Hogan Lovells

Summary of key EU and US regulatory developments relating to derivatives

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Areas of focus

- Energy and commodities
- Other commodities and metals
- Regulatory matters
- Longevity and insurance linked derivatives
- Equity derivatives
- Securitized derivatives programmes
- Credit derivatives
- Fund derivatives
- Structured finance, securitization-related and other fixed income derivatives
- Distressed derivatives

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Chambers Global, 2014

Overview

Following the G20 commitment to implement measures to increase transparency and reduce counterparty credit risk and operational risk in the derivative markets, the European Commission introduced a new EU Regulation on over-the-counter derivatives (**OTC**), central counterparties (**CCPs**) and trade repositories (also known as the European Market Infrastructure Regulation, **EMIR**). In addition, the European Parliament and the European Council have adopted a directive and regulation replacing the Markets in Financial Instruments Directive (known as **MiFID II**). Simultaneously, in the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act (**Dodd-Frank**) seeks to deal with similar risk issues in relation to derivatives markets. In summary, the new requirements introduce:

- clearing obligation and risk mitigation techniques for certain derivative contracts;
- trade reporting;
- registration, financial and risk management requirements for clearing organizations; and
- new trade execution requirements.

EMIR entered into force on 16 August 2012, although a number of provisions in EMIR require the European Securities and Markets Authority (**ESMA**) to develop draft technical standards, some of which came into force on 15 March 2013 and certain obligations (timely confirmation, mark to market and the NFC notification requirement) applied from this date. Other risk mitigation obligations (portfolio reconciliation, portfolio compression and dispute resolution) applied 6 months after this date, from 15 September 2013. Trade reporting obligations commenced on 12 February 2014. ESMA, together with the European Banking Authority (**EBA**) and the European Insurance and Occupational Authority (**EIOPA**) (together, the **ESAs**) on 10 June 2015 issued a second consultation on the draft technical standards in relation to the margin requirements for uncleared OTC derivative contracts, which is expected to be finalized in the coming months.

On 21 May 2015 the European Commission published a consultation document on the review of EMIR, seeking feedback from stakeholders on those aspects of EMIR which have already been implemented. The European Commission will then submit a general report on EMIR to the European Parliament and European Council, together with any appropriate proposals.

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Summary of key EU and US regulatory developments relating to derivatives

Derivatives

Subject	Summary of EU provisions	Summary of US provisions
Definition of swap	**EMIR Article 2(5)** EMIR applies to all standardized eligible OTC derivatives, including interest rate, credit, equity, foreign exchange derivatives and commodity OTC derivative contracts, the execution of which does not take place on a regulated market. **Foreign exchange (FX) derivatives** The treatment of foreign exchange derivatives is subject to some uncertainty as the definition of derivative in EMIR cross-refers to the list of financial instruments in MiFID, which has been transposed differently across Member States. Although the European Commission has commented that "clearing obligations are unlikely to be imposed on deliverable foreign exchange transactions without an industry initiative", it has also: (i) reiterated that there is no express power for it to exempt foreign exchange transactions generally from the requirements of EMIR; and (ii) highlighted its concern that such an exemption potentially could lead to undesirable regulatory arbitrage. The European Commission has held a consultation on FX instruments (which closed on 9 May 2014). The Financial Conduct Authority (the **FCA**) has said that, until further notice, in the United Kingdom, FX forwards undertaken for commercial purposes and FX and commodity spot transactions are outside the scope of MiFID II and therefore should not fall within EMIR. In attempting to address this issue, the Commission has suggested, in a letter to ESMA dated 23 July 2014, that between themselves they are in agreement with regards defining FX spot contracts.	**Dodd-Frank Section 721(a)** **Commodity Exchange Act 7 USC 1A(47)** Divided into "swaps" and "security-based swaps." In November 2012, the US Secretary of the Treasury exempted FX swaps from the definition of "swap." **Final Rule 17 CFR Parts 1, 230, 240 and 241** "Swaps" include interest rate swaps, rate floors, rate caps, rate collars, cross-currency rate swaps, basis swaps, currency swaps, total return swaps, equity index swaps, equity swaps, debt index swaps, debt swaps, credit spreads, credit default swaps, credit swaps, weather swaps, energy swaps, metal swaps, agricultural swaps, emission swaps and commodity swaps. "Swaps" also include any agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap. Forward contracts in non-financial commodities are excluded from the definition of “swap.” In May 2015, the Commodity Futures Trading Commission (the **CFTC**) published its final interpretation as to when forward contacts “with embedded volumetric optionality” would fall within the “forward contract exclusion” from the definition of a swap. Forward contracts “with embedded volumetric optionality” are forward contracts for the sale of a commodity, but where one party has the right — but not the obligation—to increase or decrease the volume of the commodity intended to be physically settled or delivered under the forward contract. The final interpretation provides a seven-part

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	Commodity derivatives (MiFID I) On 6 May 2015, ESMA released guidelines on the definition of "commodity derivatives" for the purposes of Sections C6 and C7 of Schedule I in the MiFID I Directive. In particular, according to the existing MiFID I definition, these categories of derivatives must be "physically settled" in order to be within the scope of MiFID I. The ESMA guidelines detail the meaning of "physically settled" for these purposes. The guidelines will apply with effect from August 2015, and will only apply as long as MiFID I remains in force. MiFID I will be replaced by MiFID II from January 2017.	test to determine whether such a contact would be excluded from the definition of a "swap". The seven-part test requires that: • the embedded optionality does not undermine the overall nature of the agreement, contract, or transaction as a forward contract; • the predominant feature of the agreement, contract, or transaction is actual delivery; • the embedded optionality cannot be severed and marketed separately from the overall agreement, contract, or transaction in which it is embedded; • the seller of a non-financial commodity underlying the agreement, contract, or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction, to deliver the underlying nonfinancial commodity if the embedded volumetric optionality is exercised; • the buyer of a non-financial commodity underlying the agreement, contract or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction, to take delivery of the underlying non-financial commodity if the embedded volumetric optionality is exercised; • both parties are commercial parties; and • the embedded volumetric optionality is primarily intended, at the time that the parties enter into the agreement, contract, or transaction, to address physical factors, or regulatory requirements that reasonably influence demand for, or supply of, the non-financial commodity. **Securities Exchange Act of 1934 Section 3(a)(68)(A).** A security-based swap is defined as an agreement, contract or transaction that is a swap and is based on: • an index that is a narrow-based security index, including any interest therein or on the value thereof; • a single security or loan, including any

