



CFTC Adopts Final Cross-Border Guidance and Exemptive Order; Announces “Path Forward” with EU

The Commodity Futures Trading Commission (*CFTC*) on July 12, 2013 approved its highly-anticipated final interpretive guidance and policy statement (the *Guidance*) on the cross-border application of Dodd-Frank’s swap regulatory requirements. The CFTC also approved a related exemptive order (the *Exemptive Order*) that will provide market participants temporary relief from compliance with certain of these requirements.¹

This development came just one day after CFTC Chairman Gary Gensler and European Union Commissioner Michel Barnier released a joint statement setting out “a path forward” (the *US/EU Joint Statement*) regarding their understandings on a package of measures on how to approach cross-border derivatives regulation; the US/EU Joint Statement described no-action letter relief that the CFTC proposed to grant, and the CFTC released four no-action letters later the same day.²

This Update highlights certain key matters addressed in the Guidance and the Exemptive Order, several of which were anticipated the day before in the US/EU Joint Statement. A more detailed analysis of these topics will follow in a separate Update.

US Person Definition

The Guidance includes a revised US person definition; however, the Exemptive Order provides that this new definition will not take effect until 75 days after the Guidance is published in the Federal Register and that in the interim market participants should continue to apply the narrower definition contained in the CFTC’s January 2013 order, which provided temporary relief that expired on July 12, 2013 (the *January Order*).³

¹ Copies of the CFTC’s Fact Sheets on the Guidance and the Exemptive Order are available at:

http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff071213;

A copy of the Guidance is available at:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister071213b.pdf>

A copy of the Exemptive Order is available at:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister071213.pdf>.

We note that the Exemptive Order has been revised, in certain respects in substance, a few times since first appearing on July 12, 2013. In addition, at least one revision of the Guidance has been posted since it first appeared on July 15, 2013. This Update is based on the most recent versions of the Guidance and the Exemptive Order that we have accessed on the CFTC’s website.

² A copy of US/EU Joint Statement is available at:

http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/jointdiscussionscftc_europeanu.pdf.

Links to the related CFTC no-action letters are available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6642-13>.

³ Final Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 858 (Jan. 7, 2013), available at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-07/pdf/2012-31736.pdf>.

The new US person definition covers collective investment vehicles – including hedge funds – that are majority-owned by US persons, or that have their principal place of business in the United States.⁴ The principal place of business test for collective investment vehicles focuses on the location of investment managers, fund sponsors and promoters, and sales and trading desks.⁵ The Guidance explained that majority-owned means the beneficial ownership of more than 50 percent of the equity or voting interests in the collective investment vehicle and that a collective investment vehicle should (1) determine whether its direct beneficial owners are U.S. persons⁶ and (2) “look-through” the beneficial ownership of any other legal entity invested in the collective investment vehicle that is controlled by or under common control with the collective investment vehicle in determining whether the collective vehicle is majority-owned by U.S. persons. The Guidance noted that reference to “indirect” majority ownership, which had been proposed last year, was eliminated. Collective investment vehicles that are publicly offered exclusively to non-US persons will in any case be excluded from the definition.

Hedge funds and other collective investment vehicles that will be captured by the new US person definition will need to prepare for compliance with mandatory clearing, recordkeeping, reporting and other applicable Dodd-Frank requirements (discussed below), as will the swap dealers who transact with these vehicles. During the meeting at which the Guidance and the Exemptive Order were approved, Chairman Gensler made specific comments regarding the application, after the Exemptive Order’s 75-day relief period expires, of mandatory swap clearing requirements to Cayman-organized hedge funds operated from the United States.

Non-US persons that are guaranteed by, or affiliated with, US persons, are not themselves US persons, but may be treated similarly to US persons for purposes of certain Dodd-Frank requirements. Non-US branches of US banks that are registered swap dealers are treated as part of the US person bank, but may be treated similarly to non-US persons for purposes of certain Dodd-Frank requirements.

Application of the Dodd-Frank Requirements to Cross-Border Activities

The Guidance divides the Dodd-Frank regulatory requirements in two broad groupings: *Entity-Level Requirements*⁷ and *Transaction-Level Requirements*,⁸ each of the groupings is then broken down into two

⁴ Collective investment vehicles are described as “an entity or group of related entities created for the purpose of pooling assets of one or more investors and channeling those assets to trade or invest to achieve the investment objectives of the investor(s)” and distinguished from “a separate, active operating business.”

⁵ On the subject of US asset managers hired in other contexts, the Guidance states: “The Commission also understands that non-U.S. individuals, institutions, pension plans or operating companies may retain asset management firms in the United States to provide a range of asset management and other investment-related services. Where the individual, institution, pension plan or operating company is not within any prong of the interpretation of the term ‘U.S. person’ described in this Guidance (including [the] prongs [that] relate to collective investment vehicles), then the Commission generally believes that the person would not come within the ‘U.S. person’ interpretation solely because it retains an asset management firm located in the United States to manage its assets or provide other financial services.”

