

US Derivatives Regulation: Swap Clearing and Exchange Trading USA (National/Federal) **Related Content**

A Practice Note detailing regulation of swap clearing and exchange trading under Title VII of the Dodd-Frank Act, including a summary of CFTC swap clearing determinations and made-available-to-trade (MAT) determinations to date. This Note also details the CFTC regulatory framework for derivatives clearing organizations (DCOs) and swap execution facilities (SEFs), as well as certain relevant SEC rules for SBS clearing agencies.

One of the primary objectives of the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#) (the Dodd-Frank Act or Dodd-Frank) was to address certain perceived flaws in the [over-the-counter \(OTC\) derivatives](#) markets that many held responsible for exacerbating the financial crisis that began in 2008. Swaps and derivatives are generally covered under Title VII of the Act (Title VII). The cornerstone of Title VII swaps regulation is mandatory swap clearing and exchange trading.

Under Title VII, all non-exempt swaps to which a clearing exception does not apply that are capable of being cleared (that is, "standardized" swaps) are subject to "mandatory" clearing and exchange trading requirements under Title VII. These provisions were drafted by federal legislators in accordance with the [G-20](#) commitment to clear all standard swaps globally.

Like the G-20 commitments, Title VII specifies that mandatory clearing was to be implemented no later than the close of 2012. While US regulators (and all other global regulators) missed this deadline, mandatory clearing and exchange trading under Title VII is now underway in the US. Under the Title VII mandate and the rules implemented under it, much of the OTC swaps markets -- in particular, many common [credit default swaps](#) (CDS) and [interest rate swaps](#) (IRS) -- must now be executed on registered exchanges and cleared by [clearinghouses](#).

This Note details rules and rulemaking under Title VII of the Dodd-Frank Act covering mandatory swap clearing and exchange trading, including a summary of CFTC clearing determinations and made-available-to-trade (MAT) determinations to date. This Note also details the CFTC regulatory framework for derivatives clearing organizations (DCOs), derivatives contract markets (DCMs), and swap execution facilities (SEFs), as well as certain relevant SEC rules for SBS clearing agencies.

Swap Clearing Under Title VII

Clearinghouses collect [variation margin](#) (VM) collateral and, in certain cases, [initial margin](#) (IM) on behalf of the parties to a cleared swap to cover the parties' [exposure](#) to one another under the swap, essentially guarantying counterparty performance of the transaction so that parties to cleared swaps do not have to rely on the credit risk of their counterparty (see [Practice Note, Mechanics of Derivatives Clearing](#)).

Title VII requires that all "standardized" swaps that are capable of being cleared be cleared by a registered clearinghouse, provided that a clearinghouse accepts the contract for clearing and a clearing exemption or exception does not apply to the swap (see [Swap Clearing and Exchange-Trading Exemptions and Exceptions](#)).

Under:

- Section 723(a)(3) of the Dodd-Frank Act, which added Section 2(h) to the [Commodity Exchange Act](#) (CEA) (7 U.S.C. § 2(h)), [non-security-based swaps](#) (swaps) are regulated under Title VII by the [Commodity Futures Trading Commission](#) (CFTC) and must be cleared by a CFTC-registered [derivatives clearing organization](#) (DCO).

- Section 763(a) of the Dodd-Frank Act, which added Section 3C to the [Securities Exchange Act of 1934](#) (Exchange Act) ([15 U.S.C. § 78c-3](#)), [security-based swaps](#) (SBS) are regulated under Title VII by the [Securities and Exchange Commission](#) (SEC) and must be cleared by an SEC-registered securities clearing agency (SCA) that clears SBS (an SBS clearing agency).

(For detail on these types of entities, see [Swap Exchanges and Clearinghouses Under Title VII](#).)

Under CFTC regulations, exchange-traded swaps that are subject to the Title VII mandatory clearing requirement must be submitted for clearing “as quickly as technologically practicable” (AQATP) ([17 C.F.R. § 39.12\(b\)\(7\)](#)); see [Swaps Must Be Cleared "AQATP"](#)). The CFTC has clarified that this means within ten minutes of execution ([CFTC Staff Letter 15-67](#)). For further details, see [CFTC Modifies Time Frame for Submitting Exchange-Traded Swaps for Clearing](#).

Mandatory swap clearing under Title VII began for many common non-security-based CDS and IRS in 2013 under the CFTC's first clearing determination (see [CFTC Swap Clearing Determinations](#)). The CFTC has since issued a second determination covering additional denominations of IRS. Any further CFTC clearing determinations will be issued by the CFTC on a rolling basis.

The clearinghouse or the applicable regulator (CFTC for swaps, SEC for SBS) may initiate the review process for approval of clearing a category of swaps. For details on final rules ([76 Fed. Reg. 44464 \(July 26, 2011\)](#)) covering the CFTC's swap clearing review process, see [Legal Update, CFTC Issues Final Rules on Review Process of Non-Security-Based Swaps for Clearing Under Dodd-Frank](#).

Note that clearing requirements under Title VII are not yet effective for SBS (see [SBS Clearing and Exchange-Trading Rules Under Title VII Not Yet Effective](#)).

Swaps Must Be Cleared "AQATP"

Swaps subject to the Title VII clearing requirement must be cleared “as quickly as technologically practicable” (AQATP) under CFTC Regulation 39.12(b)(7) ([17 C.F.R. § 39.12\(b\)\(7\)](#)). As of September 26, 2013, the CFTC clarified that [clearing members](#) have ten seconds to accept or reject trades submitted to the DCO for clearing by or for the clearing member (see [2013 CFTC Staff Guidance on Swaps Straight-Through Processing](#)).

As of August 1, 2016, the CFTC specified that trades executed on a SEF or DCM must be routed to and received by a DCO no more than ten minutes after execution of the trade ([CFTC Staff Letter 15-67](#); see [Legal Update, CFTC Modifies Time Frame for Submitting Exchange-Traded Swaps for Clearing](#)).

The CFTC also issued [final rules](#) ([77 Fed. Reg. 21278 \(April 9, 2012\)](#)) for clearing members of non-security-based swap clearinghouses to facilitate customer access to clearing, bolster risk management at the clearing member level, and minimize the time between submission and acceptance or rejection of non-security-based swaps for clearing by DCOs and clearing members (see [Legal Update, Final Dodd-Frank Rules for Swap Clearing Members Issued by CFTC](#)).

These rules include:

- Certain parameters for the documentation between customers and clearing members (financial institutions that submit swaps to a non-security-based swap clearinghouse for clearing on behalf of customers) that are FCMs, SDs, and MSPs.
- The timing of acceptance or rejection of swaps for clearing by DCOs and clearing members of non-security-based swap clearinghouses.
- Risk-management protocol for SDs, MSPs, and FCMs that are clearing members on non-security-based swap clearinghouses.

([77 Fed. Reg. 21278 \(April 9, 2012\)](#).)

Note that on November 5, 2018, the CFTC proposed certain rule amendments that would impact SEF straight-through processing requirements ([83 Fed. Reg. 61946 \(Nov. 30, 2018\)](#)); see also, [84 Fed. Reg. 3350 \(Feb. 12, 2019\)](#) (extending comment period to March 15, 2019). If adopted, these amendments would clarify that the AQATP standard only applies to a DCO's acceptance or rejection of a transaction for clearing. However, the AQATP standard does not apply to the processing and routing of transactions. For further details, see [Legal Update, CFTC Proposes Revamp of Swap Execution Facility \(SEF\) and Trade Execution Framework](#).

CFTC Swap Clearing Determinations

To date, the CFTC has issued two clearing determinations under Title VII. Swaps that are identified in these rules must be cleared by a DCO as soon as technologically practicable after execution (see [Swaps Must Be Cleared "AQATP"](#)). The classes of swaps that must be cleared under these rules are reflected in the tables below (see [Clearing Tables: CDS and Interest Rate Swaps Subject to CFTC Clearing Mandates](#)).

The clearing determination does not apply to swaps or parties that fall within a final exemption or exception (see [Swap Clearing and Exchange-Trading Exemptions and Exceptions](#)).

First CFTC Clearing Determination

On November 28, 2012, the CFTC issued [final rules](#) requiring certain CDS and IRS to be cleared by a registered DCO ([77 Fed. Reg. 74284 \(Dec. 13, 2012\)](#)). The initial CFTC clearing determination requires that swaps in four IRS classes and two CDS classes be cleared under Section 2(h)(1) of the CEA ([7 U.S.C. § 2\(h\)\(1\)](#)). The determination identifies these classes by using basic specifications so that counterparties contemplating entering into a swap should be able to determine quickly whether or not a particular swap is subject to the clearing requirement.

The first CFTC clearing determination has fully taken effect and the swaps subject to this clearing determination must be cleared. The tables below reflect all swaps subject to CFTC clearing determinations to date, as well as footnotes specifying which clearing mandate the particular swap was subject to (see [Clearing Tables: CDS and Interest Rate Swaps Subject to CFTC Clearing Mandates](#)).

Second CFTC Clearing Determination: Expansion of Interest Rate Swap Clearing Requirements

On September 28, 2016, the CFTC issued its second [clearing determination](#) under Title VII, covering certain additional classes and denominations of interest rate swaps to be cleared ([81 Fed. Reg. 71202 \(Oct. 14, 2016\)](#)); see [Legal Update, CFTC Approved Expansion of Interest Rate Swap Clearing Requirements](#)). This clearing determination expanded the CFTC clearing requirement to include interest rate swaps denominated in:

- The Australian Dollar.
- The Canadian Dollar.
- The Hong Kong Dollar.
- The Singapore Dollar.
- The Mexican Peso.
- The Swiss Franc.
- The Polish Zloty.
- The Swedish Krona.
- The Norwegian Krona.

The CFTC has been phasing in the expanded interest rate swap clearing requirements specified in its second clearing determination on a rolling basis. The phase-in period has been implemented according to when a corresponding clearing requirement takes effect in the applicable non-US jurisdiction relevant to that currency (see [CFTC Phase-in Schedule for Second Clearing Determination](#)).

The tables below reflect all swaps subject to CFTC clearing determinations to date, including footnotes specifying which clearing mandate the particular swap was subject to (see [Clearing Tables: CDS and Interest Rate Swaps Subject to CFTC Clearing Mandates](#)).

Clearing Tables: CDS and Interest Rate Swaps Subject to CFTC Clearing Mandates

The tables below reflect all CFTC clearing determinations to date ([17 C.F.R. § 50.4](#)).

