

# US Derivatives Regulation: Requirements for Swap Dealers and MSPs Checklist

by Practical Law Finance

Maintained • USA (National/Federal)

📌 [Related Content](#)

*A brief summary of all major Dodd-Frank rules applicable to swap dealers (SDs) and major swap participants (MSPs), as well as security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs).*

Under Title VII of the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#) (Dodd-Frank Act), parties that exceed certain large aggregate **notional** thresholds of swap dealing (or market-making) activity are designated as **swap dealers** (SDs) or **major swap participants** (MSPs) by the [Commodity Futures Trading Commission](#) (CFTC) (see [Practice Note, US Derivatives Regulation: Swap Dealer and MSP Threshold Calculations](#)). These parties are primarily large banks and financial institutions, and their affiliates, whose business involves selling swaps and other financial products to customers such as businesses and funds. SDs and MSPs must adhere to a comprehensive framework of CFTC operational, business conduct, and swap-related transactional and documentary requirements under Title VII.

This Checklist provides a quick and easy guide to the principal rules applicable to SDs and MSPs under Title VII of the Dodd-Frank Act and related rulemaking. For a comprehensive guide to Dodd-Frank rulemaking applicable to SDs and MSPs, see [Practice Note, US Derivatives Regulation: Swaps Regulatory Tracker: Swap Dealers \(SDs\) and Major Swap Participants \(MSPs\)](#).

Generally, the rules discussed in this resource are fully effective and compliance (or a properly obtained exemption) is required. Note that margin rules for uncleared swaps began phase in as of September 2016. For further information on compliance dates for all important Dodd-Frank swaps rules, see [US Derivatives Regulation: Compliance Calendar](#).

Parties may use the table below as a quick check of the rules applicable to SDs and MSPs. Note that some of these rules apply only to SDs and not to MSPs, as discussed in greater detail below.

| Requirement   | Further Details   |
|---|---|
| <b>CFTC Registration</b>  | See <a href="#">Registration</a>                          |
| <b>Swap Data Reporting and Recordkeeping.</b> These include, among others: <ul style="list-style-type: none"><li>• CFTC Regulations Part 45 SDR regulatory data reporting and recordkeeping rules.</li><li>• CFTC Regulations Part 43 real-time public swap data reporting rules.</li><li>• CFTC Regulations Part 46 historical swap data reporting rules.</li><li>• CFTC large-trader reporting rules for physical commodity swap positions.</li></ul> | See <a href="#">Swap Data Reporting and Recordkeeping</a> |
| <b>External Business Conduct (EBC) Rules</b> (also referred to as external  | See <a href="#">External Business Conduct (EBC) Rules</a> |

|  |   |
|--|---|
| business conduct standards, or EBCS). These include, among others:   |   |
| <ul style="list-style-type: none"> <li>• Know-your-counterparty (KYC) rules.</li> <li>• Rules for swaps with special entities.</li> <li>• Institutional suitability requirements.</li> <li>• Other EBC rules.</li> </ul> |   |
| <b>Internal Business Conduct (IBC) Rules</b> on:   | See <a href="#">Internal Business Conduct (IBC) Rules</a>   |
| <ul style="list-style-type: none"> <li>• Swap trading relationship documentation.</li> <li>• Transaction confirmations.</li> <li>• Portfolio reconciliation and compression.</li> </ul>                                  |   |
| <b>Final IBC Rules on Governance and Risk Management</b> , including:  | See <a href="#">Rules on Governance and Risk Management; Chief Compliance Officer (CCO) Duties and Annual Report</a> ; CCO Duties and Annual Report |
| <ul style="list-style-type: none"> <li>• Rules on conflicts of interest.</li> <li>• Internal risk-management rules.</li> <li>• CCO appointment and CCO annual reports.</li> </ul>  |   |
| <b>Obligations with Respect to Associated Persons (APs)</b>  | See <a href="#">Obligations with Respect to Associated Persons</a>  |
| <b>Swap Margin Collateral Segregation Rules</b> , including optional segregation of initial margin collateral upon request of customer.  | See <a href="#">Swap-Related Margin Collateral Obligations and Clearing Member Rules</a>  |
| <b>Swap Margin Collateral Collection Rules for Uncleared Swaps</b>   | See <a href="#">Swap-Related Margin Collateral Obligations and Clearing Member Rules</a>  |
| <b>Rules Applicable to Swap Clearinghouse Clearing Members</b> , which are typically also SDs.   | See <a href="#">Swap-Related Margin Collateral Obligations and Clearing Member Rules</a>  |
| <b>Derivatives Risk Capital Requirements</b>   | See <a href="#">Risk Capital Requirements for Derivatives Exposures</a>   |
| <b>Cross-Border Swaps Obligations</b>  | See <a href="#">Cross-Border Obligations and Substituted Compliance</a>   |
| <b>Rules on Customer Data Security</b>   | See <a href="#">Customer Data Security</a>  |
| <b>Compliance with Swaps Pushout Rule</b>  | See <a href="#">Swaps Pushout Rule</a>  |
| <b>Requirements for Security-Based Swap Dealers (SBSDs) and Major Security-Based Swap Participants (MSBSPs)</b>  | See <a href="#">Requirements for Security-Based Swap Dealers and MSBSPs</a>   |
| <b>Other Dodd-Frank rules</b> , including the Volcker Rule and rules for systemically significant financial institutions (SSFIs), which are typically also SDs.  | See <a href="#">Other Applicable Dodd-Frank Rules</a>   |