⁶ For this purpose, US person refers to the first five prongs of the definition: (i) any natural person who is a resident of the United States; (ii) any estate of a decedent who was a resident of the United States at the time of death; (iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a “legal entity”), in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States; (iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity; (v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust.

⁷ The Entity-Level requirements include: (i) capital adequacy; (ii) chief compliance officer; (iii) risk management; (iv) swap data recordkeeping; (v) swap data repository reporting; and (vi) physical commodity large swaps trader reporting. Requirements (i) through (iii) and part of (iv) are allocated to the “First Category” of Entity-Level Requirements, while the remaining requirements are allocated to the “Second Category.”

⁸ The Transaction-Level Requirements include: (i) clearing and swap processing; (ii) margining (and segregation) for uncleared swaps; (iii) mandatory trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards. All but requirement (ix) are allocated to “Category A,” while requirement (ix) is allocated to “Category B.”

categories.⁹ The CFTC's approach to these various requirements, including the availability of substituted compliance by requirement group and category and by counterparty type, is broadly similar to the approach taken last year by the CFTC in its original cross-border proposal. Appendices attached to the Guidance set out four tables summarizing the application of the different requirements in this regard.¹⁰

Subject to certain conditions, the Exemptive Order permits a non-US swap dealer¹¹ established in the EU or in any of five additional jurisdictions¹² to delay compliance with *Entity-Level Requirements* (subject to certain limitations) until the issuance by the CFTC of substituted compliance determinations for its jurisdiction. The relief in respect of a particular jurisdiction will expire 30 days after the issuance of a substituted compliance determination for that jurisdiction or, at latest, December 21, 2013. Market participants or regulators in the six jurisdictions have recently submitted requests for substituted compliance determinations (discussed further below).

The Exemptive Order similarly permits a non-US swap dealer from one of the six listed jurisdictions, subject to certain conditions and limitations, to comply with home-country laws and regulations in lieu of many *Transaction-Level Requirements*.¹³ This relief for Transaction-Level Requirements also extends to non-US branches of US bank swap dealers located in these jurisdictions. As with Entity-Level Requirements, the relief in respect of a particular jurisdiction will expire 30 days after the issuance of the determination or, at latest, December 21, 2013. Note that the limitations on this relief include a shorter relief period (75 days from publication of the Guidance in the Federal Register) during which non-US swap dealers, and non-US branches of US banks that are swap dealers, will be relieved from otherwise applicable mandatory clearing obligations.

Several of the key Dodd-Frank requirements will apply to swaps involving at least one US person even where a registered swap dealer is not involved (***Non-Registrant Requirements***). These include: (i) clearing; (ii) trade execution; (iii) real-time public reporting; (iv) swap data repository reporting, (v) swap data recordkeeping; and (vi) large trader reporting. Thus, with regard to swap transactions between two non-registrants where one (or both) of the counterparties is a US person, the parties generally would be expected to comply with the Non-Registrant Requirements. The Guidance indicates that substituted compliance will generally *not* be available for Non-Registrant Requirements in such circumstances.¹⁴

As noted above, non-US persons that are guaranteed by or affiliated with US persons are not themselves considered US persons. They thus would not per se trigger the requirements described in the preceding paragraph. However, the Guidance indicates that where two non-registrant parties to a swap transaction are both

⁹ The CFTC's allocation differs from the allocation between entity and transaction level requirements proposed in May 2013 by the Securities and Exchange Commission in respect of security-based swaps.

¹⁰ For ease of reference these four appendices are reproduced as ***Schedule 1*** of this Update. As noted in the Guidance, they should be read in conjunction with the remainder of the Guidance.

¹¹ Generally speaking, the relief extended to non-US swap dealers is also extended to non-US major swap participants.

¹² Australia, Canada, Hong Kong, Japan and Switzerland. All non-US swap dealers that have registered to date with the CFTC are domiciled in the EU or in one of these five countries.

¹³ The Exemptive Order indicates that a non-US swap dealer should generally comply with Transaction-Level Requirements for its swaps with U.S. persons and with non-U.S. persons that are guaranteed by, or are affiliate conduits of, a U.S. person, although substituted compliance would generally be available to a non-US swap dealer for transactions with (1) foreign branches of a U.S. bank that is an swap dealer and (2) guaranteed or conduit affiliates of a U.S. person.

¹⁴ However the Guidance notes that where a swap is executed anonymously on a registered DCM or SEF (or registered FBOT) between two non-registrants and cleared by a registered DCO (or cleared otherwise in the case of execution on a registered FBOT), and one (or both) of the counterparties to the swap is a US person, neither party to the swap will be required to comply with the Non-Registrant Requirements that otherwise apply to the swap (other than swap data repository reporting, swap data recordkeeping and large trader reporting).

guaranteed or conduit affiliates,¹⁵ then the Non-Registrant Requirements will apply, although, in this case, substituted compliance may be available. We also note that the Exemptive Order provides that guaranteed and conduit affiliates do not need to comply with Transaction-Level Requirements relating to swaps with non-U.S. persons or foreign branches of U.S. swap dealers and MSPs until 75 days after the Guidance is published in the Federal Register.

