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The CFTC's Proposed Guidance on Cross-Border Swap Regulation and Proposed Exemptive Order

1. Introduction

On June 29, 2012, the Commodity Futures Trading Commission (CFTC) released its proposed interpretive guidance, "Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act" (the Proposed Guidance), addressing the extent to which the swaps provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) apply to persons and entities located outside the United States. The CFTC also released a proposed exemptive order providing temporary conditional exemptions from compliance with certain of the Title VII requirements for swaps (the Proposed Order). From the date that the Proposed Guidance and the Proposed Order are published in the Federal Register, the public will have 45 days and 30 days, respectively, during which to comment.¹

The Proposed Guidance and Proposed Order have implications both for U.S. persons conducting swap activities through branches, agencies, subsidiaries and affiliates outside of the United States as well as for non-U.S. persons entering into swaps with U.S. persons. The Proposed Guidance outlines whether a non-U.S. person or the non-U.S. subsidiaries and affiliates of U.S. persons will be required to register as either a swap dealer or major swap participant (MSP), supplementing the CFTC's final rulemaking and interpretive guidance on swap dealer and MSP registration approved on April 18, 2012 (the Final Entities Rulemaking).² The Proposed Guidance also makes clear that having a U.S. branch does not make a non-U.S. entity a U.S. person.

The Proposed Guidance addresses which persons will be subject to "entity-level requirements" and "transaction-level requirements" and which will be permitted to employ "substituted compliance." The Proposed Order would, upon adoption, provide conditional extensions of time for compliance with the "entity-level" and "transaction-level" requirements.³

¹ In particular, the Proposed Guidance includes 32 topics on which the CFTC has requested comment.

² See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 77 Fed. Reg. 30596 (May 23, 2012). For a discussion of how to apply the exclusions and exceptions for certain swap dealing activities included in the Final Entities Rulemaking, including the applicable *de minimis* thresholds, see [the Katten Advisory addressing the Final Entities Rulemaking](#).

³ A detailed chart setting out the entity-level and transaction-level requirements (defined below) applicable to various counterparty scenarios is provided as Appendix 2.

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2. Executive Summary

- In the Proposed Guidance, the CFTC takes an expansive view of the extraterritoriality provisions in Section 2(i) of the Commodity Exchange Act, as amended (CEA). The substance of the Proposed Guidance is premised on the CFTC's initial conclusion that the non-U.S. swaps activities of U.S. persons have a direct and significant connection with activities in, or effect on, U.S. commerce.
- The CFTC has taken a correspondingly expansive view of what constitutes a "U.S. person" for these purposes.
- In addition to the term U.S. person, the Proposed Guidance contains three additional definitions—"Entity-Level Requirements," "Transaction-Level Requirements" and "Substituted Compliance"—which are applied to determine which non-U.S. swaps activities are relevant for determining whether swap dealer and MSP registration requirements apply and, if so, what level of compliance is required.
- The Proposed Order would provide temporary relief, under certain circumstances, for swap dealers and MSPs from compliance with particular Entity-Level Requirements and Transaction-Level Requirements, provided the conditions set out in the Proposed Order are met.

3. Key Definitions

The Proposed Guidance centers on four critical definitions: (i) "U.S. person"; (ii) "entity-level requirements"; (iii) "transaction-level requirements"; and (iv) "substituted compliance."

"U.S. Person"

The CFTC proposes to interpret the term "U.S. person" to address the anticipated effect that entering into swap transactions with such persons would have on U.S. commerce. The Proposed Guidance defines 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 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, in each case that is either (A) organized or incorporated under the laws of the United States or having its principal place of business in the United States (legal entity) or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such owners is a U.S. person;⁴
- (iii) any individual account (discretionary or not) where the beneficial owner is a U.S. person;
- (iv) any commodity pool, pooled account or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership is held, directly or indirectly, by a U.S. person(s);
- (v) any commodity pool, pooled account or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA;⁵
- (vi) a pension plan for the employees, officers or principals of a legal entity with its principal place of business inside the United States; and
- (vii) an estate or trust, the income of which is subject to U.S. income tax regardless of source.⁶

"Entity-Level Requirements"

The Proposed Guidance separates the substantive swap compliance obligations of Title VII into two categories: (i) entity-level requirements, and (ii) transaction-level requirements. Entity-level requirements apply generally to all swap dealers and MSPs across all of their swaps without distinctions as to the counterparty or the location of the swaps. The requirements relate to: (i) capital adequacy; (ii) chief compliance officer; (iii) risk management; (iv) swap data recordkeeping; (v) swap data reporting (SDR Reporting); and (vi) physical commodity swaps reporting (Large Trader Reporting) (collectively, the Entity-Level Requirements).