## Registration

Firms that cross the applicable notional exception threshold must register as SDs or MSPs, as applicable. To determine whether an entity must register as an SD or MSP, the notional value of all of the entity's non-exempt swap transactions must be aggregated over a rolling 12-month lookback period (see [Practice Note, US Derivatives Regulation: Swap Dealer and MSP Threshold Calculations](#)). The CFTC has permanently set the SD notional threshold exception at \$8 billion (see [Legal Update, CFTC Permanently Sets Swap Dealer De Minimis Exception Threshold at \\$8 Billion Notional](#)), which means any firm that crosses this level of non-exempt swap dealing activity over the prior 12 months must register with the CFTC as an SD within two months from the end of the month they cross the applicable annual threshold. This means that if a firm crosses the threshold in mid-October, it would not have to register until December 31, though it could choose to do so earlier. MSP thresholds are more complex and rarely applicable.

The National Futures Association (NFA) processes SD and MSP registrations on behalf of the CFTC. In order to register as an SD or MSP, a registration application, which includes the applicant's policies, procedures, and other required documentation (Section 4s Submission) is filed with the NFA. Once the Section 4s Submission has been filed with the NFA, the SD or MSP becomes provisionally registered. From there, the NFA, in coordination with the CFTC, performs a detailed review of the Section 4s Submission. An SD or MSP becomes fully registered following this review if the Section 4s Submission is complete and demonstrates compliance with CFTC requirements.

## Swap Data Reporting and Recordkeeping

SDs and MSPs must comply with all applicable swap data reporting rules for all swaps they enter into. SDs are almost always the reporting party to a swap to which they are a party (see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: Box, Which Is the Reporting Party?](#)).

The following swap data reporting and recordkeeping rules are fully effective and applicable to SDs and MSPs:

- **Final SDR data reporting rules.** Final CFTC regulatory swap data reporting and recordkeeping rules (data to be used for CFTC regulatory purposes), which are referred to as "SDR rules" under Part 45 of the CFTC Regulations (17 C.F.R. §§ 45.1 to 45.14; see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 45 \(SDR\) Data Reporting Rules](#) and [Part 45 Swap Data Recordkeeping Rules](#)).
- Note that on November 30, 2017, the CFTC further extended to December 1, 2020 relief for SDs or MSPs established in Australia, Canada, the European Union, Japan, and Switzerland from Part 45 swap data reporting requirements under Part 45, stating that it does not currently intend to extend this relief beyond December 1, 2020 (see [Legal Update, CFTC Issues Fifth Extension of Relief for Certain Non-US Swap Dealers from SDR Reporting Rules](#)).
- **Final real-time public data reporting rules.** Final CFTC real-time swap data reporting rules (data for public dissemination) under Part 43 of the CFTC Regulations (17 C.F.R. §§ 43.1 to 43.7; see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 43 CFTC Real-Time Public Swap Data Reporting Rules](#)).
- **Final historical swap data reporting rules.** Final CFTC rules on historical swap data reporting and recordkeeping under Part 46 of the CFTC Regulations (17 C.F.R. §§ 46.1 to 46.11; see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 46 Data Reporting Rules for Historical Swaps](#) and [Part 46 Historical Swap Data Recordkeeping Rules](#)).
- Note that on November 30, 2017, the CFTC further extended to December 1, 2020 relief for SDs and MSPs established in Australia, Canada, the European Union, Japan, and Switzerland from historical swap data reporting requirements under Part 46, stating that it does not currently intend to extend this relief beyond December 1, 2020 (see [Legal Update, CFTC Issues Fifth Extension of Relief for Certain Non-US Swap Dealers from SDR Reporting Rules](#)). Historical swaps include:
  - **pre-enactment swaps.** These are swaps that were entered into before July 21, 2010, the enactment date of the Dodd-Frank Act, which did not expire or terminate as of April 25, 2011; and
  - **transition swaps.** These are swaps that were entered into on or after the enactment date but before the final applicable compliance date of the final historical swap data reporting rules (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Part 46 Data Reporting Rules for Historical Swaps](#)), which did not expire or terminate as of April 25, 2011.
- **Large-trader reporting of physical commodity positions.** Large-trader position data reporting for physical commodity swaps (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Large-Trader Position Data Reporting for Physical Commodity Swaps](#)).
- **Recordkeeping rules for SDs and MSPs.** Final CFTC rules on swap data recordkeeping for SDs and MSPs (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: CFTC Rules on Non-Historical Swap Data Recordkeeping by SDs and MSPs](#)). Note that compliance by SDs and MSPs with many final swap data recordkeeping rules, including the obligation to record certain swap-related telephone conversations in most major swaps jurisdictions, has been required since March 31, 2013 (see [Legal Update, Swap Data Recordkeeping Compliance Delayed for Swap Dealers and MSPs](#)). Compliance with certain other swap data recordkeeping rules for SDs and MSPs, including the obligation to keep data on site and searchable, has been required since June 30, 2013 (see [Legal Update, CFTC Further Delays Some Swap Data Recordkeeping Rules for SDs and MSPs](#)). All of these rules are now effective.

Note that final swap data recordkeeping rules for SDs and MSPs include retention of records of all oral and written communications that lead to the execution of a swap, including quotes, solicitations, and bids. In connection with this, SDs and MSPs must maintain recordings of certain swap-related:

- telephone calls;
- faxes;
- chat applications;
- voicemail; and
- any other digital or electronic media.

The SD or MSP must create recordings and records of these communications if any pre-execution trade information is transmitted via these media. Thus, installation of telephone recording technology (both cell phone and land line) is required unless it is absolutely clear that no communication is made relating to the swap via telephone.

For further detail on the above CFTC swap data reporting and recordkeeping rules, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules](#).

Note that compliance with SEC data reporting rules for [security-based swaps](#) (SBS), Regulation SBSR, was required as of May 1, 2017, except for any SBSDR applicants that filed amendments to their application with the SEC before May 1, 2017 – these applicants had until September 29, 2017 to comply (see [Legal Update, SEC Pushes Back Registration and Compliance Date for Security-Based SDRs](#)). However, compliance with the final rule on reporting and dissemination of SBS data was required as of May 18, 2015.

For details on SBS data reporting under Regulation SBSR, see [Practice Note, US Derivatives Regulation: SEC Regulation SBSR Data Reporting for Security-Based Swaps](#).

For a concise guide to compliance with all applicable swap data reporting rules, see [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting](#).

## External Business Conduct (EBC) Rules

SDs and MSPs are subject to a wide range of Dodd-Frank EBC rules (also referred to as external business conduct standards or EBCS) covering their dealings with customers with which they enter into swaps. These include:

- Know-your-counterparty (KYC) rules.
- Institutional suitability requirements.
- Requirements for SDs and MSPs that enter into swaps with so-called "special entities," which are government entities, including public utilities.