CDS Clearing Determinations to Date

Specification	European Untranch CDS Indices Class
Reference Entities	Corporate
Region	Europe
Indices	iTraxx Europe iTraxx Europe Crossover

	iTraxx Europe HiVol
Tenor	iTraxx Europe: 5Y, 10Y iTraxx Europe Crossover: 5Y iTraxx Europe HiVol: 5Y
Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series
Tranched	No
Effective Date	Effective
Specification	North American Untranchd CDS Indices Class
Reference Entities	Corporate
Region	North America
Indices	CDX.NA.IG CDX.NA.HY
Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y CDX.NA.HY: 5Y
Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series
Tranched	No
Effective Date	Effective

Interest Rate Swap Clearing Determinations to Date

Specification	Fixed-to-Floating Interest Rate Swap Class			
Currency	US Dollar (USD) ¹	Euro (EUR) ¹	Sterling (GBP) ¹	Yen (JPY) ¹
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years
Optionality	No	No	No	No
Dual Currencies	No	No	No	No
Conditional Notional Amounts	No	No	No	No

Effective Date	Effective	Effective	Effective	Effective	
Specification	Fixed-to-Floating Interest Rate Swap Class (Continued)				
Currency	Australian Dollar (AUD) ²	Canadian Dollar (CAD) ²	Hong Kong Dollar (HKD) ²	Mexican Peso (MXN) ²	
Floating Rate Indexes	BBSW	CDOR	HIBOR	TIIE-BANXICO	
Stated Termination Date Range	28 days to 30 years	28 days to 30 years	28 days to 10 years	28 days to 21 years	
Optionality	No	No	No	No	
Dual Currencies	No	No	No	No	
Conditional Notional Amounts	No	No	No	No	
Effective Date	December 13, 2016	July 10, 2017	August 30, 2017	December 13, 2016	
Specification	Fixed-to-Floating Interest Rate Swap Class (Continued)				
Currency	Norwegian Krone (NOK) ²	Polish Zloty (PLN) ²	Singapore Dollar (SGD) ²	Swedish Krona (SEK) ²	Swiss Franc (CHF) ²
Floating Rate Indexes	NIBOR	WIBOR	SOR-VWAP	STIBOR	LIBOR
Stated Termination Date Range	28 days to 10 years	28 days to 10 years	28 days to 10 years	28 days to 15 years	28 days to 30 years
Optionality	No	No	No	No	No
Dual Currencies	No	No	No	No	No
Conditional Notional Amounts	No	No	No	No	No
Effective Date	April 10, 2017	April 10, 2017	No later than October 14, 2018	April 10, 2017	No later than October 14, 2018
Specification	Basis Swap Class				
Currency	US Dollar (USD) ¹	Euro (EUR) ¹	Sterling (GBP) ¹	Yen (JPY) ¹	Australian Dollar (AUD) ²
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR	BBSW
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years	28 days to 30 years
Optionality	No	No	No	No	No
Dual Currencies	No	No	No	No	No
Conditional Notional Amounts	No	No	No	No	No
Effective Date	Effective	Effective	Effective	Effective	December 13, 2016
Specification	Overnight Index Swap Class				
Currency	US Dollar (USD) ¹	Euro (EUR) ¹	Sterling (GBP) ¹	Australian Dollar	Canadian Dollar

				(AUD) ²	(CAD) ²
Floating Rate Indexes	FedFunds	EONIA	SONIA	AONIA-OIS	CORRA-OIS
Stated Termination Date Range	7 days to 3 years	7 days to 3 years	7 days to 3 years	7 days to 2 years	7 days to 2 years
Optionality	No	No	No	No	No
Dual Currencies	No	No	No	No	No
Conditional Notional Amounts	No	No	No	No	No
Effective Date	December 13, 2016	December 13, 2016	December 13, 2016	December 13, 2016	July 10, 2017

Specification	Forward Rate Agreement (FRA) Class			
Currency	US Dollar (USD) ¹	Euro (EUR) ¹	Sterling (GBP) ¹	Yen (JPY) ¹
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR
Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years
Optionality	No	No	No	No
Dual Currencies	No	No	No	No
Conditional Notional Amounts	No	No	No	No
Effective Date	Effective	Effective	Effective	Effective

Specification	Forward Rate Agreement (FRA) Class (Continued)		
Currency	Polish Zloty (PLN) ²	Norwegian Krone (NOK) ²	Swedish Krona (SEK) ²
Floating Rate Indexes	WIBOR	NIBOR	STIBOR
Stated Termination Date Range	3 days to 2 years	3 days to 2 years	3 days to 3 years
Optionality	No	No	No
Dual Currencies	No	No	No
Conditional Notional Amounts	No	No	No
Effective Date	April 10, 2017	April 10, 2017	April 10, 2017

¹ First CFTC interest rate clearing determination.

² Second CFTC interest rate clearing determination.

CFTC Phase-in Schedule for Second Clearing Determination

In the second clearing determination, the CFTC provided a compliance table for denominations subject to the final rule. The CFTC also included a column indicating the compliance dates for non-US clearing requirements. Note that compliance with the first CFTC clearing determination has been fully phased in and compliance is now required.

Product	First Non-US Clearing Requirement Compliance Date	CFTC Clearing Date
AUD Fixed-to-Floating Class	April 4, 2016	December 13, 2016
CAD Fixed-to-Floating Class	May 9, 2017	July 10, 2017

CHF Fixed-to-Floating Class	None to date	No later than October 14, 2018 ¹
HKD Fixed-to-Floating Class	July 1, 2017	August 30, 2017
MXN Fixed-to-Floating Class	April 1, 2016	December 13, 2016
NOK Fixed-to-Floating Class	February 9, 2017	April 10, 2017
PLN Fixed-to-Floating Class	February 9, 2017	April 10, 2017
SEK Fixed-to-Floating Class	February 9, 2017	April 10, 2017
SGD Fixed-to-Floating Class	None to date	No later than October 14, 2018 ¹
AUD Basis Swap Class	April 4, 2016	December 13, 2016
NOK Forward Rate Agreement Class	February 9, 2017	April 10, 2017
PLN Forward Rate Agreement Class	February 9, 2017	April 10, 2017
SEK Forward Rate Agreement Class	February 9, 2017	April 10, 2017
EUR Overnight Index Swap Class (2-3 year term)	June 21, 2016	December 13, 2016
GBP Overnight Index Swap Class (2-3 year term)	June 21, 2016	December 13, 2016
USD Overnight Index Swap Class (2-3 year term)	June 21, 2016	December 13, 2016
AUD Overnight Index Swap Class	October 3, 2016	December 13, 2016
CAD Overnight Index Swap Class	May 9, 2017	July 10, 2017

¹Default date provided by the CFTC which was set for two years after the date of publication of the expanded clearing determination in the *Federal Register*.

CFTC Considers FX NDF Clearing Mandate

On December 22, 2014, the CFTC Foreign Exchange Markets Subcommittee (FEM) submitted a report to the CFTC Global Markets Advisory Committee (GMAC) regarding a prospective clearing mandate under Title VII of the Dodd-Frank Act for foreign exchange (FX) non-deliverable forwards (NDFs) (see [Legal Update, CFTC Considering FX NDF Clearing Mandate, Issues Report](#)). It is not yet clear if the CFTC intends to move forward with a clearing mandate under Title VII for FX NDF contracts.

Swap Exchange Trading Under Title VII

Under Title VII, swaps that are approved for clearing must be traded on a registered exchange that has been approved by the applicable regulator (CFTC for swaps, SEC for SBS), unless no registered exchange accepts the swap for trading. This is referred to as the Title VII mandatory swap exchange-trading requirement (also referred to as the trade-execution requirement). The Title VII trade-execution requirement became effective for many common IRS and CDS in February 2014 (see [CFTC Made-Available-to-Trade \(MAT\) Determinations](#)).

Under:

- Section 723(a)(3) of Title VII of the Dodd-Frank Act, which added [Section 2\(h\)\(8\)](#) to the CEA ([7 U.S.C. § 2\(h\)\(8\)](#)), non-security-based swaps (swaps) must be traded on "boards of trade," as defined in the CEA. In the context of Title VII, this means any exchange registered with the CFTC for swap trading. Boards of trade include:
 - [designated contract markets](#) (DCMs), which are large recognized exchanges on which physical commodities and other derivatives are entered into (traded) ([7 U.S.C. § 7](#)); and
 - [swap execution facilities](#) (SEFs), which are open-access electronic platforms on which non-commodity swaps such as IRS are traded ([7 U.S.C. § 7b-3](#)).

- Under Section 763(a) of Title VII of the Dodd-Frank Act, which added Section 3C(h) to the Exchange Act ([15 U.S.C. § 78c-3\(h\)](#)), SBS, such as single-name CDS, must be traded on either a:
 - national securities exchange ([15 U.S.C. § 78c\(a\)\(1\)](#)); or
 - security-based swap execution facility (SB SEF), which is a SEF on which SBS are traded ([15 U.S.C. § 78c-4](#)).

A swap exchange may be designated as one or more of these under Dodd-Frank CFTC rules. Many major derivatives exchanges may ultimately be designated as all of the above (see [Swap Exchanges and Clearinghouses Under Title VII](#)).

How the Title VII MAT Rules Operate

Swaps that are subject to the mandatory Title VII clearing requirement become subject to the Title VII trade-execution requirement through the CFTC's made-available-to-trade (MAT) process. The CFTC issued [final rules](#) on the MAT process on June 4, 2013 ([78 Fed. Reg. 33606 \(June 4, 2013\)](#)). Under these rules, SEFs and DCMs may make an initial determination that certain types of swaps may be made available to trade (MAT) on their exchange or platform. The exchange's MAT determination, if not objected to or stayed by the CFTC, self-certifies and becomes effective ten days after submission.

However, under CFTC Regulations 40.6(c) and 40.7(a)(2)(iii), the CFTC has the authority to stay MAT submissions for 90 days in order to request comment and gain additional time to analyze the submissions ([17 C.F.R. §§ 40.6\(c\)](#) and [40.7\(a\)\(2\)\(iii\)](#)). After this period the MAT determination self-certifies (see, for example, Javelin and trueEx MATs, discussed in [CFTC Made-Available-to-Trade \(MAT\) Determinations](#)). Exchange trading of the swap or swaps described by each MAT determination is required 30 days after self-certification occurs.

MAT determinations are not exchange-specific. So, if a MAT determination goes into effect, all swaps covered by that MAT determination must be exchange traded. However, the swaps subject to the MAT determination are not required to be traded on the exchange that submitted the MAT determination for those swaps.

Note that on November 5, 2018, the CFTC issued proposed rule amendments to revamp existing CFTC regulations for SEFs and trade-execution requirements ([83 Fed. Reg. 61946 \(Nov. 30, 2018\)](#); see also, [84 Fed. Reg. 3350 \(Feb. 12, 2019\)](#) (extending comment period to March 15, 2019)). If adopted, the amendments would eliminate the MAT determination process for SEFs and DCMs (see [Proposed Revisions to CFTC Swap Trade-Execution Requirement](#) and [Legal Update, CFTC Proposes Revamp of Swap Execution Facility \(SEF\) and Trade Execution Framework](#)).

CFTC Made-Available-to-Trade (MAT) Determinations

On January 16, 2014 the CFTC issued its [first trade-execution mandate](#) in response to a MAT determination submitted by Javelin SEF, LLC (Javelin) for certain IRS that may now be executed only on a CFTC-registered SEF or DCM (see [Legal Update, Mandatory Exchange Trading of Interest Rate Swaps to Begin on February 15, 2014](#)).

On January 22, 2014, the CFTC issued its [second trade-execution mandate](#) in response to a MAT determination submitted by trueEX, LLC (trueEX) for certain IRS that may now be executed only on a CFTC-registered SEF or DCM. The trueEX MAT determination included certain IRS that were included in the Javelin MAT.

On January 28, 2014, the CFTC issued its [third trade-execution mandate](#) in response to the MAT determinations for certain CDS and IRS submitted by TW SEF LLC (Tradeweb). These swaps may now be executed only on a CFTC-registered SEF or DCM (see [CDS MAT Summary](#)). The Tradeweb MAT determination was the third covering IRS but included certain IRS contracts that had been omitted from the Javelin and trueEx MATs (as well as certain IRS contracts that were already subject to those trade-execution mandates). The Tradeweb MAT determination was the first covering CDS.

Other MAT determinations have been certified by the CFTC but those have covered swaps that are already subject to the MAT determinations detailed above (see [CDS MAT Summary](#) and [IRS MAT Summary](#)).

CDS MAT Summary

The following CDS became subject to mandatory exchange trading under Title VII of the Dodd-Frank Act in February 2014 (see [Legal Update, MAT Summary: CFTC Swap Exchange-Trading Mandates and Effective Dates](#)) and may now only be entered into on a CFTC-registered SEF or DCM:

Untranchned Credit Default Swap Indices ¹		
Reference Entities	Corporate	Corporate

Region	North America	Europe
Indices	CDX.NA.IG	iTraxx Europe
	CDX.NA.HY	iTraxx Europe Crossover
Tenor	CDX.NA.IG 5Y	iTraxx Europe 5Y
	CDX.NA.HY 5Y	iTraxx Europe Crossover 5Y
Applicable Series	At any time, the then-current on-the-run series and the preceding series that was replaced by the current one	

¹This excludes certain "package" swaps that are required to be exchange traded as of various dates (see [US Derivatives Regulation: Compliance Calendar](#) and [CFTC Again Delays Package Swaps Exchange Trading Until 2020](#)).