⁴ As discussed below, because a branch is not a separate legal entity, the CFTC includes in this category any non-U.S. person branch of a U.S. person but excludes any non-U.S. person subsidiaries and affiliates.

⁵ The CFTC has not previously held that a commodity pool that is organized outside of the United States and has no U.S. participants would be deemed to be a U.S. person simply because the pool's operator is required to be registered with the CFTC as a commodity pool operator.

⁶ As used in this Advisory, the term "non-U.S. person" means any person who is not a U.S. person.

“Transaction-Level Requirements”

Transaction-level requirements apply to specific swap transactions rather than to the swap entity. The transaction-level requirements under Title VII of the Dodd-Frank Act and the CFTC’s regulations (proposed or adopted) include: (i) clearing and swap processing; (ii) margining and segregation for uncleared swaps; (iii) trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards (collectively, the Transaction-Level Requirements).

“Substituted Compliance”

The Proposed Guidance would permit non-U.S. registered swap dealers and MSPs to comply with certain of the Entity-Level and Transaction-Level Requirements in some circumstances through compliance with applicable home country regulation. Such substituted compliance will be permitted only if the CFTC determines, upon application, that the regulatory regime in the home jurisdiction is comparable to the CEA and CFTC regulations.

4. Cross-Border Application of Swap Dealer and Major Swap Participant Registration

Swap Dealer Registration

The Proposed Guidance confirms that U.S. swap dealers will be regulated on an entity-wide basis. Therefore, the non-U.S. branches and agencies of a U.S. swap dealer, which comprise the same legal entity, will be deemed to be registered as swap dealers and the U.S. entity will be responsible for compliance by its non-U.S. branches and agencies with all applicable swap dealer regulations.

On the other hand, the Proposed Guidance classifies non-U.S. subsidiaries and affiliates of U.S. swap dealers, which are separate legal entities, as non-U.S. persons. When determining whether it is required to register as a swap dealer, a potential swap dealer that is a non-U.S. person, including a non-U.S. subsidiary or an affiliate of a U.S. swap dealer, is required to include only certain qualifying U.S.-facing swap dealing activities.

Potential swap dealers that are non-U.S. persons, including non-U.S. subsidiaries and affiliates of U.S. swap dealers, determine the U.S.-facing swap dealing activity that is relevant for assessing whether swap dealer registration is required by calculating the aggregate notional amount of the following:

- the potential swap dealer’s swap dealing transactions with U.S. persons;
- swap dealing transactions with U.S. persons entered into by the potential swap dealer’s non-U.S. affiliates under common control;
- the potential swap dealer’s swap dealing transactions where its obligations are guaranteed by U.S. persons; and
- all swap dealing transactions of the potential swap dealer’s non-U.S. affiliates under common control where such affiliates’ obligations are guaranteed by U.S. persons.

Notwithstanding the proposed definition of a U.S. person, the Proposed Guidance clarifies that potential swap dealers that are non-U.S. persons, including non-U.S. subsidiaries and affiliates of U.S. swap dealers, do not need to count the aggregate notional amount of all swap dealing transactions that they (and their non-U.S. affiliates under common control) enter into with non-U.S. branches of U.S. swap dealers.