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		interest therein or on the value thereof; • the occurrence, non-occurrence or extent of occurrence, or of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer."
Significant participants	**EMIR Article 10** The application of certain parts of EMIR will depend on which of the following categories an entity falls in: • financial counterparties (broadly, banks, insurers, investment firms, pension schemes, certain alternative investment funds (**AIFs**) and UCITS funds) established in the EU (**FCs**); • non-financial counterparties (**NFCs**) established in the EU whose aggregate positions exceed the clearing thresholds (see below) (**NFC+s**) (this is conceptually analogous to the "MSP" designation in US regulations); and • NFCs established in the EU whose aggregate positions are below the clearing threshold (**NFC-**). As of 15 March 2013, NFC+s (ie NFCs that exceed the clearing threshold) must notify ESMA and their EU Member State competent authority (**NFC notification**).	**Dodd-Frank Section 761** **7 USC 1a(11), 7 USC 1a(33), 7 USC 1a(49)** "Major swap participant" (**MSP**) is someone who is not a dealer and (i) maintains a substantial position in swaps for any of the major swap categories as determined by CFTC (except positions held for hedging or mitigating commercial risk or maintained by employee benefit plans); (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the US banking system or financial markets; or (iii) a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency and maintains a substantial position in outstanding swaps in any major swap category as determined by CFTC. "Commodity pool operator" is someone who is engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property for the purpose of trading in commodity interests, including any: • commodities for future delivery, security futures products, or swaps; • commodity options; and • leverage transactions. De minimis exception from registering as a commodity pool operator: • The aggregate initial margin, premiums, and required minimum security deposit for retail forex transactions required to establish commodity interest positions, determined at the time the most recent position was established, does not exceed 5 per cent of

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		the liquidation value of the pool's portfolio; or • The aggregate net notional value of commodity interest positions, determined at the time the most recent position was established, does not exceed 100 per cent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into.
	Clearing thresholds (EMIR Article 10 (3)) The clearing threshold values which, if exceeded, would subject NFCs to the clearing obligation are: • credit derivatives - EUR 1 billion in gross notional value; • equity derivatives - EUR 1 billion in gross notional value; • interest rate derivatives - EUR 3 billion in gross notional value; • FX derivatives - EUR 3 billion in gross notional value; and • commodity and any other OTC derivatives - EUR 3 billion in gross notional value. The notional value adds up the nominal value of all outstanding OTC derivative contracts of the group of the relevant NFC on a worldwide basis, whether they are in or out of the money. If an NFC exceeds the clearing threshold in respect of any of the above asset classes, the clearing obligation will apply to all clearable OTC derivatives, irrespective of the asset class but subject to the exemptions highlighted below.	"Swap dealer" is any person who: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps, provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer. A person may be designated as a swap dealer for one category of swaps and not be considered a swap dealer for another category of swaps. A person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business, is not a "swap dealer." Entities that engage in a de minimis quantity of swap dealing are exempt from the swap dealer definition. **Swap dealer registration** • There is an exemption from registration as a swap dealer for firms that have an aggregate gross notional amount of swaps entered into over the prior 12-month period that is not greater than $3 billion, although the threshold initially will be set at $8 billion for at least a three-year phase-in period. • For firms engaging in security-based swaps business, the exemption threshold is $3 billion in notional value over a 12-month period for credit default swaps (**CDS**) and $150 million for other types of security-based swaps. • The exemptions will be phased-in at $8 billion in notional value for swaps and CDSs and $400 million in notional value for other types of security-based swaps. • Ninety-six entities have provisionally

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		registered with the CFTC as swap dealers. Swaps that satisfy certain hedging criteria or are entered into in conjunction with loans originated by a federally backed bank will not be counted towards the swap dealer threshold. **Major Swap Participant: Substantial position** • The final rule applies two different tests to determine whether a person has a "substantial position" in swaps or security-based swaps. • A substantial position is a daily average current uncollateralized exposure of at least $1 billion for the applicable swap or security-based swap category (or $3 billion for the rate swap category) or a daily average current uncollateralized exposure plus potential future exposure of $2 billion for the applicable swap or security-based swap category (or $6 billion for the rate swap category). A position satisfying either test will constitute a "substantial position." **Major Swap Participant: Substantial counterparty exposure** • "Substantial counterparty exposure" is calculated using the same method as "substantial position," but substantial counterparty exposure is not limited to major categories of swaps and does not exclude hedging or employee benefit plan positions. • The swap thresholds across the entirety of a person's swap positions are $5 billion of current uncollateralized exposure or $8 billion of current uncollateralized exposure and potential future exposure. • The security-based swap thresholds across the entirety of a person's security-based swap positions are $2 billion of current uncollateralized exposure or $4 billion of current uncollateralized exposure and potential future exposure. **Financial entity and highly leveraged** A financial entity is "highly leveraged" where the ratio of its liabilities to its equity exceeds 12-to-1.