IRS MAT Summary

The following IRS became subject to mandatory exchange trading under Title VII of the Dodd-Frank Act in February 2014 (see [Legal Update, MAT Summary: CFTC Swap Exchange-Trading Mandates and Effective Dates](#)) and may now only be entered into on a CFTC-registered SEF or DCM:

Fixed-to-Floating Interest Rate Swaps (USD) ¹			
Currency	US Dollar (USD)	US Dollar (USD)	US Dollar (USD)
Floating Rate Indexes	USD LIBOR (3M, 6M)	USD LIBOR (3M, 6M)	USD LIBOR (3M)
Trade Start Type	Spot Starting (T+2)	IMM Start Date (next two IMM dates)	IMM Start Date (next two IMM dates)
Optionality	No	No	No
Fixed Leg			
Payment Frequency	Semi-Annual, Annual	Semi-Annual, Annual	Semi-Annual
Day Count Convention	30/360, Actual/360	30/360, Actual/360	30/360
Floating Leg			
Payment/Reset Frequency	Quarterly (3M USD LIBOR), Semi-Annual (3M USD LIBOR or 6M USD LIBOR)	Quarterly (3M USD LIBOR), Semi-Annual (3M USD LIBOR or 6M USD LIBOR)	Quarterly (3M USD LIBOR)
Day Count Convention	Actual/360	Actual/360	Actual/360
Dual Currencies	No	No	No
Notional	Fixed Notional	Fixed Notional	Fixed Notional
Fixed Rate	Par	Par	Standard Coupon ²
Tenors³	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30 years	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30 years (standard and IMM end/roll date conventions)	1, 2, 3, 4, 5, 7, 10, 15, 20, 30 years (standard end/roll date conventions)
Holiday Calendar	NY/London	NY/London	NY/London
Business Day Convention	Following, Modified Following	Following, Modified Following	Modified Following
Effective Date	February 15, 2014	February 15, 2014	February 15, 2014 ⁴

¹This excludes certain "package" swaps that are required to be exchange traded as of various dates (see [US Derivatives Regulation: Compliance Calendar](#) and [CFTC Again Delays Package Swaps Exchange Trading Until 2020](#)).

²Standard Coupon refers to the then-current fixed coupon rates for Market Agreed Coupon (MAC) contracts (see [Legal Update, Standard Market Agreed Coupon \(MAC\) Interest Rate Swap Confirmation Introduced by ISDA](#)).

³USD-denominated Par Coupon swaps with a tenor of 4 or 6 years that are made available to trade are effective on February 26, 2014 and are limited to the 3M USD LIBOR floating rate index; Quarterly Reset Frequency; Modified Following; and the following fixed leg conventions: (1) Semi-Annual and 30/360; or (2) Annual and Actual/360. USD-denominated Par Coupon swaps with an IMM start date and a tenor of 12 years are limited to the IMM end/roll date convention.

⁴Standard Coupon swaps with a tenor of 4 years that are made available to trade are effective on February 26, 2014.

Fixed-to-Floating Interest Rate Swaps (Non-USD) ¹		
Currency	Euro (EUR)	Sterling (GBP)
Floating Rate Indexes	EURIBOR (3M, 6M)	GBP LIBOR (3M, 6M)
Trade Start Type	Spot Starting (T+2)	Spot Starting(T+0)
Optionality	No	No
Fixed Leg		
Payment Frequency	Semi-Annual, Annual	Quarterly, Semi-Annual
Day Count Convention	30/360, Actual/360	Actual/365F
Floating Leg		
Payment/Reset Frequency	Quarterly (3M EURIBOR), Semi-Annual (3M EURIBOR or 6M EURIBOR)	Quarterly (3M GBP LIBOR), Semi-Annual (6M GBP LIBOR)
Day Count Convention	Actual/360	Actual/365F
Dual Currencies	No	No
Notional	Fixed Notional	Fixed Notional
Fixed Rate	Par	Par
Tenors²	2, 3, 4, 5, 6, 7, 10, 15, 20, 30 years	2, 3, 4, 5, 6, 7, 10, 15, 20, 30 years
Holiday Calendar	TARGET ³	London
Business Day Convention	Following, Modified Following	Modified Following
Effective Date	February 15, 2014	February 15, 2014

¹This excludes certain "package" swaps that are required to be exchange traded as of various dates (see [US Derivatives Regulation: Compliance Calendar](#) and [CFTC Again Delays Package Swaps Exchange Trading Until 2020](#)).

²Euro (EUR)-denominated, par coupon swaps with a tenor of 4 or 6 years that are made available to trade are limited to the following fixed leg conventions: Annual and 30/360.

³TARGET holiday calendar convention is any day which the Trans-European Automated Real-time Gross Settlement Express Transfer system is open.

Proposed Revisions to CFTC Swap Trade-Execution Requirement

On November 5, 2018, the CFTC issued a proposed rule that would revamp the CFTC trade-execution requirement under Title VII to include all swaps listed by a SEF or DCM that are subject to the clearing requirement under the CEA ([83 Fed. Reg. 61946 \(Nov. 30, 2018\)](#); see also, [84 Fed. Reg. 3350 \(Feb. 12, 2019\)](#) (extending comment period to March 15, 2019)). If the amendment is finalized, the trade-execution requirement would align with the clearing requirement, and any swap for which the CFTC has issued or issues a final clearing determination would be subject to the mandatory trade-execution requirement and must be entered into on SEF or on a DCM (see [Legal Update, CFTC Proposes Revamp of Swap Execution Facility \(SEF\) and Trade Execution Framework](#)).

If adopted, the amendments would eliminate the MAT determination process for SEFs and DCMs

This proposed amendment is in line with a 2018 whitepaper entitled [Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps](#) (April 26, 2018), in which CFTC Chairman Giancarlo criticized the MAT determination process and recommends aligning the MAT determination process with the clearing determination so that all swaps subject to the clearing mandate are MAT (see [Legal Update, CFTC Announces Swaps Regulatory Reform 2.0](#)).

Swap Clearing and Exchange-Trading Exemptions and Exceptions

The Commercial End-User Exception

On July 10, 2012, the CFTC issued [final rules](#) ([77 Fed. Reg. 42560 \(July 19, 2012\)](#)), originally codified as former CFTC Rule 39.6) governing the end-user exception to the mandatory Title VII swap clearing and exchange trading requirements. As part of later rulemaking ([77 Fed. Reg. 74284 \(Dec 13, 2012\)](#)), the CFTC recodified the end-user exception as CFTC Rule 50.50, effective February 11, 2013 ([17 C.F.R. § 50.50](#)).

Under Section 2(h)(7) of the CEA, as amended by Section 723(a) of Title VII, Dodd-Frank mandatory swap clearing and exchange trading requirements do not apply to a swap if one counterparty to the swap satisfies all of the following conditions:

- It is either:
 - not a "financial entity"; or
 - an exempt financial entity (see [Practice Note, US Derivatives Regulation: The Commercial End-User Exception to the Mandatory Swap Clearing Requirement: Exempt Financial Entities](#)).
- It is using the swap to "hedge or mitigate commercial risk."
- It notifies the CFTC how it generally meets its financial obligations associated with entering into uncleared swaps.

([7 U.S.C. § 2\(h\)\(7\)\(a\)](#); [17 C.F.R. § 50.50\(a\)](#).)

Note that as long as one of the counterparties to the swap qualifies for the end-user exception, the swap need not be cleared or exchange traded. Clearing and exchange trading for these swaps is optional, at the election of the end user.

For details, see [Practice Note, US Derivatives Regulation: The Commercial End-User Exception to the Mandatory Swap Clearing Requirement](#).

Treasury Affiliate Exception

The CFTC issued two no-action letters exempting from mandatory swap clearing requirements swaps entered into by financial entities (known as "treasury affiliates") that would otherwise be subject to clearing but need not be cleared because the financial entity is entering into the swap on behalf of a non-financial affiliate hedging commercial risk (see [Legal Updates, Certain Affiliate Financial Entity Transactions Exempted from Mandatory Clearing by CFTC](#) and [CFTC Expands Dodd-Frank Clearing Exemption for Treasury Affiliates](#)).

On December 18, 2015, as part of the Consolidated Appropriations Act, 2016, Congress codified the clearing exception for treasury affiliates of non-financial commercial end users hedging commercial risk ([7 U.S.C. § 2\(h\)\(7\)\(D\)](#)). For more information, see [Legal Update, Treasury Affiliate Clearing Exception Codified as Part of Consolidated Appropriations Act](#).

FX Swap Exemption

On November 19, 2012, the US Treasury announced that Title VII clearing and exchange trading requirements would not apply to FX swaps and forward contracts ([77 Fed. Reg. 69694 \(November 20, 2012\)](#)). The exemption, which became effective November 20, 2012, covers a narrowly defined

segment of FX swaps, primarily swaps in which a fixed amount of one currency are exchanged for a fixed amount of another currency on a particular date. Though narrowly constructed, the exemption covers a large segment of the FX markets. In particular, the exemption covers FX swaps that:

- Have fixed payment obligations.
- Are [physically settled](#).
- Are short-term instruments.

Other FX derivatives are not exempted from Title VII central clearing and exchange trading requirements. For example, the following are not exempted to the extent they are not captured by the "FX swap" and "FX forward" definitions in the CEA:

- FX options.
- Currency swaps.
- Non-deliverable forwards (NDFs).

The FX exemption effectively allows exempt FX products to continue to be traded on bank electronic trading platforms. However, the rule effectively requires FX dealers to divide their businesses between products such as currency options and NDFs that must be cleared by clearinghouses and traded on exchanges, and FX swaps that may continue to be traded over the counter.

For more details on the FX swap exemption, see [Legal Update, FX Swaps and Forwards Exempted from Dodd-Frank Clearing Requirement](#).

Inter-Affiliate Swap Exemption

On April 1, 2013, the CFTC issued a [final rule](#) that exempts inter-affiliate swaps from mandatory clearing under Title VII ([78 Fed. Reg. 21750 \(April 11, 2013\)](#)). This exemption allows "eligible affiliate counterparties" to choose not to clear swaps if:

- The counterparties are majority-owned affiliates.
- The financial statements of the affiliates are included in the same consolidated financial statements.
- Both counterparties choose not to clear the swap.
- The terms of the swap are documented in a swap trading relationship document, or, if one of the parties is an SD or MSP, the swap is in compliance with CFTC Regulation 23.504 ([17 C.F.R. § 23.504](#)).
- The swap is subject to a centralized risk-management program reasonably designed to monitor and manage swap risks, or if one of the parties is an SD or MSP, the swap is in compliance with CFTC Regulation 23.600 ([17 C.F.R. § 23.600](#)).
- Each swap that is not exempt from mandatory clearing requirements is cleared.

([17 C.F.R. § 50.52\(a\), \(b\).](#))

Counterparties that elect not to clear a swap under the final inter-affiliate exemption must report the following to a swap data repository (SDR), or the CFTC if no SDR is available:

- That both affiliated counterparties have elected not to clear the swap and that both parties are eligible for the exemption by satisfying the requirements of this final rule.
- How both affiliated counterparties generally meet the financial obligations associated with entering into uncleared swaps.
- Specific additional information, if the affiliated counterparties are issuers of securities or are required to file reports under sections 12 and 15(d), respectively, of the Exchange Act ([15 U.S.C. §§ 78f and 78o\(d\)](#)).

([17 C.F.R. § 50.52\(c\).](#))

For further details, see [Legal Update, Inter-Affiliate and Certain Other Swaps Exempted from Mandatory Clearing Requirements by CFTC](#); see also [Treasury Affiliate Exception](#).

No-Action Relief Relating to Inter-Affiliate OFSC Exemption

The CFTC has issued [No-Action Letter 17-66](#), extending until December 31, 2020 relief that permits the use by eligible affiliates of alternatives to the "outward facing swaps condition" (OFSC) to qualify for the inter-affiliate swap clearing exemption and corresponding exemption from compliance with

mandatory trade-execution requirements under CEA Section 2(h)(8) ([7 U.S.C. § 2\(h\)\(8\)](#)). For details on the relief provided, see [Legal Update, CFTC Issues Fifth Extension of Inter-Affiliate Swap Clearing Exemption](#).