Potential swap dealers that are non-U.S. persons, including non-U.S. subsidiaries and affiliates of U.S. swap dealers, may then apply the additional exclusions and exemptions available under the Final Entities Rulemaking (e.g., swap dealing activities entered into as “not part of a regular business,” inter-affiliate swap transactions, swaps used for hedging physical positions) from the calculated amount of U.S.-facing swap dealing activity.⁷ Once all available exclusions and exemptions have been applied, if the resulting amount of U.S.-facing swap dealing activity is above the applicable *de minimis* threshold, swap dealer registration will be required.⁸

⁷ For a discussion of how to apply the exclusions and exceptions for certain swap dealing activities included in the Final Entities Rulemaking, including the applicable *de minimis* thresholds, see [the Katten Advisory addressing the Final Entities Rulemaking](#).

⁸ The Proposed Guidance does not clearly address which non-U.S. affiliates under common control may become subject to swap dealer registration requirements as a consequence of calculating the U.S.-facing swap dealing transactions in the aggregate.

Major Swap Participant Registration

When determining whether MSP registration is required, a potential MSP that is a non-U.S. person, including a non-U.S. subsidiary or affiliate of a U.S. swap dealer, must calculate in respect of each category of swap the aggregate gross notional amount of the following:

- all swaps entered into by the potential MSP with U.S. persons (including the non-U.S. branches of U.S. persons); and
- all swaps entered into by another non-U.S. person with a U.S. person where the potential MSP guarantees the obligations of the non-U.S. person.

The resulting volume of swaps activity in each category of swaps must then be applied towards the various tests for MSP registration requirements set out in the Final Entities Rulemaking.⁹ The Proposed Guidance provides that potential MSPs that are non-U.S. persons do not need to count any swaps entered into where their obligations are guaranteed by a U.S. person.

A chart presenting which swaps a potential non-U.S. person swap dealer or MSP must include in performing the calculations described above is provided as Appendix 1.

5. Cross-Border Application of Entity-Level and Transaction-Level Compliance Requirements

The Proposed Guidance also establishes a tiered approach to Entity-Level and Transaction-Level Requirements for swaps entered into on a cross-border basis. The extent of the required compliance with Entity- and Transaction-Level Requirements depends on the nature of the counterparties to the swap. At one end of the spectrum, U.S. swap dealers must comply with all Entity-Level and Transaction-Level Requirements at all times, regardless of counterparty. At the other end of the spectrum, non-U.S. persons that are not required to register as swap dealers and are not guaranteed by U.S. persons are subject to none of the Entity-Level and Transaction-Level Requirements for swaps entered into with other non-U.S. persons.

In between these two extremes, the Proposed Guidance distinguishes among: (i) non-U.S. branches of U.S. swap dealers; (ii) non-U.S. swap dealer affiliates of U.S. swap dealers; (iii) non-U.S. swap dealers; and (iv) non-U.S. persons that are not swap dealers but are guaranteed by U.S. persons. In general, for swaps booked outside the United States by a non-U.S. swap dealer (whether or not affiliated with a U.S. swap dealer), the Proposed Guidance permits substituted compliance for Entity-Level Requirements but limits substituted compliance with Transaction-Level Requirements to swaps that are entered into with non-U.S. persons. Non-U.S. branches of U.S. swap dealers are also eligible for substituted compliance with Transaction-Level Requirements for swaps entered into with non-U.S. persons.

The Proposed Guidance also provides, in certain circumstances, an exemption from the external business conduct standards applicable to swap dealers and MSPs, even where the remainder of the Transaction-Level Requirements apply.¹⁰ Finally, the Proposed Guidance makes clear that, even where a U.S. person that is not a swap dealer or MSP enters into a swap with either another non-registered U.S. person or a non-registered non-U.S. person, the following limited Entity-Level and Transaction-Level Requirements nevertheless apply: clearing, trade execution, real-time public reporting, Large Trader Reporting, SDR Reporting and swap data recordkeeping.

As noted, a detailed chart setting out the application of Entity-Level and Transaction-Level Requirements applicable to various counterparty scenarios is provided as Appendix 2.

6. Establishing Substituted Compliance Regimes

As discussed above, the CFTC will permit substituted compliance for non-U.S. person swap dealers and MSPs entering into swap transactions with all or certain of the Entity-Level and Transaction-Level Requirements. Substituted compliance requires

⁹ For a discussion of how to apply the tests for MSP registration thresholds included in the Final Entities Rulemaking in [the Katten Advisory addressing the Final Entities Rulemaking](#).