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		Major swap participant and major security-based swap participant safe harbours. Persons that satisfy any one of three alternatives are exempt from the daily calculations required by the "substantial position" tests.
Clearing	**EMIR Article 4** Under Article 4 of EMIR, all FCs, as well as NFC+s, will have to clear OTC derivative transactions that are within a class of OTC derivatives which ESMA has declared to be subject to mandatory clearing. Transactions with NFC-s will not be subject to the clearing obligation. There are two approaches for assessing whether a class of OTC derivatives is subject to clearing. • When a competent authority notifies ESMA that it has authorized a CCP to clear a class of OTC derivatives, ESMA will conduct a public consultation to determine whether the clearing obligation should apply and develop regulatory technical standards (the "bottom up" approach); and • ESMA will identify classes of derivatives which should be subject to the clearing obligation but for which no CCP has received authorisation (the "top down" approach). To date 16 CCPs established in the EU have been authorised and 10 non-EU CCPs recognised under EMIR. ESMA must develop regulatory technical standards within 6 months of receiving a notification from a competent authority. To date, ESMA has published final regulatory technical standards (**RTS**) in respect of the clearing of certain classes of interest rate swaps and draft regulatory technical standards in respect of the clearing of certain classes of credit derivatives and FX non-deliverable forwards. **Interest rate swaps** On 6 August 2015 the European Commission adopted the final regulatory technical standards on the clearing obligation in respect of the following classes of interest rate swaps	**Dodd-Frank Section 723(a)(3)** **Commodity Exchange Act (7 USC 2(h)(1))** **Final Rule 17 CFR Parts 1, 23, 37, 38 and 39** Swaps that are required to be cleared must be cleared by CCPs known as derivatives clearing organizations (**DCOs**) as soon as technologically practicable after execution of the swap, but no later than the close of business on the day of execution. If a swap is not required to be cleared but is accepted for clearing by a DCO, and the swap dealer or major swap participant and its counterparty agrees that the swap will be submitted for clearing, the swap must be submitted for clearing no later than the next business day after execution, or the agreement to clear, if later than execution. Each swap dealer or major swap participant that is a clearing member of a DCO shall coordinate with each DCO on which it clears to establish systems that enable the clearing member, or the DCO acting on its behalf, to accept or reject each trade submitted to the DCO for clearing by or for the clearing member as quickly as would be technologically practicable if fully automated systems were used. **Mandatory Swap Clearing** Mandatory clearing for specified classes of interest rate and credit default swaps went into effect in March 2013 for certain entities, with a phased compliance schedule roll-out through to September 2013. Interest rate swaps subject to mandatory clearing are fixed-to-floating swaps, basis swaps and forward rate agreements that are specified in U.S dollar, Euro and British pound. To fall under the clearing requirement, the swaps must be based on specified floating rate indexes and must have termination dates that fall into prescribed ranges. The four classes selected for mandatory clearing account for

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	(with no optionality and with a single settlement currency): • Float-to-float "basis" swaps and Fixed-to-float interest rate swaps, referencing either EURIBOR or LIBOR, with a maturity of 28 days to 50 years (this includes instruments which settle in Euros, US dollars, GBP or Japanese yen); • Forward Rate Agreements, referencing either EURIBOR or LIBOR, with a maturity of 3 days to 3 years (this includes instruments which settle in Euros, US dollars or GBP); and • Overnight Index Swaps referencing EONIA, FedFunds or SONIA, with a maturity of 7 days to 3 years (this includes instruments which settle in Euros, US dollars or GBP). The final regulatory technical standards must now be approved by the European Council and European Parliament. Once finalised, they will be published in the Official Journal of the EU and take effect on the twentieth day following publication. Lord Hill has said that he expects the first clearing obligations to be in place from April 2016. ESMA has also proposed that the following classes should be subject to the clearing obligation: • Fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NDK, PLN, with a maturity of 28 days to 50 years; and • Forward rate agreements denominated in NDK, PLN and SEK with a maturity of 3 days to 1 year. **Credit derivatives** ESMA has proposed that the following credit OTC derivative classes (traded in Europe and settled in EUR only) should be subject to the clearing obligation: • Index CDS (untranched index) referencing iTraxx Europe Main; or • iTraxx Europe Crossover indices, In each case with a series of 11 onwards and a maturity period of five years.	more than 80% of the interest rate swap market. Swaps with optionality, multiple currency swaps and swaps with conditional notional amounts are not subject to mandatory clearing. Credit default swaps subject to mandatory clearing include North American Untranched CDS Indices Class and European Untranched CDS Indices Class. Swap dealers, major swap participants, security-based swap dealers and major security-based swap participants are referred to as "Category 1 entities." Commodity pools, private funds as defined in Section 202(a) of the Investment Advisers Act of 1940 other than active funds, and persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956, are referred to as "Category 2 entities." Swaps between two Category 1 Entities had a compliance date of 11 March 2013 (26 April 2013 for iTraxx CDS indices), while swaps between a Category 2 Entity and a Category 1 Entity or another Category 2 Entity had a compliance date of 10 June 2013 (25 July 2013 for iTraxx CDS indices). All other swaps for which neither counterparty is eligible to claim an exception from the clearing requirement had compliance date of 9 September 2013 (23 October 2013 for iTraxx CDS indices). **Dodd-Frank Section 763(a)** **Securities Exchange Act of 1934 (15 USC 78c-1(3C))** Security-based swaps that are required to be cleared must be cleared by a clearing agency. The SEC has not yet issued any mandatory clearing determinations for security-based swaps.

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	FX non-deliverable forwards (FX NDFs) Based on the feedback it received to its consultation on FX NDFs, ESMA has said that it is not proposing a clearing obligation on the FX NDF classes at this stage. **Phase-in timing** The clearing obligations will take effect following a phased implementation, depending on the types of counterparties concerned. **Category 1** (clearing members): 6 months after the entry into force of the RTS on the clearing obligation; **Category 2** (FCs and AIFs which are NFC+s but not in Category 1 and which belong to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for the 3 months after the month in which the RTS is published in the Official Journal is above EUR 8 billion): 12 months after the RTS enters into force; **Category 3** (FCs and AIFs that are NFC+s and not in Category 1 or 2): 18 months after the RTS enters into force; and **Category 4 (**NFC+s not in any of the above categories): 3 years after the RTS enters into force. In order to ensure proportionate treatment with other counterparties, ESMA has said that the original 3 year phase-in period for NFC+s will be shortened progressively for subsequent RTS. Third country entities will need to apply the same criteria as their EU counterparties to determine the category to which they would belong if they were established in the EU so as to ensure equal treatment. Where a contract is concluded between two counterparties in different categories, the date from which the clearing obligation takes effect will be the latest date. There is an exemption for contracts associated with covered bond programs which meet certain conditions.	