No-Action 17-66 also extends relief granted in [No-Action Letters 16-81](#) and [16-84](#) for certain affiliate entities from the OFSC in the inter-affiliate exemption. No-Action Letters 16-81 and 16-84 specifically granted relief for US swap participants from required clearing for swaps entered into with eligible affiliate counterparties located in Australia and Mexico. No-Action 17-66 modifies the relief granted in No-Action 16-84 to provide relief to an entity that uses the alternative compliance framework described in CFTC Regulation 50.52(b)(4)(ii) ([17 C.F.R. § 50.52\(b\)\(4\)\(ii\)](#)) to meet the requirements under the OFSC to qualify for the inter-affiliate exemption when entering into a swap with an eligible affiliate counterparty located in Canada, Hong Kong, or Switzerland.

The relief is extended until the sooner of December 31, 2020 or the effective dates of related amendments to CFTC Regulation 50.52 ([17 C.F.R. § 50.52](#)).

Exemption for Certain Physical Commodity Options

Commodity options are statutorily defined as swaps ([7 U.S.C. § 1a\(47\)\(i\)](#)) and are thus subject to the same rules applicable to any other swap, including mandatory clearing and exchange trading. However, CFTC guidance exempts three types of physical commodity options from full Dodd-Frank swaps regulatory treatment, including mandatory clearing and exchange trading rules:

- **Embedded commodity options.** Commodity options that are embedded in forward contracts (embedded options), provided that:
 - the option does not undermine the overall nature of the contract as a forward (it may, however, affect the forward price);
 - the predominant feature of the option contract is that it contemplates actual delivery of the underlying commodity (that is, it is intended to be physically settled); and
 - the option cannot be severed and marketed separately from the overall forward contract in which it is embedded.
- **Embedded volumetric options,** which are a specific type of option that can be used to hedge physical supply risk, often in connection with energy commodities, provided that:
 - the three requirements (listed above) for embedded commodity options are met;
 - the seller intends to deliver the commodity if the option is exercised;
 - the buyer intends to take delivery if the option is exercised;
 - both parties are commercial entities; and
 - the decision to exercise or to refrain from exercising the volumetric option is based primarily on physical factors or regulatory requirements that are outside the control of the parties.

See also [Forward Contracts with Embedded Volumetric Optionality \(EVO\)](#).

- **Trade options** (this is referred to as the "trade option exemption" or TOE), which must involve a physical commodity, provided that the trade option is:
 - offered by either an [eligible contract participant](#) (ECP) or a commercial participant, which includes producers, processors, and commercial end users;
 - offered to a commercial participant; and
 - intended to be physically settled.

([CFTC Commodity Options FAQs](#) (and authority cited therein).)

Certain other Title VII rules still apply to these transactions. For more details on these exemptions, including information on trade option reporting, see [Legal Update, CFTC Clarifies Most Commodity Options Are Swaps Subject to Dodd-Frank](#).

Other commodity option contracts that are [cash settled](#), as well as other physically settled commodity derivatives not delineated above, are considered swaps and are subject to Title VII swaps rules (see [Legal Update, CFTC Clarifies Most Commodity Options Are Swaps Subject to Dodd-Frank](#)). These instruments are already commonly cleared and exchange traded.

Forward Contracts with Embedded Volumetric Optionality (EVO)

On May 12, 2015, the CFTC and the SEC adopted a [final joint interpretation](#) excluding certain EVO forward contracts from the application of Dodd-Frank swaps rules, including mandatory Title VII clearing and exchange trading ([80 Fed. Reg. 28239 \(May 18, 2015\)](#)). For more details on the joint interpretation, see [Legal Update, CFTC Clarifies Dodd-Frank Exemption for EVO Forward Contracts](#).

Exemption for Small Banks and S&Ls

On January 8, 2016, the CFTC issued no-action relief from the Title VII clearing requirement to:

- Small bank holding companies (BHCs) and savings and loan holding companies (SLHCs) having consolidated assets of \$10 billion or less ([No-Action Letter 16-01](#)).
- Community-development financial institutions (CDFIs) that have received a certification from the US Department of the Treasury ([No-Action Letter 16-02](#)).

These entities may elect not to clear a swap that is otherwise subject to the CFTC's swap clearing requirement, provided that they meet certain specifications and take certain actions described in the no-action letters. For details, see [Legal Update, CFTC Exempts Small Banks and S&Ls from Certain Swap Clearing Requirements](#).

Other Exemptions

Also excluded or exempted from most of Title VII's requirements, including mandatory clearing and exchange trading, are:

- **Pre-enactment swaps.** Swaps entered into before the effective date of the Act's clearing rules (March 11, 2013).
- **"Stub" swaps.** Swaps remaining after partial swap [novations](#) or terminations and swaps remaining after swap portfolio compression exercises (see [Legal Updates, Inter-Affiliate and Certain Other Swaps Exempted from Mandatory Clearing Requirements by CFTC and Certain Affiliate Financial Entity Transactions Exempted from Mandatory Clearing by CFTC](#)).
- **Cooperative swaps.** Swaps entered into by certain cooperatives ([78 Fed. Reg. 52286 \(August 22, 2013\)](#), codified at [17 C.F.R. § 50.51](#)).
- **Customized, non-standard swaps.** Certain [bespoke](#) swaps that are not available to trade on a registered exchange and not able to be cleared because they are non-standardized.

Other Title VII clearing and exchange-trading exclusions or exemptions:

- **Equity options.** Options on securities or on certain indexes that are subject to the securities laws.
- **Commodity futures.** Exchange-traded commodity futures and options on exchange-traded commodity futures (these are already exchange-traded).
- **Physically settled non-financial forward contracts.** The final definitions of the terms "swap" and "security-based swap" under Title VII ([7 U.S.C. § 1a\(47\)](#); [15 U.S.C. § 78c\(a\)\(68\)](#)) exclude "any sale of a non-financial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled" ([7 U.S.C. § 1a\(47\)\(B\)\(ii\)](#)). Non-deliverable forwards (NDFs) are not excluded from these definitions and are therefore subject to Title VII swaps rules, including mandatory clearing and exchange trading.

SBS Clearing and Exchange-Trading Rules Under Title VII Not Yet Effective

SBS need not be cleared or exchange traded at this time, as no SBS clearing determinations or exchange-trading mandates (or any analogous releases) have been issued or certified by the SEC to date. However, Title VII includes analogous rules for SBS clearing and exchange trading under Section 763(a), which amended the Exchange Act in a similar manner to that in which Section 723(a) of Title VII amended the CEA to require non-security-based swap clearing and exchange trading. The SEC has not issued analogous rules to the CFTC's MAT rules for exchange trading.

But the SEC has been laying the groundwork for an SBS clearing and exchange-trading framework under Title VII that is similar to the CFTC's for swaps, including an SBS clearing and exchange-trading commercial end-user exception.

For details on SEC rulemaking to date on Title VII SBS clearing, see:

- [Legal Update, SEC Adopts Final Clearing Submission Rules for Security-Based Swaps Under Dodd-Frank](#) (discussing [77 Fed. Reg. 41602 \(July 13, 2012\)](#)).

- [Legal Update, SEC Proposes Corollary End-User Exemption From Mandatory Swap Clearing Under Dodd-Frank](#)).
- [Practice Note, US Derivatives Regulation: Swaps Regulatory Tracker: Swap Exchange Trading and Trade Execution and Swap Clearing](#).

For more information on SEC rulemaking activity related to SBS clearinghouses under Title VII, see [SBS Clearinghouses and Exchanges](#).

(Note that SBS compose a much smaller segment of the swaps market than non-security-based swaps. For details on the distinction between swaps and SBS under Title VII, see [Practice Note, Summary of the Dodd-Frank Act: Swaps and Derivatives: Types of Swaps Under Title VII](#).)

Swap Exchanges and Clearinghouses Under Title VII

Clearinghouses. As noted above, under Title VII:

- **DCOs (swaps).** Swaps must be cleared by a CFTC-registered derivatives clearing organization (DCO) ([7 U.S.C. § 2\(h\)](#)).
- **SCAs (SBS).** SBS must be cleared by an SEC-registered securities clearing agency (SCA) that clears SBS (an SBS clearing agency) ([15 U.S.C. § 78c-3](#)).

A clearinghouse may be registered with both the CFTC and the SEC so that it may clear both swaps and SBS.

Exchanges. As noted above, under Title VII:

- **DCMs and SEFs (swaps).** Swaps must be traded on "boards of trade," as defined in the CEA ([7 U.S.C. § 2\(h\)\(8\)](#)). In the context of Title VII, this means a derivatives exchange registered with the CFTC for the trading of non-security-based swaps. Boards of trade include:
 - Designated contract markets (DCMs), which are large recognized exchanges on which physical commodities and other derivatives, including certain swaps, are entered into (traded); and
 - Swap execution facilities (SEFs), which are open-access electronic platforms on which non-commodity swaps such as IRS are traded.

([7 U.S.C. §§ 7](#) and [7b-3](#).)

- **National securities exchanges and SB SEFs (SBS).** SBS, such as single-name CDS, must be traded on either a:
 - national securities exchange ([15 U.S.C. § 78c\(a\)\(1\)](#)); or
 - security-based swap execution facility (SB SEF), which is a SEF on which SBS are traded ([15 U.S.C. § 78c-4](#)).

([15 U.S.C. § 78c-3\(h\)](#).)

An exchange or electronic trading platform may be registered with both the CFTC and the SEC so that it may provide Title VII trade execution for both swaps and SBS.

Non-ECP Exchange-Trading Requirement

The Dodd-Frank Act makes it unlawful for a person who is not an eligible contract participant (ECP) to enter into a swap other than on or subject to the rules of a DCM. Final Title VII definitional rules therefore designate:

- SDs and MSPs as ECPs under the CEA.
- [Security-Based Swap Dealers](#) (SBSDs) and [major security-based swap participants](#) (MSBSPs) as ECPs under the Exchange Act.

([17 C.F.R. §§ 1.3](#) and [240.15Fh-2](#); and see [Legal Update, Final Rules Defining "Swap Dealer" and "Major Swap Participant" Under Dodd-Frank Issued by Regulators](#).)

In addition, section 763(e) of the Dodd-Frank Act ([15 U.S.C. § 78f\(l\)](#)) makes it unlawful for a person to effect a transaction in a SBS with or for a person that is not an ECP unless the transaction is effected on a national securities exchange registered with the SEC. Moreover, section 768(b) of Dodd-Frank ([15 U.S.C. § 77e\(c\)](#)) makes it unlawful for a person to sell, offer to sell, or offer to buy or purchase a SBS to or from a person that is not an ECP unless a registration statement under the Securities Act of 1933 is in effect with respect to that SBS.

Swap Clearinghouses: Derivatives Clearing Organizations (DCOs)

DCOs are non-security-based swap clearinghouses registered with the CFTC. On October 18, 2011, the CFTC issued [final rules](#) (76 Fed. Reg. 69334 (November 8, 2011)) for DCOs under Title VII. These rules establish standards for compliance with core principles such as required capital reserves for DCOs, product eligibility, standards for DCO risk-management policy and procedure, margin rules, including collateral [haircut](#) requirements and asset valuation methodology, clearing member, insolvency procedures, and more (see [Legal Update, CFTC Issues Final Rules for Derivatives Clearing Organizations Under Dodd-Frank](#)).

The final rules provide that DCOs must permit any person with at least \$50 million in adjusted net capital to become a clearing member (17 C.F.R. § 39.12(a)(1)(ii), (2)(i), (iii); see [US Derivatives Regulation: Swap Clearing and Exchange Trading :DCO Open Access Rule](#)). The final rules require that DCOs post on their websites a list of all swaps that they accept for clearing and to clearly indicate which of those swaps the CFTC has determined must be cleared (17 C.F.R. § 39.21).