For detailed information on these, as well as on other EBCS for SDs and MSPs, see [Practice Note, US Derivatives Regulation: External Business Conduct \(EBC\) Rules for Swap Dealers and MSPs](#).

For details on how the ISDA Dodd-Frank Protocol may be used to facilitate compliance with the final EBCS, see [Practice Note, Practical Law Guide to the ISDA Dodd-Frank Protocols and ISDA Amend: The August 2012 Protocol: Compliance with Final EBC Rules for Swap Dealers and MSPs](#).

For details on the ISDA Derivatives/FX Business Conduct Allocation Protocol, see [Legal Update, ISDA Releases Prime Brokerage Protocol for Dodd-Frank Swap Dealer Business Conduct Allocation](#).

For information on ISDA letters that may be used by SDs to comply with the EBCS, see [Legal Updates, Safe Harbor 'ERISA Special Entity' and 'Non-Special Entity' Letters Published by ISDA](#) and [ISDA Publishes Sample 'Special Entities' Letter for Swap Dealers](#).

## Internal Business Conduct (IBC) Rules

SDs and MSPs are also subject to final Dodd-Frank IBC rules on:

- Swap trading relationship documentation.
- Swap transaction acknowledgment.
- Swap transaction confirmation.
- Swap portfolio reconciliation and compression.

Under these rules, SDs and MSPs are no longer permitted to enter into an uncleared swap transaction without an [ISDA Master Agreement](#) (or equivalent agreement) in place. Historically, parties would often enter into a swap transaction over the phone and execute an [ISDA long-form confirmation](#) at a later time. Under the final IBC rules ([17 CFR § 23.504](#)), this practice is no longer permitted. Parties may enter into a 2002 ISDA Master Agreement with respect to any undocumented swap transactions with a designated counterparty by adhering to the ISDA March 2013 Dodd-Frank Protocol and checking the appropriate box.

For further details on these final rules, see [Practice Note, US Derivatives Regulation: Internal Business Conduct \(IBC\) Rules for Swap Dealers and MSPs](#).

For information on how ISDA's Dodd-Frank Protocol may be used to facilitate compliance with the final IBC rules, see [Practice Note, Practical Law Guide to the ISDA Dodd-Frank Protocols and ISDA Amend: The March 2013 Protocol: Compliance with Final IBC Rules for Swap Dealers and MSPs](#).

## Rules on Governance and Risk Management; Chief Compliance Officer (CCO) Duties and Annual Report

SDs and MSPs are subject to:

- Rules on conflicts of interest.
- Internal risk-management rules.
- Chief compliance officer (CCO) appointment and CCO annual reports.

For details on these rules, see [Practice Note, US Derivatives Regulation: Internal Business Conduct \(IBC\) Rules for Swap Dealers and MSPs: IBC Reporting and Recordkeeping Rules](#).

## Obligations with Respect to Associated Persons

Associated persons (APs) are natural persons who are associated with an SD, MSP, or other CFTC registrant as a partner, officer, employee, or agent (or any natural person with a similar status or function) in a capacity that involves the solicitation or acceptance of swaps (other than in a clerical or ministerial capacity). For information on final Dodd-Frank rules on associated persons, see [Legal Update, Final Rules on Associated Persons of Swap Dealers and MSPs Issued by CFTC](#).

The CFTC issued interpretive guidance in [No-Action Letter 12-15](#) permitting SDs and MSPs to employ an AP even if that person is statutorily disqualified from serving as an AP, provided the SD or MSP consults with the National Futures Association (NFA).

Final rules under Title VII allow associations of unregistered APs with multiple SDs, MSPs, and other CFTC registrants. However, the rules require the SD, MSP, or other registered entity associating with the AP to supervise the AP and be [jointly and severally](#) responsible for the AP's activities with respect to customers common to it and any other SD, MSP, or other CFTC registrant (see [Legal Update, Final Rules on Associated Persons of Swap Dealers and MSPs Issued by CFTC](#)).