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	Frontloading requirement EMIR requires the application of the clearing obligation to contracts concluded after the notification to ESMA of the authorisation of a CCP to clear a class of derivatives but before the date on which the clearing obligation takes effect, provided that the contracts meet the relevant minimum remaining maturity. On 18 December 2014 the European Commission proposed certain amendments to the frontloading requirement. The start date for the frontloading requirement will now be as set out below. **Category 1**: 2 months after the entry into force of the RTS on the clearing obligation; and **Category 2**: 5 months after the entry into force of the RTS on the clearing obligation. The frontloading requirement is not applicable to contracts where: (i) one party is counterparty in Category 3, given the long phase-in; or (ii) one party is an NFC+. In order to comply with the clearing obligation, counterparties will need to establish clearing arrangements by becoming a clearing member or a client of a clearing member or by establishing indirect clearing arrangements (which must not increase counterparty risk). ISDA has published: (i) the ISDA/FOA Client Cleared OTC Derivatives Addendum, which is a market standard document for use by counterparties and their clearing members which covers all types of derivative trades to be cleared by CCPs; and (ii) the ISDA/ FIA Europe Cleared Derivatives Execution Agreement, for use by two swap counterparties in respect of their OTC derivative trades that are subject to the clearing obligation. Parties may wish to consult their legal counsel regarding the various elections that need to be made. Parties to OTC derivative contracts that are not cleared by a CCP will be required to put in place risk mitigation techniques to mitigate operational risk and counterparty credit risk under Article 11 of EMIR (see below).	

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Exemptions from the clearing obligation	**Commercial hedging exemption for NFCs** Trades entered into by NFCs for the purposes of commercial hedging or treasury activities which are "objectively measureable as reducing risks directly in relation to the commercial activity of the group or treasury financing activity of the NFC or of that group" will not count towards the clearing thresholds (Article 10(2) of EMIR). The definition of "group" is determined by reference to whether an entity is consolidated for the purposes of the relevant accounting standards. This covers risks arising from the potential change in value of assets in the normal course of business (including proxy hedging and options arising from employee benefits), indirect risks and any OTC derivative contract that qualifies as a hedging contract pursuant to the International Financial Reporting Standards (**IFRS**) principles on hedge accounting. The definition of 'group' under EMIR is not clear and it is not certain whether the definition of 'group' could, in certain circumstances, include special purpose vehicles and bring derivative contracts entered into by special purpose vehicles within the clearing requirements. **Intragroup exemption** Entities can apply for an intragroup exemption from the clearing obligation under Article 3 of EMIR if, broadly, both counterparties are consolidated on a full basis and are subject to appropriate centralized risk and control procedures and, if a non-EU entity, the EU Commission has recognized the equivalence of requirements in that non-EU country. Certain disclosure requirements will still apply however. There is a temporary derogation for trades between an EU counterparty (other than a counterparty in Category 4) and a non-EU counterparty which are part of the same group. The clearing obligation will apply to such trades: • 3 years after the entry into force of the RTS on the clearing obligation; or • if the European Commission has adopted an equivalence decision in respect of the relevant third country, the later of: (i) 60 days after such equivalence decision; or (ii) the date on which the clearing obligation takes effect pursuant to the RTS on	**Commercial end-user exception** A commercial end-user exception applies to counterparties who are non-financial entities that are using security-based swaps to hedge or mitigate commercial risk. (15 USC 78c-1(3C)(g)(1)). **17 CFR Part 39** The clearing requirements do not apply to CFTC swaps if one of the counterparties is: • a non-financial entity; • is using the swap to hedge or mitigate commercial risk; and • notifies the CFTC how it generally meets its financial obligations associated with non-cleared swaps. A swap is used to hedge or mitigate commercial risk if: • the swap is economically appropriate to the reduction of the person's risks in the conduct and management of a commercial enterprise; and • the risks arise from changes in values of assets and liabilities, including changes related to movements of interest rates and foreign exchange rates. Swaps eligible for the end-user exception cannot be used for speculation, investing or trading. To determine whether a counterparty is a nonfinancial entity, the following needs to be considered: • the CEA defines a financial entity as a swap dealer, a security-based swap dealer, an MSP, a major security-based swap participant, a commodity pool, a private fund, certain types of benefit plans under ERISA, or a person predominantly engaged in activities that are in the business of banking or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956; • to be predominantly engaged in financial activities, the entity generally must either devote 85% or more of its assets to or derive 85% or more of its revenues from financial activities;

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	the clearing obligation. There is also an intragroup exemption from the margin requirements if certain conditions are met. There must be no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties. **Pension schemes** Certain pension schemes are initially exempt from the clearing obligation until 15 August 2015, which can be extended. On 5 June 2015 the European Commission published a delegated act extending the exemption for certain pension schemes until 16 August 2017. **Supranational bodies** Entities such as the ECB, national EU public debt management bodies, specified multilateral development banks, and certain guaranteed public entities benefit from exemptions from EMIR.	• the list of financial activities in section 4(k) is broad and includes activities such as insurance underwriting and agency, securities brokerage, investment advisory activities, and financial data processing; and • small ($10 billion or less in total assets) depository institutions, credit unions and farm credit system institutions are also eligible for the commercial end-user exception. **Captive finance companies** **Commodity Exchange Act (7 USC 2(h)(7)(C))** **CFTC Letter No. 15-27** A “captive finance company” is permitted to elect the commercial end-user exception because it is excluded from the definition of "financial entity". To be a captive finance company, an entity must satisfy a four-prong test: • the entity’s primary business is providing financing; • the entity uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures; • 90% or more of such exposures arise from financing that facilitates the purchase or lease of products; and • 90% or more of such products are manufactured by the parent company or another subsidiary of the parent company. The CFTC has also taken a position, in an interpretive letter dated 4 May 2015, that a wholly-owned special purpose vehicle of a captive finance company can also be treated as a captive finance company and rely on the commercial end-user exception. **Treasury affiliates** **CFTC Letter No. 13-22** Swaps entered into by eligible treasury affiliates are exempt from clearing provided certain conditions are met, including the following: • treasury affiliate is directly, wholly-owned by a non-financial entity or another eligible treasury affiliate and is not indirectly majority-owned by a financial entity; • treasury affiliate’s ultimate parent is not a

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		financial entity, and the majority of the ultimate parent's wholly and majority-owned affiliates qualify for the end-user exception; • treasury affiliate is a financial entity solely as a result of acting as principal to swaps with, or on behalf of, one or more of its related affiliates, or providing other financial services to such affiliates; • treasury affiliate enters into the exempted swap for the sole purpose of hedging or mitigating the commercial risk of one or more related affiliates that was transferred to the treasury affiliate via one or more swaps with such related affiliates; and • certain information regarding the uncleared swap is reported to a swap data repository. **Inter-affiliate exception** **17 CFR Part 50** The clearing requirements do not apply for swaps between affiliates provided the following conditions are met: • affiliates have common ownership: -- (i) one counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, or (ii) a third party, directly or indirectly, holds a majority ownership interest in both affiliate counterparties; • affiliates report for each swap that they are eligible to elect the inter-affiliate exception; • annual reporting of how each affiliate meets its financial obligations associated with entering into non-cleared swaps; • swap documentation; • centralized risk management; and • external swaps of affiliates must either (i) be cleared in the US or pursuant to comparable home country regulations or (ii) be exempt from clearing under the Dodd-Frank Act or a comparable foreign jurisdiction exception. In the case of a '34 Act filer, the use of this exception must be reviewed and approved by an appropriate committee of the company's board.

