

VII. Appendix C – Application of the Entity-Level Requirements to Swap Dealers and MSPs*

<p>U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person). Also applies when acting through a foreign branch.¹</p>	<p>Apply</p>
<p>Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person).</p>	<p>First Category:² Substituted Compliance</p> <p>Second Category:³ Apply for U.S. counterparties; Substituted Compliance for SDR reporting with non-U.S. counterparties that are not guaranteed or conduit affiliates; Substituted compliance (except for Large Trader Reporting) with non-U.S. counterparties⁴</p>

***The Appendices to the Guidance should be read in conjunction with the rest of the Guidance.**

- ¹ Both Entity-Level and Transaction-Level Requirements are the ultimate responsibilities of the U.S.-based swap dealer or MSP.
- ² First Category is capital adequacy, Chief Compliance Officer, risk management, and swap data recordkeeping (except Commission regulations 23.201(b)(3) and (4)).
- ³ Second Category is SDR Reporting, certain aspects of swap data recordkeeping relating to complaints and marketing and sales materials (Commission regulations 23.201(b)(3) and (4)), and Large Trader Reporting.
- ⁴ Substituted compliance does not apply to Large Trader Reporting, *i.e.*, non-U.S. persons that are subject to part 20 would comply with it in the same way that U.S. persons comply. With respect to the SDR Reporting requirement, the Commission may make substituted compliance available only if direct access to swap data stored at a foreign trade repository is provided to the Commission.

VIII. Appendix D – Application of the Category A Transaction-Level Requirements to Swap Dealers and MSPs*

(Category A includes (1) Clearing and swap processing; (2) Margining and segregation for uncleared swaps; (3) Trade Execution; (4) Swap trading relationship documentation; (5) Portfolio reconciliation and compression; (6) Real-time public reporting; (7) Trade confirmation; and (8) Daily trading records).**

	U.S. Person (other than Foreign Branch of U.S. Bank that is a Swap Dealer or MSP)	Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Non-U.S. Person Guaranteed by, or Affiliate Conduit¹ of, a U.S. Person	Non-U.S. Person <u>Not</u> Guaranteed by, and Not an Affiliate Conduit¹ of, a U.S. Person
U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person)	Apply	Apply	Apply	Apply
Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Apply	Substituted Compliance	Substituted Compliance ²	Substituted Compliance ²
Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person)	Apply	Substituted Compliance	Substituted Compliance	Do Not Apply

*The Appendices to the Guidance should be read in conjunction with the rest of the Guidance.

** Where one of the counterparties is electing the Inter-Affiliate Exemption, the Commission would expect the parties to the swap to comply with the conditions of the Inter-Affiliate

Exemption, including the treatment of outward-facing swaps condition in Commission regulation 50.52(b)(4)(i).

- ¹ Factors that are relevant to the consideration of whether a non-U.S. person is an “affiliate conduit” include whether: (i) the non-U.S. person is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. person controls, is controlled by, or is under common control with the U.S. person; (iii) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with such U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates; and (iv) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person. Other facts and circumstances also may be relevant.
- ² Under a limited exception, where a swap between the foreign branch of a U.S. swap dealer or U.S. MSP and a non-U.S. person (that is not a guaranteed or conduit affiliate) takes place in a foreign jurisdiction other than Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland, the counterparties generally may comply only with the transaction-level requirements in the foreign jurisdiction where the foreign branch is located if the aggregate notional value of all the swaps of the U.S. swap dealer’s foreign branches in such countries does not exceed 5% of the aggregate notional value of all of the swaps of the U.S. swap dealer, and the U.S. person maintains records with supporting information for the 5% limit and to identify, define, and address any significant risk that may arise from the non-application of the Transaction-Level Requirements.

Notes:

- ¹ The swap trading relationship documentation requirement applies to all transactions with registered swap dealers and MSPs.
- ² Participation in multilateral portfolio compression exercises is mandatory for dealer to dealer trades.

IX. Appendix E – Application of the Category B Transaction-Level Requirements to Swap Dealers and MSPs*

(Category B is External Business Conduct Standards).

	U.S. Person (other than Foreign Branch of U.S. Bank that is a Swap Dealer or MSP)	Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Non-U.S. Person Guaranteed by, or Affiliate Conduit¹ of, a U.S. Person	Non-U.S. Person <u>Not</u> Guaranteed by, and Not an Affiliate Conduit¹ of, a U.S. Person
U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person)	Apply	Apply	Apply	Apply
U.S. Swap Dealer or MSP (when it solicits and negotiates through a foreign subsidiary or affiliate)	Apply	Do Not Apply	Do Not Apply	Do Not Apply
Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Apply	Do Not Apply	Do Not Apply	Do Not Apply

Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person)	Apply	Do Not Apply	Do Not Apply	Do Not Apply
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***The Appendices to the Guidance should be read in conjunction with the rest of the Guidance.**

¹ Factors that are relevant to the consideration of whether a non-U.S. person is an “affiliate conduit” include whether: (i) the non-U.S. person is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. person controls, is controlled by, or is under common control with the U.S. person; (iii) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with such U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates; and (iv) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person. Other facts and circumstances also may be relevant.

X. Appendix F – Application of Certain Entity-Level and Transaction-Level

Requirements to Non-Swap Dealer/Non-MSP Market Participants*

(The relevant Dodd-Frank requirements are those relating to: clearing, trade execution, real-time public reporting, Large Trader Reporting, SDR Reporting and swap data recordkeeping).**

	U.S. Person (including an affiliate of non-U.S. person)	Non-U.S. Person Guaranteed by, or Affiliate Conduit¹ of, a U.S. Person	Non-U.S. Person <u>Not</u> Guaranteed by, or Affiliate Conduit¹ of, by U.S. Person
U.S. Person (including an affiliate of non-U.S. person)	Apply	Apply	Apply
Non-U.S. Person Guaranteed by, or Affiliate Conduit¹ of, a U.S. person	Apply	Substituted Compliance ²	Do Not Apply
Non-U.S. Person <u>Not</u> Guaranteed by, or Affiliate Conduit¹ of, U.S. Person	Apply	Do Not Apply	Do Not Apply

*The Appendices to the Guidance should be read in conjunction with the rest of the Guidance.

** Where one of the counterparties is electing the Inter-Affiliate Exemption, the Commission would generally expect the parties to the swap to comply with the conditions of the Inter-Affiliate Exemption, including the treatment of outward-facing swaps condition in Commission regulation 50.52(b)(4)(i).

- ¹ Factors that are relevant to the consideration of whether a non-U.S. person is an “affiliate conduit” include whether: (i) the non-U.S. person is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. person controls, is controlled by, or is under common control with the U.S. person; (iii) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with such U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates; and (iv) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person. Other facts and circumstances also may be relevant.
- ² Substituted compliance does not apply to Large Trader Reporting, *i.e.*, non-U.S. persons that are subject to part 20 would comply with it in the same way that U.S. persons comply. With respect to the SDR Reporting requirement, the Commission may permit substituted compliance only if direct access to swap data stored at a foreign trade repository is provided to the Commission.

Issued in Washington, DC, on July 17, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendices to Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations – Commission Voting Summary and Statements of Commissioners

NOTE: The following appendices do not constitute a part of the Interpretive Guidance and Policy Statement itself.

Appendix 1 – Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioner O’Malia voted in the negative.