Note that the CFTC has adopted an [amendment](#) to CFTC Regulation 23.22 clarifying that the prohibition against SDs and MSPs associating with persons who are statutorily disqualified from serving as APs does not apply in the case of clerical and ministerial employees ([17 C.F.R. § 23.22\(a\)](#)).

In addition, on March 25, 2019, the NFA amended its bylaws and compliance rules to impose a swaps proficiency exam requirement on APs who solicit orders, customers, or customer funds on behalf of certain CFTC-registered entities, including SDs and MSPs (see [Legal Update, NFA Adopts Swaps Proficiency Exam Requirement for Associated Persons \(APs\)](#)).

## Swap-Related Margin Collateral Obligations and Clearing Member Rules

SDs and MSPs have extensive margin collateral collection and segregation obligations in connection with their uncleared swaps under Dodd-Frank rules, including:

- **Margin collateral collection for uncleared swaps.** SDs are required to collect margin collateral at certain levels and threshold amounts based on the type of swap and the nature of their swap counterparty (including another SD). The prudential margin collection rules for uncleared swaps (prudential margin rules) apply to SDs, MSPs, SBSDs, and MSBSPs regulated by any of the US prudential bank regulators. The CFTC margin collection rules for uncleared swaps (CFTC margin rules) apply to SDs and MSPs that are not covered by the prudential rules. SEC margin collection rules for uncleared SBS apply to SBSDs and MSBSPs that are not covered by the prudential rules, however compliance with these

rules is not yet required (see [SEC Capital, Margin, and Segregation Rules for Uncleared SBS](#)). For details on these rules, see [Practice Note, US Derivatives Regulation: Margin Collection and Exchange Rules for Uncleared Swaps](#).

- **Segregation of uncleared swap margin collateral.** Under Title VII rules, SDs and MSPs (as well as security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs)) must inform their non-SD/non-MSP swap counterparties of their right to have segregated with an independent third-party custodian any [initial margin](#) posted by the counterparty in connection with the uncleared swaps that it enters into with the SD/MSP. For details, see [Practice Note, US Derivatives Regulation: Margin Collateral Rules: Optional Segregation of Uncleared Swaps Initial Margin](#). In March 2019, the CFTC approved a final rule easing certain notice and other obligations related to the optional customer collateral segregation rules for SDs and MSPs (see [Legal Update, CFTC Eases Collateral Segregation Requirements for Swap Dealers and MSPs](#)).
- **Segregation and treatment of cleared swap margin collateral.** Many SDs and MSPs are also derivatives clearinghouse [clearing members](#) or [futures commission merchants](#) (FCMs), which must adhere to Dodd-Frank rules requiring segregation and treatment of cleared swaps customer collateral, as well as rules on investment of customer funds, used to collateralize futures and options. For details, see:
  - [Practice Note, US Derivatives Regulation: Margin Collateral Rules: Segregation of Cleared Swaps Customer Collateral by FCMs and DCOs: LSOC](#).
  - [Practice Note, US Derivatives Regulation: Margin Collateral Rules: Segregation of Customer Funds \(Futures Collateral\) by FCMs and DCOs](#).
  - [Practice Note, US Derivatives Regulation: Margin Collateral Rules: Investment of Customer Funds and Cleared Swaps Customer Collateral](#).
  - [Legal Update, Final Dodd-Frank Rules for Swap Clearing Members Issued by CFTC](#).

For additional information on Dodd-Frank and related SD, MSP, and FCM swaps and derivatives margin rules, see [Practice Note, US Derivatives Regulation: Swaps Regulatory Tracker: Swaps and Derivatives Margin Collateral Matters](#).

## Risk Capital Requirements for Derivatives Exposures

On June 7, 2012, the Federal Reserve Board (FRB) issued final rules implementing changes to its market risk capital requirements for derivatives exposures, which applies to SDs that are US banks. For details, see [Practice Note, Summary of the Dodd-Frank Act: Swaps and Derivatives: Dodd-Frank and Related Risk Capital Requirements for Derivatives Exposures](#) and [Legal Update, Federal Reserve Board Issues Final Rule Implementing Market Risk Capital Rule Changes](#).