Subject	Summary of EU provisions	Summary of US provisions
		In recognition that most jurisdictions have not fully implemented clearing regimes, the final rule established an alternative compliance regime under which parties can claim the exemption during a transitional period until 11 March 2014 (such date extended to 31 December 2015 pursuant to CFTC no action relief). The alternative regime is subject to a number of conditions which vary depending on the jurisdiction in which a non-US counterparty is located. **FX exclusion** In November 2012, the US Secretary of the Treasury exempted FX swaps from the definition of "swap." As a consequence, foreign exchange swaps and foreign exchange derivatives which are physically settled are excluded from the clearing requirements.
Trade Execution	**MiFID II** All sufficiently liquid derivative trades that are subject to the clearing obligation under EMIR will need to be traded on a regulated trading venue (regulated market, Multilateral Trading Facility (**MTF**), OTF or third country (i.e. non-EU) trading venue). This requirement is expected to apply to both FCs and NFC+s. Within 6 months of the European Commission adopting a clearing obligation in relation to a class of derivatives, ESMA will be required to launch a consultation to determine whether such derivatives should be subject to the trading obligation. Under MiFID II, there will also be new pre- and post- transparency requirements. ESMA will also publish and maintain a list of derivatives which need to be traded on a regulated venue. MiFID II was published in the Official Journal on 12 June 2014 and came into force on 2 July 2014. However, the provisions of MiFID II will not be effective until 3 January 2017. Following its discussion and consultation papers published in May 2014, in December 2014 ESMA published final technical advice and a consultation paper (and draft regulatory	**Dodd-Frank Section 723(a)(8)** **Commodity Exchange Act (7 USC 2(h)(8))** **17 CFR Parts 1, 16, 37, 38 and 40** Swaps that are required to be cleared must be traded on a designated contract market (**DCM**) or a swap execution facility (**SEF**), except where no DCM or SEF makes the swap available for trading. Swaps traded on SEFs are divided into two different categories for the purposes of the trade execution regime. "Required transactions" are those swaps that are subject to the trade execution requirement. "Permitted transactions," are those transactions that do not involve swaps subject to the trade execution requirement. Block trades, illiquid swaps and bespoke swaps generally fall into the "permitted transactions" category. A DCM or SEF may make a swap "available to trade" by first making a determination based on several factors, including that there are ready and willing buyers and sellers, the trading volume, the bid/ask spread and the frequency or size of transactions. If the DCM or SEF determines that the swap is available to trade, it may submit this determination to the CFTC. The CFTC may provide for a 30-day public comment period before determining that a swap is available to trade. In February 2014, certain classes of USD, EUR and GBP-denominated fixed-to-floating interest

Subject	Summary of EU provisions	Summary of US provisions
	technical standards) in relation to MiFID II. The consultation paper covers issues such as the obligation to trade derivatives on a regulated trading venue and increased trade transparency for non-equity instruments including derivatives. In February 2015, ESMA published a further addendum consultation paper containing technical information on transparency issues for certain non-equity instruments (FX derivatives, credit derivatives, other derivatives and contracts for difference) Member States will need to transpose any delegated acts by 3 July 2016 and MiFID II/MiFIR will apply from 3 January 2017.	rate swaps along with certain classes of index-based untranched credit default swaps were declared available to trade. However, pursuant to CFTC no-action relief, swaps between eligible affiliate counterparties that are subject to a trade execution requirement are not required to be cleared until 1 January 2016. A "swap execution facility" is defined as a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: • facilitates the execution of swaps between persons; and • is not a designated contract market. • DCM rules in force 20 August 2012 (17 CFR Part 38) **SEF rules (17 CFR Part 37)** • Swaps subject to a clearing requirement must be traded on an SEF either through an Order Book or through a Request for Quote System (**RFQ**) that operates in conjunction with an Order Book. • Swap transactions are subject to the execution requirement upon the later of (a) the date the clearing requirement for such swap goes into effect, or (b) thirty days after the determination that such swap is available to trade is deemed approved or certified pursuant to CFTC rules. • An Order Book is defined as an electronic trading facility, a trading facility (each as defined in the Dodd-Frank Act) or a trading system 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, and transact on such bids and offers. • The RFQ system is a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than a certain number of participants in the trading system or platform, to which all such participants may respond.

Subject	Summary of EU provisions	Summary of US provisions

		• An SEF must provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or similar pricing data displays.
		
		• A minimum pause of 15 seconds between entry of two potentially matching customer-broker swap orders or two potentially matching customer-customer swap orders on SEFs' Order Book (such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction is submitted for execution). The time delay is not applicable to trades executed through an RFQ system.
		
		• SEFs must provide that market participants transmit an RFQ to at least three potential counterparties in the trading system or platform, subject to a phase-in compliance period:
		    • from 5 August 2013 to 2 October 2014, market participants could only transmit RFQs to two participants;
		    • the three-quote requirement came into effect on 3 October 2014.
		
		• SEFs may offer any method of execution for permitted transactions as long as an Order Book is among the offered methods.
		
		• SEFs are not required to offer functionality for indicative quotes.
		
		• SEFs may use proprietary data or personal information for business or marketing purposes only if the person from whom they collect or receive such information consents to such use, and SEFs may not condition access to their facilities based upon such consent.
		
		Trade reporting
		
		Pursuant to US trade reporting rules, SEFs must report creation data to a registered swap data repository for any swaps executed on or pursuant to the rules of an SEF.
		