¹⁰ External business conduct standards, set forth in CFTC Rules 23.400-23.451, include: counterparty verification requirements; fair dealing obligations; counterparty disclosure obligations; daily marks; clearing disclosures; suitability determinations (swap dealers only); scenario analyses upon counterparty request (swap dealers only); and certain additional requirements applicable to swap dealers acting as advisers or counterparties to “special entities.” See Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012). See also [the Katten Advisory discussing the external business conduct standards](#).

the CFTC to make a “comparability” finding between the regulatory requirements of the entity’s home country regulations and the regulatory objectives of the Dodd-Frank Act. In making a comparability determination, the CFTC intends to use the approach it has adopted in exempting foreign brokers from registration as futures commission merchants under CFTC Rule 30.10. The CFTC’s evaluation will take into consideration all relevant factors including, but not limited to, the scope, objectives and comprehensiveness of the jurisdiction’s regulatory requirements as well as the relevant regulator’s supervisory program and its authority to support and enforce its oversight on the non-U.S. person.

A Non-U.S. Person swap dealer or MSP subject to the CFTC regulations must first request the CFTC’s permission to comply with the Entity-Level and Transaction-Level Requirements through substituted compliance. Alternatively, a group of non-U.S. persons from the same jurisdiction or the regulator from a non-U.S. jurisdiction may submit an application for substituted compliance on behalf of non-U.S. persons subject to its regulatory regime. A request for substituted compliance must be submitted by the non-U.S. swap dealer or MSP at the same time it files its application to register as a swap dealer or MSP.

The non-U.S. swap dealer or MSP will be expected to state with particularity the reasons why the CFTC should recognize comparability with respect to a particular Dodd-Frank Act provision as well as include all applicable legislation, rules and policies. The entity will further have to state that it is licensed and in good standing with the applicable supervisor in its home jurisdiction. The CFTC expects that when substituted compliance is permitted, it will have entered into an appropriate memorandum of understanding (MOU) or a similar arrangement with the relevant regulator in the jurisdiction of the applicant. Although existing information-sharing and/or enforcement arrangements would be indicative of the regulator’s ability to cooperate with the CFTC, the CFTC would expect that, going forward, supervisory MOUs will be put in place to establish ongoing coordination between the CFTC and the regulator. Such MOUs would address, but not be limited to, procedures for confirming continuing oversight activities, access to information, on-site visits, and notification and procedures in certain situations.

The Proposed Guidance also details what the CFTC would expect to view as substituted compliance with regard to swaps covered by a CFTC mandatory clearing requirement. Another jurisdiction’s regime would be comparable when: (i) the swap is subject to a mandate by the other jurisdiction that is comparable and comprehensive to the CFTC’s mandate; and (ii) the swap is cleared through a derivatives clearing organization (DCO) that is exempted from registration under the CEA.¹¹

7. Implementation Period

The Proposed Order provides temporary relief for non-U.S. registered swap dealers and MSPs as well as U.S. registered swap dealers and MSPs from compliance with certain of the Entity-Level Requirements and Transaction-Level Requirements.

Entity-Level Requirements

Non-U.S. registered swap dealers and MSPs can delay compliance with the Entity-Level Requirements (other than SDR Reporting and Large Trader Reporting for swaps entered into with U.S. persons) for one year following publication of the Proposed Order in the Federal Register. In addition, if a non-U.S. swap dealer or non-U.S. MSP is not an affiliate or subsidiary of a U.S. swap dealer, such non-U.S. swap dealer or MSP may delay compliance with SDR Reporting requirements for swaps entered into with non-U.S. persons.

To take advantage of the relief afforded by the Proposed Order, a non-U.S. swap dealer or MSP must: (i) file an application to register as a swap dealer or MSP with the National Futures Association (NFA) by the date on which registration is required (i.e., 60 days after the effective date of the CFTC rules defining “swap”), and (ii) file a compliance plan with the NFA within 60 days of filing its application for registration, describing how the entity will comply with the requirements or seek to rely on substituted compliance by providing a description of the home country requirements and how it would comply with such requirements.