The CFTC has also proposed Title VII swap-related capital requirements for nonbank SDs and MSPs that are not subject to regulation by US prudential bank regulators (see [Legal Update, CFTC Proposes Dodd-Frank Capital Requirements for Swap Dealers and MSPs](#)). These rules are not yet in effect. The SEC has also proposed risk capital rules for SBSDs and MSBSPs, which are also not yet effective (see [Legal Update, Capital and Margin Rules for Security-Based Swap Dealers and Major Security-Based Swap Participants Proposed by SEC](#) and [US Derivatives Regulation: Requirements for Swap Dealers and MSPs Checklist: Requirements for Security-Based Swap Dealers and MSBSPs: SEC Reopens Comment Period for SBS Rules](#)).

## Cross-Border Obligations and Substituted Compliance

SDs and MSPs have specific obligations with respect to the application of Dodd-Frank swaps rules to cross-border swaps. For details, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules](#).

For information on, and a link to, a standardized representation letter published by ISDA (ISDA bank letter) that is designed to help banks that are SDs and MSPs comply with cross-border rules, see [Legal Update, Cross-Border Swaps Representation Letter for US Banks Published by ISDA](#).

The ISDA bank letter and the ISDA Dodd-Frank Protocol (see [Practice Note, Practical Law Guide to the ISDA Dodd-Frank Protocols and ISDA Amend](#)) each permit a bank to identify itself as a US bank that is registered with the CFTC as an SD or MSP and to represent that a particular foreign branch is the relevant office of the bank for purposes of the swap in question. The bank letter and the protocol also permit the bank to represent that it has satisfied the requirements under the final CFTC cross-border guidance (see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules: Final CFTC Cross-Border Guidance and Related Rulemaking](#)) for the swap in question to be deemed a swap entered into by such foreign branch for purposes of the CFTC's swaps regulations.

## No-Action Relief for Non-US Swaps Arranged, Negotiated, or Executed in the US

In November 2013, the CFTC issued a controversial staff advisory (the ANE advisory), which clarified that non-US SDs must comply with Dodd-Frank transaction-level requirements even when entering into swaps with another non-US counterparty if the swap is arranged, negotiated, or executed in



the US (ANE swaps) (see [Legal Update, CFTC Closes Cross-Border Swaps Compliance Loophole](#)). The ANE advisory was upheld in federal court in September 2014, and in October 2016 the CFTC proposed a rule that would codify certain provisions of the ANE advisory (see [Legal Updates, CFTC Cross-Border Swaps Rules Upheld in Court](#) and [CFTC Proposes Revised "US Person" Definition and Clarification on Important Cross-Border Swaps Rules](#)). On October 1, 2018, the CFTC published a whitepaper proposing a major revamp of the current rules (see [Legal Update, CFTC Chairman Publishes Whitepaper Proposing New Cross-Border Swaps Rules](#).)

In order to address compliance issues resulting from the ANE advisory, the CFTC has issued no-action relief to non-US SDs from compliance with certain transaction-level requirements when entering into uncleared swaps with non-US persons. The latest no-action relief was issued on July 25, 2017, and is effective until the CFTC takes further action to address whether particular transaction-level requirements apply to ANE transactions (see [Legal Update, CFTC Extends Further Relief to Non-US Swap Dealers from Certain Transaction-Level Requirements for ANE Swaps](#)).

For details on Dodd-Frank transaction-level requirements, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules: Entity-Level Requirements and Transaction-Level Requirements](#).

## Swaps Pushout Rule

Section 716 of the Dodd-Frank Act, known as the swaps "pushout" rule, barred the provision of any "federal assistance" to "swaps entities," including access to the [Federal Reserve discount window](#) and [Federal Deposit Insurance Corporation](#) (FDIC) deposit insurance. Swaps entities are federally insured banks that are SDs or SBSDs.