Substituted Compliance

As noted above, non-US registered swap dealers (and, in some cases, foreign branches of US banks) will generally be permitted to comply with foreign swap regulations, in lieu of certain Dodd-Frank requirements, if the CFTC finds that those regulations are comparable to and as comprehensive as the corresponding Dodd-Frank requirements. In determining whether a foreign jurisdiction's regulations can be substituted, the CFTC will rely upon an outcomes-based approach to determine whether those regulations achieve the same regulatory objectives as the relevant Dodd-Frank requirements. Substituted compliance determinations will be made by requirement group and category and will not entail either a rule-by-rule analysis or an analysis of any foreign regime as a whole. All determinations will be reviewed every four years.

The CFTC's staff took action related to, but different from, substituted compliance in one of the four no-action letters that it released in connection with the US/EU Joint Statement. Letter 13-45 (July 11, 2013) provides no-action relief to registered swap dealers in respect of specified risk mitigation rules (*CFTC Risk Mitigation Rules*)¹⁶ as they apply to uncleared swaps and exempt physically-settled foreign exchange forwards and swaps, where such transactions are subject both to the CFTC Risk Mitigation Rules and to risk mitigation rules under the European Market Infrastructure Regulation (*EMIR*). The CFTC Risk Mitigation Rules address such matters as swap confirmations, swap portfolio reconciliation and compression, and swap trading documentation, though the letter carved out some elements of these rules from the relief granted. The relief was based on a determination that the EU risk mitigation rules were "essentially identical" to the CFTC Risk Mitigation Rules. The Guidance makes it clear that this no-action relief, and potential future action of a similar nature by the CFTC or its staff, is to be distinguished from substituted compliance. In emphasizing this, the CFTC seems to leave an alternative avenue for relief where substituted compliance is categorically unavailable – for example, where a non-US swap dealer is dealing with a US person other than a foreign branch of a US bank.¹⁷

Swap Dealer De Minimis Threshold

The Guidance also addresses the application of the swap dealer de minimis test to cross-border activities. US persons (and non-US persons that are US guaranteed or are conduit affiliates) will be required to count in their calculations all dealing swaps, whether with US or non-US person counterparties. Non-US persons will be

¹⁵ Guaranteed or conduit affiliate means a non-US person that is guaranteed by a US person or that is an affiliate conduit of a US person (as described in the Guidance).

¹⁶ Regulation §§ 23.501, 23.502 (other than 23.502(c)), 23.503, 23.504(b)(2), and 23.504(b)(4), as promulgated under section 4s(i) of the CEA and codified in Subpart I of Part 23 of the CFTC's regulations.

¹⁷ As to the no-action relief, the Guidance explained: "Even though substituted compliance is not available with respect to swaps between a non-U.S. swap dealer or non-U.S. MSP, on the one hand, and a U.S. person (other than a foreign branch of a U.S. bank swap dealer or U.S. MSP), on the other, a market participant would be deemed in compliance with the relevant Dodd-Frank requirements where it complies with requirements in its home jurisdiction that are *essentially identical* to the Dodd-Frank requirements. Whether the home jurisdiction's requirements are *essentially identical* to the corollary Dodd-Frank requirements would be evaluated on a *provision-by-provision* basis. The Commission intends that a finding of *essentially identical* generally would be made through Commission action but in appropriate cases could be made through staff no-action. Based on the foregoing principles, the Commission staff issued a no-action letter related to risk mitigation. The Commission staff found that the Commission and the EU have *essentially identical* rules in important areas of risk mitigation for the largest counterparty swap market participants" (emphasis added).

required to count swaps with US persons and with certain US guaranteed affiliates, but not swaps with foreign branches of US swap dealers and not swaps entered into anonymously on a registered designated contract market, swap execution facility or foreign board of trade provided that the swap is cleared.

The Exemptive Order provides that, until 75 days after the publication of the Guidance in the Federal Register, all non-US persons may continue to apply the January Order for purposes of calculating whether the de minimis test is met. Moreover, the Exemptive Order provides that any non-US person previously exempt from swap dealer registration because of the January Order, but that is required to register because of changes to the scope of the term US person or changes in the de minimis calculation (including aggregation) – for example, once the new 75-day relief period expires – will not be required to register until two months after the end of the month in which it exceeds the de minimis threshold.

Exemptive Order Comment Period

The Exemptive Order indicates that the CFTC is seeking public comment on any issues that are not fully addressed by the Exemptive Order. Thus even though the Exemptive Order was effective as of July 13, 2013, comments are being solicited for 30 days, and the CFTC indicated that it will take into consideration arguments made in all comments received and make adjustments to the Exemptive Order as necessary.

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If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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SCHEDULE 1

Select Appendices to CFTC Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations

- Appendix C – Application of the Entity-Level Requirements to Swap Dealers and MSPs
- Appendix D – Application of the Category A Transaction-Level Requirements to Swap Dealers and MSPs
- Appendix E – Application of the Category B Transaction-Level Requirements to Swap Dealers and MSPs
- Appendix F – Application of Certain Entity-Level and Transaction-Level Requirements to Non-Swap Dealer/Non-MSP Market Participants

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.