Types of DCOs

There are three types of DCOs:

- **Registered.** A clearinghouse seeking to provide clearing services for futures contracts, options on futures contracts, or swaps is required to register with the CFTC as a DCO prior to engaging in clearing activities and must comply with the DCO core principles set forth in Section 5b of the CEA as added by Section 725(c) of the Dodd-Frank Act (7 U.S.C. § 7a-1(a), (c)).
- **Exempt.** Section 5b(5) of the CEA allows the CFTC to exempt a clearinghouse from registration as a DCO to the extent that the CFTC determines that the clearinghouse is subject to comparable and comprehensive supervision by an appropriate government authority in the clearinghouse's home jurisdiction (7 U.S.C. § 7a-1(h)). An exempt DCO is permitted to clear swaps positions for its US clearing members. The following clearinghouses are exempt from registration:
 - ASX Clear (Futures) Pty Limited (the first clearinghouse to be issued an [order of exemption](#) by the CFTC).
 - Japan Securities Clearing Corporation (JSCC).
 - Korea Exchange, Inc.
 - OTC Clearing Hong Kong Limited.

The CFTC maintains a [list of registered DCOs](#), including exempt DCOs, on its website.

- **Systemically Important Derivatives Clearing Organization (SIDCO).** SIDCOs are large CFTC-registered DCOs that the [Financial Stability Oversight Council](#) (FSOC) has designated systemically important. For details on the final rules governing SIDCOs, see [Legal Updates, Agencies Issue Final Rules Establishing Standards for Systemically Important Derivatives Clearing Organizations \(SIDCOs\)](#) and [CFTC Publishes Guidance Regarding Derivatives Clearinghouse Recovery and Wind-Down Plans](#). The following DCOs are designated as SIDCOs:
 - The Chicago Mercantile Exchange, Inc.
 - ICE Clear Credit LLC.

DCO Core Principles

A DCO seeking registration, or to maintain registration, must comply with the following core principles listed in Section 5b of the CEA (7 U.S.C.A. § 7a-1) and the related regulatory compliance standards (17 C.F.R. §§ 39.9 to 39.27):

- Compliance (Core Principle A).
- Financial resources (Core Principle B) (see [Financial Resources](#)).
- Participant and product eligibility (Core Principle C) (see [Participant and Product Eligibility](#)).
- Risk management (Core Principle D) (see [Risk Management](#)).
- Settlement procedures (Core Principle E).
- Treatment of funds (Core Principle F) (see [Treatment of Funds](#)).
- Default rules and procedures (Core Principle G) (see [Default Procedures](#)).
- Rule enforcement (Core Principle H).

- System safeguards (Core Principle I) (see [System Safeguards](#)).
- Reporting (Core Principle J) (see [Reporting](#)).
- Recordkeeping (Core Principle K).
- Public information (Core Principle L).
- Information sharing (Core Principle M).
- Antitrust considerations (Core Principle N).
- Governance fitness standards (Core Principle O).
- Conflicts of interest (Core Principle P).
- Composition of governing boards (Core Principle Q).
- Legal risk (Core Principle R).

(7 U.S.C.A. § 7a-1(c)(2)(A) to (R).)

Financial Resources

Core Principle B requires that a DCO maintain sufficient financial resources to:

- Meet its financial obligations to its clearing members, even if the clearing member to which it has the greatest exposure defaults, in extreme but plausible market conditions; and
- Cover its operating costs for at least one year.

(7 U.S.C.A. § 7a-1(c)(2)(B); 17 C.F.R. § 39.11.)

A financial resource may be allocated, in whole or part, to cover either obligations to clearing members or operating costs, but not both. A DCO may use its own capital to satisfy these obligations. To meet its obligations to clearing members, the DCO may also look to margin (to the extent permitted), guaranty fund deposits, default insurance, potential assessments for additional guaranty fund contributions (if permitted under the DCO rules), and any other financial resources acceptable to the CFTC. (17 C.F.R. § 39.11(b).)

A DCO must calculate its minimum required financial resources, and must also value its financial resources, on a monthly basis. The DCO must also manage its liquidity to ensure that it can, at a minimum, fulfill both:

- Its cash obligations when due.
- Its obligations as a central counterparty during a one-day settlement cycle.

(17 C.F.R. § 39.11(c) to (e).)

The requirement to maintain sufficient financial resources is often accomplished through a well-defined default [waterfall](#) hierarchy where [central clearing counterparties](#) (CCPs) assume the default risk of their trading members and ensure the continuity of the trading system. Typically, the defaulting member's collateral contributions are used first to absorb the losses. If that is not enough, the CCP's capital contribution will be next in line. As a last resort, the contributions of non-defaulting members in the default fund pool are pulled in to mutually share the losses. (For details on CCP default waterfalls, see [Practice Note, Clearinghouse \(CCP\) Default Waterfalls Explained](#).)

Participant and Product Eligibility

Core Principle C requires a DCO to establish standards for clearing member participation and membership, as well as product eligibility (7 U.S.C.A. § 7a-1(c)(2)(C); 17 C.F.R. § 39.12).

Participant (clearing member) eligibility requirements must:

- Permit fair and open access (see [US Derivatives Regulation: Swap Clearing and Exchange Trading :DCO Open Access Rule](#)).
- Require clearing members to meet minimum:
 - financial resource and operational capacity standards; and

- capital requirements of no more than \$50 million for any person seeking to become a clearing member in order to clear swaps.
- Require compliance reporting from clearing members and provide for compliance monitoring and enforcement by the DCO.

(17 C.F.R. § 39.12(a).)

Product eligibility requirements must, among other things:

- Take into account the DCO's ability to manage the risks associated with eligible agreements, contracts, and transactions.
- Treat swaps with the same terms and conditions submitted for clearing as economically equivalent within the DCO.
- Select product unit sizes and other terms and conditions to maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management.
- Establish rules governing acceptance for clearing, the time frame for clearing, and confirmation of the swap.

(17 C.F.R. § 39.12(b).)

Risk Management

Core principle D requires DCOs to manage risk by measuring credit exposure, limiting its exposure to potential losses from defaults, and requiring sufficient margin (7 U.S.C.A. § 7a-1(c)(2)(D); 17 C.F.R. § 39.13). Regulation 39.13 requires DCOs to:

- establish a written risk-management framework, subject to internal audit (17 C.F.R. § 39.13(b));
- appoint a chief risk officer responsible for implementing the risk-management framework (17 C.F.R. § 39.13(c));
- measure its mark-to-market credit exposure at least once each business day (17 C.F.R. § 39.13(e)); and
- limit its exposure to potential losses from defaults by its clearing members (17 C.F.R. § 39.13(f)).

Margin Requirements. A DCO must establish risk-based initial margin (IM) requirements adequate for the particular risks associated with each product and portfolio. The IM requirements must be sufficient to cover the DCO's potential future exposures to clearing members based on price movements occurring between the last collection of variation margin (VM) and the time of estimated liquidation of a defaulting member's positions, based on the following minimum liquidation times:

- One day for futures and options.
- One day for swaps on agricultural commodities, energy commodities, and metals.
- Five days for all other swaps.
- A longer liquidation time as appropriate for the specific product or portfolio, unless the CFTC orders a shorter or longer liquidation time.

(17 C.F.R. § 39.13(g)(2).)

A DCO must review the adequacy of its IM requirements on a daily basis (17 C.F.R. § 39.13(g)(6)). A DCO must also conduct backtesting, which compares a DCO's IM requirements with historical price changes to determine the extent of actual margin coverage (17 C.F.R. § 39.2)), as follows:

- Daily for products or swap portfolios that are experiencing significant market volatility.
- At least monthly for each:
 - product for which the DCO uses a product-based margin methodology;
 - spread for which there is a defined spread margin rate;
 - account held by a clearing member at the DCO (by house origin and by each customer origin); and
 - swap portfolio, including any portfolio containing futures, options, or both and held in a commingled account by a beneficial owner.

(17 C.F.R. § 39.13(g)(7)).

The actual coverage of the IM requirements must meet an established confidence level of at least 99%, based on appropriate historical data (17 C.F.R. § 39.13(g)(2)). A DCO's systems for generating IM requirements, including its theoretical models, must be reviewed and validated on a regular basis by a qualified and independent party (17 C.F.R. § 39.13(g)(3)).

A DCO may allow reductions in IM requirements for related positions if the price risks with respect to those positions are significantly and reliably correlated by both a theoretical basis and an exhibited statistical correlation. Any margin reductions and the underlying correlations must be reviewed regularly. (17 C.F.R. § 39.13(g)(4).)

To accurately measure its credit exposure, the DCO must have written procedures and sound valuation models where pricing data is not readily available or reliable. (17 C.F.R. § 39.13(g)(5).)

Customer Margin. A DCO must collect IM on a gross basis for each clearing member's customer accounts equal to the sum of the IM amount that would be required if each individual customer in the account was a clearing member. Neither the DCO nor its clearing members may net positions of different customers against one another. However, the DCO may collect IM for its clearing members' house accounts on a net basis. (17 C.F.R. § 39.13(g)(8).)

A DCO must require its clearing members to:

- Collect customer IM from their customers, for non-hedge positions, at a level greater than 100% of the DCO's IM requirements for each product and swap portfolio.
- Ensure that their customers do not withdraw funds from their accounts unless the net liquidating value plus the margin deposits remaining in the customer's account after the withdrawal is sufficient to meet the customer IM requirements for all products and swap portfolios held in the customer's account.

(17 C.F.R. § 39.13(g)(8).)

The DCO must establish and enforce deadlines for payment of IM and VM by its clearing members (17 C.F.R. § 39.13(g)(9)). Assets accepted as IM must have minimal credit, market, and liquidity risks. A DCO may accept letters of credit as IM for futures and options on futures, but not for swaps. (17 C.F.R. § 39.13(g)(10).) A DCO must value assets posted as IM on a daily basis and must:

- Apply appropriate haircuts, which must be evaluated at least quarterly.
- Apply appropriate concentration limits or charges, as needed, to ensure liquidity, which must be evaluated at least monthly.
- Ensure that any assets pledged as IM are unencumbered.

(17 C.F.R. § 39.13(g)(11) to (14).)

Other risk-control mechanisms. The regulations also require a DCO to employ other risk-control mechanisms, including:

- Risk limits on each clearing member.
- Daily review of large-trader reports to determine the risk of the overall portfolio of each large trader.
- Stress tests, as defined in Regulation 39.2 (17 C.F.R. § 39.2), to be conducted:
 - daily for each large trader who poses a significant risk to a clearing member or the DCO; and
 - at least weekly for each clearing member account and each swap portfolio held in a commingled account by a beneficial owner, under extreme but plausible market conditions.
- Portfolio compression exercises to be made available on a regular and voluntary basis for clearing members that clear swaps.
- Periodic review of clearing member risk-management policies and procedures.
- Authority to take action regarding particular clearing members based on objective and prudent risk management standards (for example, by imposing enhanced capital or margin requirements, requiring a reduction in positions, or suspending or revoking clearing membership).

(17 C.F.R. § 39.13(h)).

Treatment of Funds

Core Principle F requires a DCO to adopt standards and procedures governing segregation and holding of customer funds and assets, transfer of customer positions, and permissible investments (7 U.S.C.A. § 7a-1(c)(2)(F); 17 C.F.R. § 39.15).

A DCO must hold customer funds and assets in a manner that minimizes the risk of loss or delay in access and according to the segregation requirements under Section 4d of the CEA and under CFTC regulations (7 U.S.C.A. § 6d; 17 C.F.R. § 39.15(b)(1)). The DCO and its clearing

members may commingle customer positions in futures, options, and swaps, and any money, securities, or property received to margin or guarantee those positions in:

- A cleared swaps account meeting the requirements of Section 4d(f) of the CEA (7 U.S.C.A. § 6d(f)), governing the money, securities, and properties of swap customers of a [futures commission merchant](#) (FCM), provided the DCO meets certain requirements in establishing its rules and procedures.
- A futures account meeting the requirements of Section 4d(a) of the CEA (7 U.S.C.A. § 6d(f)), governing commingling by FCMs, provided the DCO petitions to obtain an order under Section 4d(a).

(17 C.F.R. § 39.15(b)(2).)

Transfer of customer positions. A DCO must promptly transfer all or a portion of a customer's positions and related funds at the same time from the carrying clearing member to another clearing member without requiring the close-out and re-booking of the positions, subject to certain conditions (17 C.F.R. § 39.15(d)).