The practical implications of this rule were that SDs and SBSDs that are swaps entities were required to "push out" certain of their swaps activities to separately capitalized affiliates (or to unaffiliated entities) to retain their benefits as federally insured depository institutions (IDIs). For details, see [Practice Note, US Derivatives Regulation: Swaps Pushout Rule](#) and [Legal Update, Fed Clarifies Application of Swaps Pushout Rule to US Branches of Non-US Banks](#).

However, the Swaps Pushout Rule was substantially repealed by federal legislation signed into law by President Obama in December 2014. The rule now applies to only a narrow range of transactions, related to [asset-backed securities](#) (ABS) ([15 U.S.C. § 8305](#), as amended). For further details, see [Legal Update, Dodd-Frank Swaps Pushout Rule Substantially Repealed](#).

## Requirements for Security-Based Swap Dealers and MSBSPs

[Security-based swap dealers](#) (SBSDs) and [major security-based swap participants](#) (MSBSPs) are entities that exceed certain large aggregate notional thresholds of [security-based swap](#) (SBS) activity. Under Section 15F of the [Exchange Act](#) ([15 U.S.C. § 78o-10](#)), SBSDs and MSBSPs will be required to register as such with the SEC (see [Legal Update, SEC Adopts Registration Rules for Security-Based Swap Dealers and Major Security-Based Swap Participants](#)).

Although the final registration rules technically became effective on October 13, 2015, compliance (including registration) is not required until the latest of the following:

- Six months after the date of publication in the Federal Register of a final rule release adopting rules establishing capital, margin, and segregation requirements for certain SBS entities (SBS Entities).
- The compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities.
- The compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k) ([15 U.S.C. § 78o-10\(h\)](#), (k)).
- The compliance date for final rules establishing a process for a registered SBS Entity to make an application to the SEC to allow an associated person who is subject to a statutory disqualification to effect, or be involved in effecting, SBS on the SBS Entity's behalf.

None of these rules are yet scheduled to take effect, so there is currently no timetable for registration or compliance with the other final SBSD and MSBSP rules.

The SEC has begun to finalize a comprehensive regulatory framework of rules under Dodd-Frank for SBSDs and MSBSPs, similar to that which the CFTC has put in place for SDs and MSPs (see [Legal Update, SEC Adopts Security-Based Swap Business Conduct Standards](#)). Many of these will overlap and apply to the same large global swap trading entities. For more information on the SEC's rules business conduct standards for SBSDs and MSBSPs, see [Practice Note, US Derivatives Regulation: SEC Security-Based Swap Business Conduct Standards](#). Note that the SEC has provided a five-year reprieve on enforcement of certain SBS business conduct standards (see [Legal Update, SEC Provides Five-Year Accommodation on Certain Business Conduct Requirements for Security-Based Swap Dealers and MSBSPs](#)).

For detailed information on aggregate notional thresholds of non-exempt SBS activity that causes an entity to be required to register with the SEC as a SBSD or MSBSP, see [Practice Note, US Derivatives Regulation: Swap Dealer and MSP Threshold Calculations](#).

For information on final rules under Title VII relating to transaction-confirmation requirements for SBSDs and MSBSPs (17 C.F.R. §§ 240.15Fi-1, 240.15Fi-2), see [Legal Update, SEC Adopts Final Security-Based Swap Trade Acknowledgment and Verification Rules](#).

The SEC has finalized margin collateral collection and risk capital requirements for SBSDs and MSBSPs based on the Exchange Act's rule governing capital for [broker-dealers](#), Rule 15c3-1 (17 C.F.R. § 240.15c3-1) (see [Legal Update, SEC Adopts Capital, Margin, and Segregation Requirements for Security-Based Swaps](#) and [Practice Note, US Derivatives Regulation: SEC Capital, Margin, and Segregation Requirements for Security-Based Swaps](#)).

Bank SBSDs and MSBSPs are subject to the prudential margin rules, which apply to swap dealers and MSPs that are subject to regulation by a prudential bank regulator (see [Practice Note, US Derivatives Regulation: Margin Collection and Exchange Rules for Uncleared Swaps: Final Prudential Bank Margin Rules](#)). Though bank SBSDs are subject to the prudential margin rules, the SEC has authority to establish segregation requirements for both bank and nonbank SBSDs. Therefore, all SBSDs are subject to the SEC's margin segregation requirements.