		Continuation data reporting for uncleared swaps executed on or pursuant to the rules of an SEF is the obligation of the designated reporting counterparty, not the SEF.

Subject	Summary of EU provisions	Summary of US provisions
Derivatives Clearing Organizations / CCPs	**EMIR Articles 14 - 50** CCPs need to be authorized by the relevant competent authority and comply with new organization, prudential, conduct of business and minimum capital requirements. Non-EEA CCPs may be authorized by ESMA to provide clearing services in the EEA, provided that the CCP is subject to equivalent supervision and enforcement regime in the relevant non-EEA state. To date, the Commission has established implementing acts in respect of Australia, Hong Kong, Singapore and Japan. Accordingly, CCPs from those jurisdictions are able to obtain recognition under EMIR. CCPs from other jurisdictions are not yet able to obtain recognition under EMIR, but are currently able to continue providing any services they have been providing into the EU on the basis of transitional provisions under EMIR. CCPs are subject to: • detailed organizational requirements, including requirements as to the composition and structure of the board and senior management arrangements and internal control structures, such as risk, compliance, internal audit and technology management; • extensive and prescriptive Business Continuity Planning / Disaster Recovery requirements (including, for example, a requirement for the CCP to ensure recovery of critical functions within 2 hours); • prescriptive financial resource and liquidity requirements. This includes a base capital requirement of EUR 7.5m, together with risk based capital calculated on the basis of the approaches that are derived from those set out for banks in the Capital Requirements Directive; • a requirement to offer clearing members the ability to segregate client accounts with the CCP either at an omnibus or individual client level; • a requirement for CCPs contractually to commit themselves to transfer assets and positions of a defaulting member for the account of clients to another clearing member nominated by all such clients, on their request and without the consent of	**Dodd-Frank Section 725** **Commodity Exchange Act (7 USC 7a–1)** DCOs are subject to registration, financial and risk management requirements. **Final Rule** **17 CFR Parts 1, 21, 39, and 140** DCOs are subject to registration, financial and risk management requirements, including: • financial resources must be able to cover DCOs operating costs for at least one year; • DCOs must perform monthly stress tests to assess how much financial resources they need to meet their statutory requirements; • each DCO must "make a reasonable calculation of its projected operating costs over a 12 month period in order to determine the amount needed to meet" its statutory requirements; • DCOs cannot "set a minimum capital requirement of more than $50 million for any person that seeks to become a clearing member in order to clear swaps"; • DCOs must segregate, set aside or hold in a separate account customer funds and assets; and • in order for a DCO or its clearing members to commingle customer positions in swaps, options and futures, the DCO must file rules for approval with the CFTC. **Mutual Recognition of CCPs and DCOs** • In July 2013, Chairman Gary Gensler, the then Chairman of the CFTC, and European Commissioner Michel Barnier agreed to allow DCOs and CCPs to clear swaps/derivatives for the clearing members outside of the jurisdiction of their registration until the EU could reach its equivalence decisions and the CFTC could make its substituted compliance determinations. • In the meanwhile, the CFTC has provided time-limited no-action relief to two EU CCPs from DCO registration requirements until earlier of 31 December 2013 or the DCC becoming a registered relevant CCP (this relief was extended to 31 December 2014 for LCH.Clearnet Ltd. and to 30 September 2015 for Eurex Clearing AG). Neither the EU nor the CFTC has made equivalence decisions or substituted compliance determinations.

<table>
<tr><th>Subject</th><th>Summary of EU provisions</th><th>Summary of US provisions</th></tr>
<tr><td></td><td>the defaulting clearing member; and
prescriptive requirements as to structure and operation of the default arrangements to be applied by CCPs, including:
requirements for a minimum size of default fund; and
an obligation on the CCPs to use their own dedicated resources before seeking recourse to the default fund contributions of non-defaulting members.
As indicated above, to date, 16 EU CCPs have been authorised and 10 non-EU CCPs recognised under EMIR.</td><td></td></tr>
<tr><td>Trade Reporting</td><td>EMIR Article 9

EU derivatives contracts (including both listed and OTC and whether or not subject to the clearing obligation) must be reported to a trade repository (or, if unavailable, to ESMA) by no later than the next working day.

Counterparties are responsible for ensuring that the details of any OTC derivative transactions entered into (including modifications and amendments) are reported without duplication, although the reporting obligation can be delegated by prior agreement to one counterparty or a third party.

The details to be reported to trade repositories are set out in the delegated regulations and include the parties to the contract and the main commercial details of the transaction.

Counterparties should keep a record of any derivatives contracts they enter into and any modifications for at least 5 years after the termination of the contract.

Trade repositories must be registered and monitored by ESMA and are subject to operational requirements.

ESMA initially approved the registration of the following 4 trade repositories:
DTCC Derivatives Repository Ltd. (DDRL), based in the United Kingdom
Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW), based in Poland</td><td>Dodd-Frank Section 727
Commodity Exchange Act (7 USC 2(a)(13)

CFTC is authorized to require real-time public reporting for cleared and uncleared swaps, with appropriate time delays for reporting large notional swap transactions (block trades).

Final Rule
17 CFR Parts 43 and 45
All primary economic terms data for the swaps must be reported;
reporting must be done "as soon as technologically practicable after execution" but no later than 1 hour after execution during the first year of compliance and 30 minutes after execution beginning with the second year of compliance;
however, if the non-reporting counterparty is neither a swap dealer nor an MSP and is not a financial entity as defined in the CEA and verification of economic terms does not occur electronically, then swaps must be reported as "soon as technologically practicable after execution" but no later than within 24 business hours after execution during the first year of compliance, 12 business hours after execution during the second year of compliance and 30 minutes after execution beginning with the third year of compliance;
requirement of continuation data reporting to ensure that all reported data remains accurate and up-to-date;
each swap is to be recorded using a unique swap identifier and each counterparty is to be identified using a single legal entity identifier;</td></tr>
</table>