Permitted investments. A DCO must invest funds and assets of its clearing members and their customers:

- In instruments with minimal credit, market, and liquidity risks.
- In compliance with Regulation 1.25 (37 C.F.R. § 1.25), which lists specific types of permissible investments and required terms and conditions.

(17 C.F.R. § 39.15(e).)

Default Procedures

Core Principle G requires a DCO to adopt procedures for the efficient, fair, and safe management of a clearing member's insolvency or other default. DCOs must maintain written default management plans, which must be tested at least annually. (7 U.S.C.A. § 7a-1(c)(2)(G); 17 C.F.R. § 39.16.)

Among other things, a DCO's default rules must:

- Specify what constitutes a default and, if a default occurs:
 - the actions the DCO may take;
 - the obligations the DCO may impose on clearing members; and
 - the order in which the funds and assets of the defaulting clearing member and its customers and the resources of the DCO would be applied.
- Require a clearing member to promptly notify the DCO if it becomes the subject of a bankruptcy petition or receivership proceeding.

(17 C.F.R. § 39.16.)

System Safeguards

Core Principle I requires a DCO to maintain a risk analysis and oversight program governing its operations and automated systems. The program must follow generally accepted standards and industry best practices and must address the following elements:

- Information security.
- Business continuity and disaster recovery.
- Capacity and performance planning.
- Systems operations, development, and quality assurance.
- Physical security and environmental controls.

(7 U.S.C.A. § 7a-1(c)(2)(I); 17 C.F.R. § 39.18(b), (c).)

Regulation 39.18 also includes requirements for outsourcing, testing, recordkeeping, and notice requirements for exceptional events and planned changes (17 C.F.R. § 39.18(d) to (h)).

Reporting

Core Principle J requires a DCO to report information required for CFTC oversight (7 U.S.C.A. § 7a-1(c)(2).) Required reporting includes:

- **Daily reports.** A DCO must report the following for all futures, options, and swaps positions, and all securities positions held in a customer account subject to Section 4d of the CEA ([7 U.S.C.A. § 6d](#)) or subject to a cross-margining agreement:
 - IM requirements and IM on deposit for each clearing member;
 - daily VM, separately listing the mark-to-market amount collected from or paid to each clearing member;
 - all other daily cash flows relating to clearing and settlement; and
 - end-of-day positions for each clearing member.
- **Quarterly reports.** Financial resource reports as required under Core Principal B ([17 C.F.R. § 39.11\(f\)](#); see [Financial Resources](#)).
- **Annual reports.** The following reports must be filed annually:
 - annual report of the chief compliance officer ([17 C.F.R. § 39.10](#)); and
 - audited year-end financial statements of the DCO.
- **Event-specific reports.** The DCO must report certain events at the time or soon after they occur, including, among others:
 - a 25% decrease in the total value of the DCO's financial resources;
 - a decrease in of 20% or more in ownership equity;
 - a request to a clearing member to reduce its positions;
 - the default of a clearing member;
 - a change in key personnel;
 - the imposition of sanctions by the DCO against a clearing member; and
 - exceptional events or planned changes required under Core Principle I ([17 C.F.R. § 39.18\(g\), \(h\)](#); see [System Safeguards](#)).

([17 C.F.R. § 39.19\(c\)](#))

DCO Open Access Rule

One noteworthy rule included in the final DCO rules is the open access rule under CFTC Regulation 39.12, which requires entities with net adjusted capital (as defined in CFTC rules) of \$50 million or greater be given access to DCOs as clearing members for swap clearing purposes ([17 C.F.R. § 39.12](#)).

These rules prohibit a DCO from refusing to clear a swap because neither party to the swap is a clearing member of that DCO. Parties that are not clearing members, however, still have to submit their swap trades for clearing through a clearing member of the DCO. For further details, see [Legal Update, CFTC Issues Final Rules on Review Process of Non-Security-Based Swaps for Clearing Under Dodd-Frank](#).

Other DCO Obligations

DCOs also have obligations under final Dodd-Frank swap data reporting and recordkeeping rules, as well as certain final swap margin collateral segregation and other rules issued under Title VII. For details, see:

- [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules](#).
- [Practice Note, US Derivatives Regulation: Margin Collateral Rules](#).
- [Legal Update, Agencies Issue Final Rules Establishing Standards for Systemically Important Derivatives Clearing Organizations \(SIDCOs\)](#).

CFTC Proposes Major Amendments to DCO Regulations and Core Principles

On April 29, 2019, the CFTC issued a proposed rule that would amend certain regulations applicable to DCOs under Part 39 of the CFTC Regulations. The amendments would clarify certain provisions of Part 39 as well as codify related DCO staff relief and interim guidance. For details, see [Legal Update, CFTC Proposes Major Amendments to Derivatives Clearing Organization \(DCO\) Regulations and Core Principles](#).

CFTC Proposes Easing Requirements for Non-US DCOs and Exempt DCOs

On July 11, 2019, the CFTC approved two proposed rules that would:

- Provide for an alternative compliance mechanism for non-US clearing organizations to comply with the regulations of their home jurisdictions instead of US regulations governing CFTC-registered derivatives clearing organizations (DCOs).
- Amend regulations regarding exemption from DCO registration by:
 - permitting exempt DCOs to clear swaps for US customers through foreign intermediaries, provided certain conditions are met; and
 - requiring that, in order to be eligible for exemption from DCO registration, non-US clearing organizations not pose a "substantial risk" to US financial stability.

For details, see [Legal Update, CFTC Proposes to Ease Requirements for Non-US Derivatives Clearing Organizations \(DCOs\) and Exempt DCOs](#).

Further DCO Information

- For more information on DCOs, including instructions on how to register as a DCO, see the CFTC's online [DCO page](#).
- See the CFTC's [DCO list](#) for details on all CFTC-registered DCOs.
- For information on the mechanics of swap clearing, see [Practice Note, Mechanics of Derivatives Clearing](#).
- For additional information on how clearinghouses work, see [Practice Note, Clearinghouse \(CCP\) Default Waterfalls Explained](#).

Swap Exchanges: DCMs and SEFs

Title VII requires that standardized swaps be entered into on either:

- **Designated contract markets (DCMs)**, which are large recognized exchanges on which physical commodities and other derivatives, including certain swaps, are traded ([7 U.S.C. § 7](#));
- **Swap execution facilities (SEFs)**, which are open-access electronic platforms on which non-commodity swaps such as IRS are traded ([7 U.S.C. § 7b-3](#)).

([7 U.S.C. § 2\(h\)\(8\)](#).)

Most major derivatives exchanges that follow the traditional model with bank as exchange member (and clearing member of the affiliated clearinghouse) are now registered with the CFTC as DCOs. However, SEFs are a creation of Title VII and are a major component of an attempt by federal legislators to transform the swaps markets by removing large banks as gatekeepers to the market.

Swap Execution Facilities (SEFs)

SEFs are electronic swaps trading platforms introduced by Title VII of the Dodd-Frank Act that allow market participants to enter into derivatives transactions with one another, bypassing the large banks that have traditionally been the gatekeepers to these markets. A trading system or platform that provides more than one US market participant with the ability to execute or trade swaps with more than one other market participant must register with the CFTC as a SEF, unless already registered as a DCM ([7 U.S.C. § 7b-3\(a\)](#)).

On January 22, 2016, the CFTC issued orders granting its first SEF registrations to 18 organizations that had been previously operating under temporary provisional registration (see [Legal Update, CFTC Grants First SEF Registrations](#)).

Traditionally, banks or broker-dealers that are members of one or more derivatives exchanges have had an advantage in negotiating derivatives contract terms. The end user or fund (buy-side) counterparty has little choice but to agree to certain non-negotiable terms that favor the member counterparty if it wishes to enter into the transaction (for example, with respect to the posting of margin collateral in connection with the transaction). The buy-side counterparty must also, of course, pay the exchange member (usually also clearing member of the related clearinghouse) a fee for entering into the transaction.

SEFs were created in an attempt by legislators to marginalize this dealer-controlled model. As a result, SEFs have been the source of much contention between regulators and market participants. (Of course, in emphasizing swap clearing, Title VII has more than given back to the sell side what it may have taken away with the introduction of SEFs.)

To date, SEF reception has been lukewarm, and volumes not yet robust. Some, including one CFTC commissioner, have recommended changes to SEF rules to align them more closely with global guidelines and address liquidity concerns (see [White Paper: Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank](#) (Jan. 29, 2015)). Parties have been reluctant to trade on SEF because doing so voluntarily subjects the party and the transaction to many Title VII rules that are otherwise inapplicable.

SEF Core Principles

In order to qualify as a SEF, entities must comply with Part 37 of the CFTC Regulations ([17 C.F.R. §§ 37.1 to 37.1501](#)), which consist of general regulations and 15 core principles that a SEF is required to adopt. The general regulations, contained in Subpart A of Part 37 ([17 C.F.R. §§ 37.1 to 37.12](#)), include, among other things, registration requirements (including minimum functionality), the scope of the rules, and procedures for listing derivatives "on SEF."

Entities looking to register as SEFs need not be [swap dealers](#) but they must have sufficient financial resources, defined as resources sufficient to cover the operating costs of the SEF for one year ([17 C.F.R. § 37.1300](#)). Entities have reasonable discretion in determining the methodology used to calculate operating costs of the SEF and must determine their fiscal eligibility on a rolling basis, calculated quarterly ([17 C.F.R. §§ 37.1301\(c\) and 37.1303](#)). On April 28, 2017, the CFTC issued guidance on calculating projected operating costs by DCMs and SEFs ([CFTC Letter No. 17-25](#)).

Subparts B through P of Part 37 ([17 C.F.R. §§ 37.100 to 37.1501](#)) include the 15 core principles that SEFs must adopt. These principles require that the SEF will, among other things:

- Not permit the trading of swaps that are susceptible to manipulation ([17 C.F.R. §§ 37.300 and 37.301](#)).
- Monitor trading and trade processing ([17 C.F.R. §§ 37.400 to 37.408](#)).
- Have the ability to obtain necessary information from market participants ([17 C.F.R. §§ 37.500 to 37.504](#)).
- Adopt position limits or accountability ([17 C.F.R. §§ 37.600 and 37.601](#)).
- Adopt rules for ensuring the financial integrity of swaps entered into on SEF ([17 C.F.R. §§ 37.700 to 37.703](#)).
- Have emergency authority to curtail trading in a swap ([17 C.F.R. §§ 37.800 and 37.801](#)).
- Publish trading information in a timely manner ([17 C.F.R. §§ 37.900 and 37.901](#)).
- Engage in required swap data recordkeeping and reporting ([17 C.F.R. §§ 37.1000 and 37.1001](#)).
- Possess the financial resources to fulfill its obligations ([17 C.F.R. §§ 37.1300 to 37.1307](#)).

Trading on SEF

To be eligible for CFTC registration, a SEF must, at a minimum, offer an order book, which is defined as either a trading facility or platform in which all market participants in the trading system or platform have the ability to:

- Enter multiple bids and offers.
- Observe or receive bids and offers entered by other market participants.
- Transact on such bids and offers.

([17 C.F.R. § 37.3\(a\)\(2\), \(3\)](#).)

Except for block trades, any swap transaction with a SEF that is subject to mandatory clearing requirements (under [7 U.S.C. § 2\(h\)\(8\)](#)) must be executed by one of the following means:

- An order book.
- A request-for-quote (RFQ) system that operates in conjunction with an order book.

([17 C.F.R. § 37.9\(a\)\(2\)\(i\)](#).)

An RFQ system is meant to mimic the previous OTC procedures where a customer would physically call multiple dealers in order to get the best price and then execute. The RFQ system works in conjunction with the order book to execute swaps by allowing market participants to request a quote to buy or sell a swap from a minimum of three market participants who are unaffiliated with the requester or each other ([17 C.F.R. § 37.9\(a\)\(2\)\(i\), \(3\)](#)). As of October 2, 2014, market participants trading on SEF must request a quote from a minimum of three dealers ([17 C.F.R. § 37.9\(a\)\(3\)](#)).