However, both stand-alone and bank SBSDs are exempt from the SEC's segregation requirements in Rule 18a-4 under certain conditions, including that they do not clear SBS for other persons. The SEC clarified in the adopting release for its segregation rules that it expects that bank SBSDs will operate under this exemption, because in order to clear swaps for other persons, the bank would need to register as an FCM, which would subject it to CFTC capital requirements in addition to capital requirements imposed by its prudential regulator. For details, see [Practice Note, US Derivatives Regulation: SEC Capital, Margin, and Segregation Requirements for Security-Based Swaps: Segregation Requirements](#).

## SEC Capital, Margin, and Segregation Rules for Uncleared SBS

On June 21, 2019, the SEC finalized capital, margin, and segregation requirements for SBS (SEC rules) (see [Legal Update, SEC Adopts Capital, Margin, and Segregation Requirements for Security-Based Swaps](#)). The SEC rules:

- Finalize capital and margin requirements for nonbank SBSDs and nonbank MSBSPs. Nonbank SBSDs are not required to post initial margin under the rules.
- Adopt margin segregation requirements for SBSDs and broker-dealers that are not registered as an SBSD or MSBSP (stand-alone broker-dealers) for cleared and non-cleared SBS.
- Increase minimum net capital requirements for broker-dealers authorized to use internal models to compute net capital (ANC broker-dealers, including ANC broker-dealer SBSDs), intended to account for the SBS and swap activities of broker-dealers.
- Provide for certain capital and margin segregation requirements for broker-dealers that are not SBSDs to the extent they engage SBS and swap activity.
- Provide for substituted compliance with respect to SBS capital and margin requirements.
- Permit an SBSD that is not a broker-dealer and is a CFTC-registered SD to comply with the CFTC's capital, margin, and segregation requirements in place of the SEC requirements.

For details, see [Practice Note, US Derivatives Regulation: SEC Capital, Margin, and Segregation Requirements for Security-Based Swaps](#).

## Customer Data Security

Though technically not issued under the Dodd-Frank Act, the CFTC has issued guidance on customer data security for a variety of entities, including SDs and MSPs. For details, see [Legal Update, CFTC Issues Guidance on Customer Data Security](#).

## CFTC No-Action Relief for Certain SD/MSPs

The following no-action relief is in effect for SD/MSPs in certain situations:

- Prime brokerage no-action relief from EBCS (see [Legal Update, CFTC Issues Prime Broker No-Action Relief from Business Conduct Rules](#)).
- Relief from certain EBCS duties and documentation requirements applicable to SDs and MSPs (see [Practice Note, US Derivatives Regulation: Internal Business Conduct \(IBC\) Rules for Swap Dealers and MSPs: Relief from SD/MSP Rules for "Intended-to-be-Cleared" Swaps](#)).



## Other Applicable Dodd-Frank Rules

SDs that are large financial institutions may also be subject to:

- Regulation under the Dodd-Frank Act as [systemically significant financial institutions](#) (SSFIs) (see [Practice Note, Summary of the Dodd-Frank Act: Regulation of Systemically Significant Financial Institutions](#)).
- The Volcker Rule (see [Practice Note, Summary of the Dodd-Frank Act: The Volcker Rule](#)).
- The FDIC's orderly liquidation authority (OLA) under Title II of the Dodd-Frank Act (see [Practice Note, Summary of the Dodd-Frank Act: Swaps and Derivatives: The FDIC's Orderly Liquidation Authority Under Title II](#)).

### PRODUCTS

PLC US Finance, PLC US Financial Services, PLC US Law Department

© 2019 THOMSON REUTERS. NO CLAIM TO ORIGINAL U.S. GOVERNMENT WORKS.

Practical Law. © 2019 Thomson Reuters | [Privacy Statement](#) | [Accessibility](#) | [Supplier Terms](#) | [Contact Us](#) | 1-800-REF-ATTY (1-800-733-2889) | [Improve Practical Law](#)