Subject	Summary of EU provisions	Summary of US provisions
	• Regis-TR S.A., based in Luxembourg • UnaVista Ltd, (the London Stock Exchange's global hosted platform based in the United Kingdom) The registrations took effect on 14 November 2013 and the reporting obligation took effect on 12 February 2014. On 28 November 2013 ESMA also approved the registration of: • ICE Trade Vault Europe Ltd. (ICE TVEL), based in the United Kingdom; and • CME Trade Repository Ltd. (CME TR), based in the United Kingdom. The registered trade repositories cover all derivative asset classes – commodities, credit, foreign exchange, equity, interest rates and others – irrespective of whether the contracts are traded on or off exchange. **Backloading** As of 12 August 2014, all FCs and NFC+s need to report data on collateral and valuations. When the reporting obligation came into force on 12 February 2014 any transactions that were outstanding on 16 August 2012 and still outstanding on 12 February 2014 were required to be reported within 90 days (13 May 2014). Any transactions that were entered into on or after 16 August 2012 but that are no longer outstanding must be reported within 3 years. **MiFID II** MiFID II extends its pre- and post-trade reporting requirements beyond equities to cover equity-like instruments, bonds and derivatives. Trading venues will be required to make pre- and post-trade reporting data available on a reasonable commercial basis. All firms will have to report trades through Approved Publication Arrangements (**APAs**). MiFiD II envisages that a consolidated tape will be introduced for all equity and equity-like trades in the EU; in the longer term, it is intended to create a similar tape for non-equities. In the long term it is hoped that the reporting requirements under EMIR and MiFID II will be aligned.	• swap products are to be identified using unique product identifiers and a product classification system; and • swap reporting is to a registered swap data repository (**SDR**) unless no SDR makes the swap available for reporting, in which case swaps are to be reported directly to the CFTC. **SBSR Registration and Reporting** On 14 January 2015, the SEC adopted two new sets of rules that require security-based swap data repositories (**SBSRs**) to register with the SEC and prescribed reporting and public dissemination requirements for security-based swap transaction data. On the same date, the SEC also proposed certain additional rules, rule amendments and guidance related to the reporting and public dissemination of security-based swap transaction data (collectively, **Regulation SBSR**). As part of the newly proposed rules, the SEC has proposed a new compliance schedule with respect to reporting of a particular asset class such that any person who has an obligation to report must commence reporting six months after the first registered SBSR commences operations and accepts reports of security-based swaps in that particular class (**Compliance Date 1**). The proposed compliance schedule also requires historical data to be reported, to the extent available, by Compliance Date 1. The public dissemination requirements of Regulation SBSR go into effect 3 months after Compliance Date 1 for that particular asset class. **Block trades** **17 CFR Part 43** CFTC has established initial appropriate minimum block sizes for publicly reportable swap transactions based on categories within these swap classes: • Interest rate asset class • Credit asset class • Foreign exchange asset class • Other commodity asset class Block sizes are calculated using formulas based on 50 per cent, 67 per cent or 75 per cent of

Subject	Summary of EU provisions	Summary of US provisions
		aggregate notional value of a "trimmed data set" of large notional transactions. CFTC rules provide initial block sizes prior to the effective date of a CFTC determination to establish an applicable post-initial block size for a swap category. CFTC rules also provide for time delays for public dissemination for certain block trades. These time delays vary depending on the parties involved. Currently, "year 2" time delays are in effect, and unless stated otherwise, these time delays will remain unchanged going forward. Where an SD/MSP counterparty is the regulatory reporting party, the time delays for pubic dissemination is 15 minutes for swaps executed on a SEF or a DCM; 15 minutes for off-facility swaps subject to mandatory clearing, 30 minutes for credit, equity, foreign exchange and interest rate off-facility swaps not subject to mandatory clearing, and 2 hours for all other off-facility swaps not subject to mandatory clearing. Where a non-SD/MSP counterparty is the regulatory reporting party, the time delays for public dissemination is 15 minutes for swaps executed on a SEF or DCM, 2 hours for off-facility swaps subject to mandatory clearing (the time delay will be reduced to 1 hour starting year 3), and 36 business hours for off-facility swaps not subject to mandatory clearing (the time delay will be reduced to 24 business hours starting year 3). **Determining the reporting counterparty** **17 CFR Part 45** The identity of the reporting counterparty is determined as follows: • if only one counterparty is a swap dealer, then the swap dealer is the reporting counterparty; • if neither counterparty is a swap dealer but only one counterparty is an MSP, then the MSP is the reporting counterparty; • if neither counterparty is a swap dealer or an MSP but one counterparty is a financial entity as defined in Section 2(h)(7)(C) of the CEA, then the financial entity is the reporting counterparty; • if both counterparties have the same status,

Subject	Summary of EU provisions	Summary of US provisions
		then they decide amongst themselves who will report; and • notwithstanding these rules, if neither party is a swap dealer or an MSP and only one party is a US person, then the US person reports. **Legacy swaps** **17 CFR Part 46** Legacy swaps fall into one of two categories: • pre-enactment swaps - any swap entered into prior to 21 July 2010, the terms of which have not expired as of 21 July 2010; and • transition swaps - any swap entered into on or after 21 July 2010 and prior to the applicable compliance date (between October 2012 and April 2013, depending on the type of swap and counterparty). The following reporting rules apply to legacy swaps: • for legacy swaps in existence on or after 25 April 2011, the reporting counterparty should report its: (i) legal entity identifier; (ii) minimum primary economic terms; and (iii) its internal identifiers to an SDR; • for each uncleared legacy swap in existence on or after 25 April 2011, the reporting counterparty must report swap continuation data to an SDR throughout the life of the swap; • for each pre-enactment swap that expired or was terminated prior to 25 April 2011, the reporting counterparty must report on the compliance date such information relating to the transaction as was in its possession on or after 14 October 2010; and • for each transition swap that expired or was terminated prior to 25 April 2011, the reporting counterparty must report to an SDR on the compliance date such information relating to the transaction as was in its possession on or after 17 December 2010.