Temporary Relief for SEFs From Certain Block Trade Requirements

Under CFTC Regulation 43.2, block trades are defined as publicly reportable swap transactions that:

- Involve a swap that is listed on a SEF or DCM.
- Occur away from the SEF's or DCM's trading system or platform and are executed pursuant to the SEF's or DCM's rules.
- Have a [notional](#) or principal amount equal to or exceeding the applicable minimum block size (see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: Real-Time Block Size and Cap Size Tables](#))
- Are reported subject to the SEF or DCM rules.

(17 C.F.R. § 43.2.)

On November 15, 2017, the CFTC issued [No-Action Letter 17-60](#), which further extends until November 15, 2020 relief granted to SEFs from the requirement under CFTC Regulation 43.2 that block trades occur away from the trading system or platform of a registered SEF or DCM. The relief permits SEFs to temporarily facilitate block trades for swaps on a SEF trading system or platform, subject to certain conditions. For more information, see [Legal Update, CFTC Further Extends SEF Relief From Certain Block Trade Requirements Until 2020](#).

For details on CFTC rules for block trades, see [Practice Note, US Derivatives Regulation: CFTC Swap Data Reporting and Recordkeeping Rules: CFTC Block Trade Rules](#).

Relief for SEF Prime Brokerage Mirror Swaps from Certain Pre-Trade Disclosure Requirements

On March 29, 2019, the CFTC issued No-Action Letter 19-06, which is designed to facilitate [prime brokerage](#) activities on SEFs by providing relief to a prime broker (PB) SD from certain pre-trade disclosure requirements relating to a mirror or [back-to-back](#) swap entered into off SEF in connection with a PB transaction entered into by a client of the PB on SEF. The relief has no expiration date.

For further details, see [Legal Update, CFTC Provides No-Action Relief Exempting SEF Prime Brokerage Mirror Swaps from Certain Pre-Trade Disclosure Requirements](#).

SEF Rulemaking

For further details on CFTC SEF rulemaking and SEF-related regulatory activity under Title VII, see Legal Updates:

- [Final Dodd-Frank Swap Execution Facility \(SEF\) Rules Adopted by CFTC](#).
- [C:\Users\U6024156\AppData\Roaming\Microsoft\Word\5-506-9770 CFTC Issues Final Rules on "Registered Entities" Under Dodd-Frank](#).
- [SEFs Go Live, CFTC Issues Limited No-Action Relief From Some SEF Rules](#).
- [CFTC Issues Guidance on SEF "Equal Access" and Required Registration of Non-US Platforms](#).
- [EU and CFTC Issue Equivalence Decisions on Derivatives Trading Venues](#)

For more information on SEFs, including instructions on how to register as a SEF, see the CFTC's online [SEF page](#).

See the CFTC's [SEF list](#) for details on all CFTC-registered SEFs.

Proposed SEF Revamp

On November 5, 2018, the CFTC issued a proposed rule that would revamp the existing CFTC SEF framework ([83 Fed. Reg. 61946 \(Nov. 30, 2018\)](#); see also, [84 Fed. Reg. 3350 \(Feb. 12, 2019\)](#) (extending comment period to March 15, 2019)). The major proposed SEF reforms include:

- Expanding the SEF registration requirement to certain "swap broking" entities and codifying footnote 88 of the SEF core principles final rule ([78 Fed. Reg. 33476 n.88 \(June 4, 2013\)](#); see [Legal Update, Final Dodd-Frank Swap Execution Facility \(SEF\) Rules Adopted by CFTC](#)), which would clarify that any swap trading platform that meets the SEF definition would be required to register with the CFTC as a SEF, whether or not the swaps traded on the platform are MAT, and regardless of jurisdiction or location. (See [Swap Execution Facilities \(SEFs\)](#).)
- Expanding the scope of the trade-execution requirement to include all swaps listed by a SEF or DCM that are subject to the clearing requirement under the CEA, while also exempting the following swaps from the trade-execution requirement:
 - swaps that are subject to a clearing exception or exemption;
 - swap components of package transactions involving the issuance of a new bond;

- inter-affiliate swaps; and
- swaps listed for trading only by an exempt SEF.
- Eliminating the MAT determination process for SEFs and DCMs.

(See [Proposed Revisions to CFTC Swap Trade-Execution Requirement](#).)

- Eliminating the requirement that SEFs offer an order book for all swaps listed for trading and the requirement that SEFs offer either an order book or request-for-quote (RFQ) system (see [Trading on SEF](#)).
- Requiring each SEF to establish disclosure-based trading and execution rules for any execution method that it offers.
- Amending certain:
 - SEF straight-through processing requirements (see [Swaps Must Be Cleared "AQATP"](#)); and
 - SEF financial resource requirements.
- Amending the block trade definition by:
 - eliminating the "occurs away" requirement for swap block trades;
 - requiring counterparties to use a SEF's trading system or platform to execute any swap with a notional or principal amount at or above the appropriate minimum block-trade size; and
 - eliminating the block-trade exception to the pre-arranged trading prohibition.

(See [Temporary Relief for SEFs From Certain Block Trade Requirements](#).)

For further details, see [Legal Update, CFTC Proposes Revamp of Swap Execution Facility \(SEF\) and Trade Execution Framework](#).

Designated Contract Markets (DCMs)

DCMs are major recognized exchanges on which non-security-based swaps are executed. The CFTC issued [final rules](#) ([77 Fed. Reg. 36612 \(June 19, 2012\)](#)) under the Dodd-Frank Act regarding the designation and operation of DCMs which affect all DCMs, DCM applicants, DCM market participants, and DCM members and intermediaries.

In order to qualify as a DCM, entities must comply with Part 38 of the CFTC Regulations ([17 C.F.R. §§ 38.1 to 38.1201](#)), which consist of general regulations and 23 core principles that a DCM must adopt. The general regulations, contained in Part A of Part 38 ([17 C.F.R. §§ 38.1 to 38.12](#)), include, among other things, procedures for designation as a DCM, the scope of the rules, as well as procedures for listing products on the DCM and for boards of trade operating as both a DCM and a SEF.

Like a SEF, a DCM must have sufficient financial resources, defined as resources sufficient to cover the operating costs of the DCM for one year ([17 C.F.R. § 38.1100](#)). Entities have reasonable discretion in determining the methodology used to calculate operating costs of the SEF and must determine their fiscal eligibility on a rolling basis, calculated quarterly ([17 C.F.R. § 38.1101\(c\)](#)). On April 28, 2017, the CFTC issued guidance on calculating projected operating costs by DCMs and SEFs ([CFTC Letter No. 17-25](#)).

Subparts B through X of Part 38 ([17 C.F.R. §§ 38.100 to 38.1201](#)) include the 23 core principles that DCMs must adopt. These principles require that the DCM will, among other things:

- Not permit the trading of swaps that are susceptible to manipulation ([17 C.F.R. §§ 38.200 and 38.201](#)).
- Prevent market disruption through market surveillance, compliance, and enforcement practices and procedures, including real-time monitoring of trading and comprehensive and accurate trade reconstructions ([17 C.F.R. §§ 38.250 to 38.258](#)).
- Adopt position limits or accountability ([17 C.F.R. §§ 38.300 and 38.301](#)).
- Have emergency authority to curtail trading in a swap ([17 C.F.R. §§ 38.350 and 38.351](#)).
- Publish trading information daily ([17 C.F.R. §§ 38.450 and 38.451](#)).
- Adopt rules for ensuring the financial integrity of swaps entered into on the DCM ([17 C.F.R. §§ 38.600 to 38.607](#)).
- Maintain records of all activities for at least five years ([17 C.F.R. §§ 38.950 to 38.951](#)).

- Possess the financial resources to fulfill its obligations ([17 C.F.R. §§ 38.1100 and 38.1101](#)).

For further details on CFTC DCM rulemaking under Title VII, see [Legal Update, Final Rules on Designated Contract Markets Under Dodd-Frank Issued by CFTC](#).

For more information on DCMs, including instructions on how to apply to become a DCM, see the CFTC's online [DCM page](#).

See the CFTC's [DCM list](#) for details on all CFTC-designated DCMs.

Extraterritorial Reach of Dodd-Frank Swap Clearing and Exchange-Trading Rules

Because the derivatives market is truly global, US regulators have found it challenging to implement Title VII swap clearing and exchange-trading rules without bumping heads with other jurisdictions, primarily the European Union (EU), that are seeking to implement their own framework of swaps regulation (including their own clearing and exchange-trading rules). US regulators are currently trying to figure out where their jurisdiction must extend in order to prevent market participants from playing regulatory arbitrage among global jurisdictions.

To address this, the CFTC, and to a lesser extent thus far, the SEC (with respect to SBS), have issued a number of cross-border swaps rules and (in the case of the CFTC) final "substituted compliance" determinations under which certain entities and swaps are permitted to adhere to the regulation of their home jurisdiction in place of Dodd-Frank swaps regulations.

The CFTC has also generally taken the position that any swap entered into with a US person (as defined in the CFTC's July 13, 2013 final cross-border guidance and the exemptive order) is subject to all applicable Dodd-Frank rules, including the clearing and trade-execution requirements (see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules: Final CFTC Cross-Border Guidance and Related Rulemaking](#)).

For details on substituted compliance, the "US person" definition, and further information on the cross-border application of Title VII swaps and SBS rules including mandatory clearing and exchange trading, see [Practice Note, US Derivatives Regulation: Cross-Border Application of Swaps Rules](#).

CFTC-EU Equivalence for Central Clearing Counterparties (CCPs)

The CFTC and the European Commission (EC) reached a long-awaited agreement under which the CFTC and the EU will each permit market participants to use one another's CCPs, or clearinghouses, to satisfy its derivatives clearing requirements. The first phase of central clearing obligations for certain interest rate derivatives contracts under EMIR (Regulation (EU) 648/2012, governing OTC derivative transactions, central counterparties, and trade repositories) begins June 21, 2016.

Once recognized as equivalent, a US CCP may serve EU markets and will become a qualifying CCP (QCCP) for purposes of the EU Capital Requirements Regulation. EU banks that use these CCPs will now be able to avoid excess regulatory capital charges for holding positions under derivatives contracts with non-equivalent CCPs.

The process for the equivalent CFTC determination that would allow for EU CCPs to be recognized by the CFTC so that they can clear products for US clients will occur on an independent schedule, but is anticipated to follow the EU determination shortly.

For more information, see Legal Updates:

- [CFTC Approves Substituted Compliance for US-EU Derivatives Clearinghouses and Provides No-Action Relief](#).
- [European Commission Adopts Equivalence Decision for US CCP Regulatory Regime](#).
- [CFTC-EU Reach Agreement on Derivatives Clearing Equivalence](#).

For information on the effect of the UK's withdrawal from the EU on the continuity of the US and UK derivatives markets going forward, see also, [Legal Update, CFTC and Bank of England Issue Joint Statement on Post-Brexit Derivatives Trading and Clearing](#).

Note that the CFTC's 2018 whitepaper [Cross-Border Swaps Regulation Version 2.0](#) recommends a further expansion of the CFTC's exemptive authority for non-US CCPs that are not deemed a substantial risk to the US financial system and are subject to comparable regulation in their home country (see [Legal Update, CFTC Chairman Publishes Whitepaper Proposing New Cross-Border Swaps Rules: Swap Clearing and CCPs](#)).

CFTC-EU Equivalence for Derivatives Trading Venues

On December 8, 2017, the CFTC issued an [order](#) exempting certain multilateral trading facilities (MTFs) and organized trading facilities (OTFs) authorized within the EU from the requirement to register with the CFTC as SEFs. The order became effective on January 3, 2018, the compliance

date for derivatives trading obligations under the EU's Markets in Financial Instruments Regulation (MiFIR) and Markets in Financial Instruments Directive (MiFID II).

The CFTC order permits parties to satisfy Dodd-Frank swap trade-execution requirements by entering into the transaction on one of these EU-authorized MTFs or OTFs.

The EC equivalence decision on derivatives trading venues came into effect on December 7, 2017 and enables EU counterparties to trade derivative instruments on the DCMs and SEFs that the EC has recognized as equivalent.

