliate)	Apply	Do Not Apply	Do Not Apply	Do Not Apply
Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Apply	Do Not Apply	Do Not Apply	Do Not Apply
Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person)	Apply	Do Not Apply	Do Not Apply	Do Not Apply