U.S. persons that are registered swap dealers or MSPs can delay compliance with the Entity-Level Requirements except for swap data recordkeeping, SDR Reporting and Large Trader Reporting until January 1, 2013. U.S. swap dealers or MSPs will also have to file an application with the NFA by the date on which registration is required, but they will not have to submit a compliance plan.

¹¹ The Proposed Guidance does not, however, provide any additional detail as to the form or manner in which a DCO may obtain such an exemption from registration under the CEA.

Transaction-Level Requirements

The Proposed Order does not provide temporary relief from the Transaction-Level Requirements for a non-U.S. person that is registered as a swap dealer or MSP when entering into swaps with any U.S. person, whether registered as a swap-dealer or MSP. A non-U.S. registered swap dealer or MSP, when entering into swaps with any non-U.S. person, can delay compliance with the Transaction-Level Requirements for one year from the publication of the Proposed Order in the Federal Register, provided it complies with such requirements as mandated in its home jurisdiction.

Generally the Proposed Order provides no temporary relief from compliance with the Transaction-Level Requirements for U.S. persons. If such U.S. person, however, is the non-U.S. branch of a U.S. swap dealer or MSP, such branch may comply with the Transaction-Level Requirements for swaps entered into with non-U.S. persons through substituted compliance. The branch must submit a compliance plan detailing how it intends to comply with all Transaction-Level Requirements upon the expiration of the Proposed Order.

8. Comment Period

The Proposed Guidance and Proposed Order are open for public comment for 45 days and 30 days, respectively, after their publication in the Federal Register. The Proposed Guidance raises a number of questions for which the CFTC is actively seeking industry comment. Market participants entering into cross-border swaps are encouraged to review both the Proposed Guidance and the Proposed Order and provide comments to the CFTC.

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Appendix 1: Cross-Border Application of Swap Dealer and Major Swap Participant Definitions

Type of Swap Counterparty	Type of Swaps Included for Applying Swap Dealer and Major Swap Participant Definitions to Each Type of Entity Identified Below			
	Potential Non-U.S. Swap Dealer	Potential Non-U.S. Swap Dealer Guaranteed by U.S. Person	Potential Non-U.S. Major Swap Participant	Potential Non-U.S. Major Swap Participant Guaranteed by U.S. Person
Non-U.S. Branch of U.S. Swap Dealer	Excluded	Included	Included	Excluded
Non-U.S. Branch or Agency of U.S. Person other than a Swap Dealer	Included (along with swaps between its non-U.S. affiliates and such counterparties)	Included (along with swaps between its non-U.S. affiliates and such counterparties)	Included	Excluded
U.S. or Non-U.S. Affiliate	Excluded	Excluded	Excluded	Excluded
All Other U.S. Persons	Included (along with swaps between its non-U.S. affiliates and such counterparties)	Included (along with swaps between its non-U.S. affiliates and such counterparties)	Included	Excluded
Non-U.S. Persons	Excluded (but including swaps between any non-U.S. affiliates guaranteed by a U.S. Person and such counterparties)	Included (along with any swaps between any Non-U.S. affiliates guaranteed by a U.S. Person and such counterparties)	Excluded (but including swaps between another Non-U.S. Person and a U.S. Person where the Potential Non-U.S. Major Swap Participant guarantees the obligations of the Non-U.S. Person)	Excluded

Appendix 2: Application of Entity- and Transaction-Level Compliance Requirements to Swaps Market Participants