For details, see [Legal Update, EU and CFTC Issue Equivalence Decisions on Derivatives Trading Venues](#).

On December 3, 2018, the CFTC issued an amended order exempting four additional UK-based MTFs from the requirement to register with the CFTC as SEFs. For details, see [Legal Update, CFTC Exempts Four UK Multilateral Trading Facilities \(MTFs\) From SEF Registration](#).

CFTC and Monetary Authority of Singapore (MAS) Agreement on Derivatives Trading Venues

On March 13, 2019, the CFTC and the Monetary Authority of Singapore (MAS) announced a mutual recognition of certain derivatives trading venues in the US and Singapore. In connection with this agreement:

- The CFTC issued an order exempting certain derivatives trading facilities regulated by MAS from the requirement to register with the CFTC as a SEF.
- The MAS issued an order exempting certain derivatives trading venues regulated by the CFTC from the requirement to be a MAS-authorized approved exchange (AE) or a recognized market operator (RMO) before establishing or operating an organizing market.

For details, see [Legal Update, CFTC and Monetary Authority of Singapore \(MAS\) Agree on Mutual Recognition of Certain Derivatives Trading Venues](#).

CFTC and Japan Financial Services Agency (JFSA) Statement on Derivatives Trading Venues

On July 11, 2019, the CFTC and JFSA issued a [joint statement](#) regarding mutual recognition of certain derivatives trading venues in the US and Japan. In connection with this statement:

- The CFTC issued an [order of exemption](#) for JFSA-regulated electronic trading platforms (ETPs) from the requirement to register with the CFTC as SEFs. Under the order of exemption, JFSA-registered ETPs are granted exempt SEF status, and may be used by swap counterparties to comply with the trade-execution requirement under US rules, or to trade swaps that are not subject to the trade-execution requirement.
- The JFSA announced that it would facilitate the authorization process to permit CFTC-registered SEFs to operate as foreign ETP operators.

Registration of Foreign Boards of Trade (FBOTs) Under Dodd-Frank

On December 5, 2011, the CFTC approved [final Dodd-Frank rules \(76 Fed. Reg. 80674 \(December 23, 2011\)\)](#) establishing registration requirements and procedures for foreign boards of trade (FBOTs) seeking to provide their members or other participants located in the US with direct access to their electronic swaps trading systems. FBOTs are CFTC-registered non-US swap exchanges. The rules may ultimately facilitate an open and competitive central global swaps market.

However, the requirement that an FBOT must be subject to a regulatory regime similar to that which the CFTC provides for US exchanges has raised extraterritoriality concerns among foreign regulators. For more information on these rules, see [Legal Update, Final Rules on Registration of Foreign Boards of Trade Under Dodd-Frank Issued by CFTC](#).

SBS Clearinghouses and Exchanges

Though SBS clearing and exchange trading has not yet been implemented, the SEC has been laying the groundwork for an SBS clearing and exchange-trading framework under Title VII that is similar to the CFTC swaps framework.

Standards for Registered Clearing Agencies

On October 22, 2012, the SEC released a final rule ([77 Fed. Reg. 66220 \(Nov. 2, 2012\)](#)) adopting Rule 17Ad-22 under the Exchange Act, which became effective on January 2, 2013, establishing minimum standards for registered securities clearing agencies (SCAs). Under these rules SCAs are required to:

- Maintain effective risk-management procedures and controls.
- Meet the statutory requirements under the Exchange Act on an ongoing basis.

On October 13, 2016, the SEC issued an updated [final rule \(81 Fed. Reg. 70786 \(Oct. 13, 2016\)\)](#) amending Rule 17Ad-22 and adding new Rule 17Ab2-2 ([17 C.F.R. § 240.17Ab2-2](#)). These rules took effect on December 12, 2016 and established enhanced standards for the operation and governance of SCAs meeting the definition of "covered clearing agency."

Clearing Agency and Covered Clearing Agency (CCA) Definitions

The Exchange Act generally defines a clearing agency as any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities ([15 U.S.C. § 78c\(a\)\(23\)](#)). Rule 17Ad-22 establishes general operational standards applicable to all SCAs.

As amended in 2016, however, Rule 17Ad-22(e) subjects covered clearing agencies (CCAs) to enhanced operational standards. A covered SCA includes the following SEC-registered clearing agencies:

- A "designated clearing agency," which is an SCA:
 - for which the SEC is the supervisory agency (as defined in [12 U.S.C. § 5462\(8\)](#)); and
 - that is designated systemically important by the FSOC ([17 C.F.R. § 240.17Ad-22\(a\)\(6\)](#)).
- A "complex risk profile clearing agency," which is an SCA (for which the CFTC is not the supervisory agency as defined in [12 U.S.C. § 5462\(8\)](#)) that either:
 - provides central counterparty services for SBS; or
 - the SEC determines is involved in activities with a more complex risk profile, either at the time of its initial registration or at a later time under Rule 17Ab2-2(b) ([17 C.F.R. § 240.17Ab2-2\(b\)](#)).

([17 C.F.R. § 240.17Ad-22\(a\)\(4\)](#).)

([17 C.F.R. § 240.17Ad-22\(a\)\(5\)](#); see also, [81 Fed. Reg. at 70797](#).)

Because the Dodd-Frank Act expanded the definition of security under the securities laws to include SBS, SCAs became relevant to SBS clearing. Before Dodd-Frank, SCAs were exclusively for securities trading. Therefore, because the focus of this Note is limited to swap clearing and exchange trading under the Dodd-Frank Act, many of the standards governing SCAs under Rule 17Ad-22 ([17 C.F.R. § 240.17Ad-22](#)), including the enhanced standards for CCAs, are beyond the scope of this Note. The following sections, however, briefly discuss those standards to the extent they apply specifically to SCAs that perform CCP – or derivatives clearing – services.

Risk-Management Requirements

Under Rule 17Ad-22, registered SCAs that perform CCP services must:

- Measure credit exposure at least once a day and limit exposures to potential losses from defaults by its participants under normal market conditions to prevent disruption of the SCA's operations and exposure of non-defaulting participants to losses that they cannot anticipate or control.
- Use margin requirements to limit the SCA's credit exposures to participants under normal market conditions, use risk-based models and parameters to set margin requirements, and review both margin requirements and related risk-based models and parameters at least monthly.
- Maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. If the SCA performs CCP services for SBS, it must maintain sufficient additional financial resources (either generally or in separately maintained funds) to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.
- Provide for an annual model-validation consisting of a qualified person evaluating the performance of the SCA's margin models and the related parameters and assumptions.

([17 C.F.R. § 240.17Ad-22\(b\)\(1\) to \(4\)](#).)

All CCAs are subject to enhanced risk-management and other standards ([17 C.F.R. § 240.17Ad-22\(e\)](#)). In addition, a CCA that provides CCP services must:

- Maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence ([17 C.F.R. § 240.17Ad-22\(e\)\(4\)\(i\)](#)). If the SCA is either systemically important in multiple jurisdictions or involved in activities with a more complex risk profile, it must also maintain additional financial resources (in combined or separate accounts) at least sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposure for the SCA in extreme but plausible market conditions ([17 C.F.R. § 240.17Ad-22\(e\)\(4\)\(ii\), \(v\)](#)).
- Use margin requirements to cover its credit exposures to participants, including by:
 - setting margin levels that reflect the risks and particular attributes of each relevant product, portfolio, and market;
 - marking participant positions to market and collecting margin, including VM, at least daily, but with the authority and operational capacity to make intraday margin calls in defined circumstances;
 - monitoring and regularly reviewing, testing, and verifying the appropriateness of its methods of measuring credit exposure through such means as daily backtesting and, at least monthly, sensitivity analysis of its margin model and backtesting parameters (or more frequently during periods of high volatility or significant increase or decrease in concentration size); and
 - requiring at least annual model validation for its margin system and related models.

([17 C.F.R. § 240.17Ad-22\(e\)\(6\)](#).)

- Maintain sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence, including in the event of the default of the participant family that would generate the largest aggregate payment obligation for the SCA in extreme but plausible market conditions. If the SCA is either systemically important in multiple jurisdictions or involved in activities with a more complex risk profile, it must also evaluate, at least annually, the feasibility of maintaining sufficient liquid resources to meet these obligations in the event of a default by the two participant families that could potentially cause the largest aggregate payment obligation for the SCA in extreme but plausible market conditions ([17 C.F.R. § 240.17Ad-22\(e\)\(7\)\(i\), \(x\)](#)).
- Enable the segregation and portability of positions of a participant's customers and the related collateral, and effectively protect those positions and collateral from that participant's default or insolvency ([17 C.F.R. § 240.17Ad-22\(e\)\(14\)](#)).

Participant Access Standards

Rule 17Ad-22 also introduced certain requirements regarding access to registered SCAs that perform CCP services, which must:

- Allow a person who does not perform any dealer or SBS services to obtain membership to clear securities.
- Not use minimum portfolio size and minimum transaction volume thresholds as conditions for membership.
- Allow membership to persons who maintain net capital equal to or greater than \$50 million, provided other reasonable membership conditions are met.

([17 C.F.R. § 240.17Ad-22\(b\)\(5\) to \(7\)](#).)

Record of Financial Resources and Annual Audited Financial Statements

Registered SCAs must:

- If the SCA performs CCP services, calculate the financial resources necessary to meet the requirements of Rule 17Ad-22 and disclose an explanation of the methodology used to compute the financial resource requirement at the end of each fiscal quarter or whenever requested by the SEC.
- Post an annual audited financial statement meeting certain requirements on its website within 60 days after the end of its fiscal year.

([17 C.F.R. § 240.17Ad-22\(c\)](#).)

Other SBS Clearing and Exchange-Trading Rules

Final Clearing Submission Rules for SBS

On June 28, 2012, the SEC adopted [final rules](#) ([77 Fed. Reg. 41602 \(July 13, 2012\)](#)) under the Dodd-Frank Act detailing, among other things:

- The process for SEC review and approval of SBS submitted to SCAs for mandatory clearing.

- Procedures for submitting SBS for SEC review using "SBS submissions" (SBSS).
- Certain requirements for SCAs designated as "systemically important."

(17 C.F.R. § 240.19b-4(n), (o).)

SCAs must file an SBSS for any SBS, or any group, category, type, or class of SBS that the SCA plans to accept for clearing. The SEC then reviews the SBSS (and will publish a notice of each SBSS it is reviewing) to determine whether the SBS it covers should be subject to a mandatory clearing requirement. (15 U.S.C. § 78c-3(b)(2); 17 C.F.R. § 240.19b-4(o)).

Each SBSS must include quantitative and qualitative information to assist the SEC in its assessment of the five factors specified in Title VII of the Dodd-Frank Act (15 U.S.C. § 78c-3(b)(4)(B)) that must be considered when making a mandatory clearing determination, including:

- The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data for the SBS to which the SBSS relates.
- The availability of a rule framework, capacity, operational expertise and resources, and credit-support infrastructure to clear the SBS on terms consistent with the material terms and trading conventions on which the SBS is typically traded.
- The effect of clearing the SBS on the mitigation of systemic risk, considering the size of the market for the SBS and the resources available to the clearing agency to clear the SBS.
- The effect of clearing the SBS on competition, including appropriate fees and charges applied to clearing the SBS.
- The existence of reasonable legal certainty with respect to the treatment of customers of clearing members of the clearing agency and of SBS counterparty positions, funds, and property in the event of the insolvency of the clearing agency or one or more of its clearing members.

(17 C.F.R. § 240.19b-4(o)(3)(ii).)

For more information, see [Legal Update, SEC Adopts Final Clearing Submission Rules for Security-Based Swaps Under Dodd-Frank](#).

For additional information on SEC SBS clearing and exchange-trading rulemaking, see [Legal Update, SEC Proposes Dodd-Frank Rules for Security-Based Swap Execution Facilities](#) (SB SEFs).

There has been no Title VII-specific rulemaking by the SEC on large national securities exchanges, as these are already heavily regulated by the SEC.

PRODUCTS

PL Canada Finance, 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](#)