Type of Swaps Market Participant*	Type of Swap Counterparty		
	U.S. Person	Non-U.S. Person Guaranteed by U.S. Person ¹	Non-U.S. Person Not Guaranteed by U.S. Person
U.S. Swap Dealer	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Apply
U.S. Person, Non-Swap Dealer	Entity-Level: Limited Application ² Transaction-Level: Limited Application ³ External Bus. Conduct: Do Not Apply	Entity-Level: Limited Application ² Transaction-Level: Limited Application ³ External Bus. Conduct: Do Not Apply	Entity-Level: Limited Application ² Transaction-Level: Limited Application ³ External Bus. Conduct: Do Not Apply
Non-U.S. Branch of U.S. Swap Dealer⁴	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Apply Transaction-Level: Subst. Compl. ⁵ External Bus. Conduct: Do Not Apply	Entity-Level: Apply Transaction-Level: Subst. Compl. ⁵ External Bus. Conduct: Do Not Apply
Non-U.S. Swap Dealer Affiliate of U.S. Swap Dealer (Booked in U.S. Swap Dealer)⁶	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Do Not Apply	Entity-Level: Apply Transaction-Level: Apply External Bus. Conduct: Do Not Apply
Non-U.S. Swap Dealer Affiliate of U.S. Swap Dealer (Booked outside U.S. but guaranteed by U.S. Swap Dealer)	Entity-Level: Subst. Compl. ⁷ Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Subst. Compl. ⁷ Transaction-Level: Subst. Compl. External Bus. Conduct: Do Not Apply	Entity-Level: Subst. Compl. ⁷ Transaction-Level: Do Not Apply External Bus. Conduct: Do Not Apply
Non-U.S. Swap Dealer Affiliate of U.S. Swap Dealer (Booked outside U.S., not guaranteed by U.S. Swap Dealer)	Entity-Level: Subst. Compliance Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Subst. Compliance Transaction-Level: Subst. Compl. External Bus. Conduct: Do Not Apply	Entity-Level: Subst. Compliance Transaction-Level: Do Not Apply External Bus. Conduct: Do Not Apply
Non-U.S. Swap Dealer	Entity-Level: Subst. Compliance Transaction-Level: Apply External Bus. Conduct: Apply	Entity-Level: Subst. Compliance Transaction-Level: Subst. Compl. External Bus. Conduct: Do Not Apply	Entity-Level: Subst. Compliance Transaction-Level: Do Not Apply External Bus. Conduct: Do Not Apply
Non-U.S. Person, Non-Swap Dealer	Entity-Level: Limited Application ² Transaction-Level: Limited Application ³ External Bus. Conduct: Do Not Apply	Entity-Level: Do Not Apply Transaction-Level: Do Not Apply External Bus. Conduct: Do Not Apply	Entity-Level: Do Not Apply Transaction-Level: Do Not Apply External Bus. Conduct: Do Not Apply

*The categories of swaps market participants in this column apply mutatis mutandis to MSPs.

Entity-Level Requirements: Capital; Chief Compliance Officer; Risk Management; Swap Data Recordkeeping; SDR Reporting; Large Trader Reporting.

Transaction-Level Requirements: Clearing and Swap Processing; Margin/Segregation for Uncleared Swaps; Trade Execution; Swap Trading Relationship Documentation; Portfolio Reconciliation and Compression; Real-Time Public Reporting; Trade Confirmation; Daily Trading Records; External Business Conduct Standards. Note that:

- External Business Conduct Standards may not apply where Transaction-Level Requirements otherwise do apply (see chart).
- Compliance with Swap Trading Relationship Documentation is mandatory for all swaps with registered swap dealers and MSPs.
- Compliance with Portfolio Reconciliation and Compression is mandatory for all swap dealer to swap dealer trades.

¹ Transaction-Level Requirements also apply where (1) a non-U.S. Person counterparty is majority owned by U.S. Person; (2) the non-U.S. Person counterparty regularly enters into swaps with one or more U.S. affiliates or subsidiaries of the U.S. Person; and (3) the financials of the non-U.S. Person counterparty are consolidated with those of the U.S. Person.

² Limited Entity-Level Requirements apply: SDR Reporting; Large Trader Reporting; and Swap Data Recordkeeping.

³ Limited Transaction-Level Requirements apply: Clearing; Trade Execution; and Real-Time Public Reporting.

⁴ Entity- and Transaction-Level Requirements are ultimately the responsibility of the U.S. Swap Dealer.

⁵ The CFTC may permit substituted compliance even where there is no comparable foreign regulatory regime, subject to certain conditions being met.

⁶ U.S. Swap Dealer must comply with all swap dealer duties and obligations in respect of swaps that are solicited/negotiated by the non-U.S. affiliate but directly booked in the U.S. Swap Dealer.

⁷ Substituted compliance for SDR Reporting requirement permitted only if CFTC is granted direct access to swap data.