Subject	Summary of EU provisions	Summary of US provisions
Record keeping	EU Directives, including MiFID, set out a wide range of record keeping requirements applicable to different types of regulated activities that have been transposed into national regulatory provisions. These requirements include that firms should retain all records for at least 5 years (including the relevant data relating to all transactions in financial instruments) and that records of the rights and obligations of parties (i.e. contract terms, or terms of business) should be retained for at least the duration of the relationship with the client. The rules also specify how records should be held. Article 9(2) of EMIR requires that counterparties keep a record of any derivative contract or modification for at least five years following the termination of that contract. MiFID II includes some additional record keeping requirements, for example, with regard to the recording of telephone conversations and electronic communications. In its December 2014 technical advice on MiFID II, ESMA stated that investment firms should have arrangements in place to ensure compliance with requirements to record telephone conversations and electronic communications with the firms' management bodies having effective oversight and control over the policies and procedures relating to such recordings. Under EMIR, clearing houses are required to comply with more detailed record keeping requirements. For example, clearing houses are required to maintain transaction records, position records and general business records in accordance with detailed provisions set out in the technical standards underpinning EMIR, for a period of at least 10 years.	**17 CFR Part 45** Various swap participants are required to keep records of their swaps. End users are required to "keep full, complete and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty," including records proving that their swaps are exempt from mandatory clearing under Section 2(h)(7) of the CEA. All participants must retain records through the life of the swap and for a period of five years after the swap is terminated. End-users may keep records in electronic or paper form, as long as the information is retrievable and reportable. Records kept by end-users should be retrievable within five business days, while records kept by other participants should be readily accessible via real-time electronic access throughout the life of the swap plus two years, and within three business days thereafter. Records must be open to inspection by the Department of Justice, the CFTC, the SEC and representatives of prudential regulators. Each counterparty to a legacy swap in existence on or after 25 April 2011 must keep records of certain primary economic terms as well as copies of master agreements, confirmations and credit support agreements, and modifications thereto, that it has in its possession on or after that date. If a swap was: (i) entered into prior to 21 July 2010; (ii) was unexpired as of 21 July 2010; and (iii) expired prior to 25 April 2011; then each counterparty to that swap must maintain records that it had possession of on or after 14 October 2010. The counterparty may choose to keep the records in the format they existed in on or after 14 October 2010, or in any other format. If a swap was entered into on or after 21 July 2010 but expired prior to 25 April 2011, each counterparty must maintain records about the terms of the transaction that it had possession of on or after 17 December 2010, in the format in which the information existed on that day or in any other format.

Subject	Summary of EU provisions	Summary of US provisions
Risk mitigation techniques for uncleared trades	**EMIR Article 11** Under EMIR, in respect of uncleared trades, counterparties need to have appropriate procedures in place to monitor and mitigate operational and counterparty credit risk, including timely confirmation of the terms of OTC derivative trades, portfolio reconciliation, portfolio compression and dispute resolution. FCs and NFC+s are also obliged to engage in timely, accurate and appropriately segregated exchange of collateral and conduct a daily mark-to-market (or, if market conditions do not allow, marking to model). In addition, FCs are required to hold appropriate and proportionate capital to manage the risks not covered by appropriate exchange of collateral. The following is a summary of some of the key requirements. **Timely confirmation of uncleared derivative transactions** (in force from 15 March 2013) Each counterparty to uncleared OTC derivative transactions must confirm trades as soon as possible and at the latest: • for transactions between FCs and NFC+s and which are: (i) credit default swaps and interest rate swaps, on a T+2 basis until 28 February 2014 and thereafter on a T+1 basis; and (ii) equity swaps, foreign exchange, commodities and all other derivatives, on a T+2 basis until 31 August 2014 and thereafter on a T+1 basis; and • for transactions with a NFC- and which are: (i) credit default swaps and interest rate swaps, on a T+3 basis until 31 August 2014, and thereafter on a T+2 basis; and (ii) equity swaps, foreign exchange, commodities and all other derivatives, on a T+4 basis until 31 August 2014, and thereafter on a T+2 basis. If a trade is concluded after 16:00 local time, confirmation must take place at the latest one business day following the deadline set out in the relevant category above. In addition, FCs must report on a monthly basis to the competent authority the number of unconfirmed OTC derivative trades in the above categories that have been outstanding for more than 5 business days. The confirmation requirements will apply to all non-cleared trades.	**17 CFR Part 23** The risk mitigation techniques apply to swaps where one or more of the counterparties are a swap dealer or MSP. **Timely confirmations of uncleared off-facility swap transactions** Each swap dealer and MSP entering into a swap transaction must execute a confirmation (and send an acknowledgment, if applicable) as soon as technologically practicable and at the latest: • Confirmation for credit swaps or interest rate swaps with swap dealer or MSP: T+1. • Confirmation for equity swaps, foreign exchange swaps, or other commodity swaps with swap dealer or MSP: (i) T+2 until 31 August 2014; and (ii) T+1 beginning 1 September 2014. • Acknowledgment for credit swaps or interest rate swaps with a non-swap dealer and non-MSP: T+1. • Acknowledgment for equity swaps, foreign exchange swaps, or other commodity swaps with non-swap dealer and non-MSP: (i) T+2 until 31 August 2014; and (ii) T+1 beginning 1 September 2014. • Confirmation for credit swaps or interest rate swaps with financial entity: (i) T+2 until 28 February 2014; and (ii) T+1 beginning 1 March 2014. • Confirmation for equity swaps, foreign exchange swaps or other commodity swaps with financial entity: (i) T+2 until 31 August 2014; and (ii) T+1 beginning 1 September 2014. • Confirmation for credit swaps or interest rate swaps with non-swap dealer that is not an MSP or financial entity: (i) T+3 until 31 August 2014; and (ii) T+2 beginning 1 September 2014. • Confirmation for equity swaps, foreign exchange swaps, or other commodity swaps with non-swap dealer that is not an MSP or financial entity: (i) T+4 until 31 August 2014; and (ii) T+2 beginning 1 September 2014.

Subject	Summary of EU provisions	Summary of US provisions
	The International Swaps and Derivatives Association, Inc. (**ISDA**) has issued a form of Timely Confirmation Amendment Agreement as a form of agreement that market participants can use as part of their tool kit for compliance with the obligation imposed by EMIR to provide timely confirmation of the terms of an uncleared OTC derivative contract. **Mark-to-market** (in force from 15 March 2013) FCs and NFC+s need to mark-to-market on a daily basis (or, if market conditions do not allow, marking to model) and when the trade repositories are established, report these to the trade repository daily. **Portfolio reconciliation and portfolio compression** (in force from 15 September 2013) Counterparties must agree in writing the terms of portfolio reconciliation for OTC derivatives trades, which must include reconciliation of key trade terms and any mark-to market valuations (see above). The frequency with which portfolio reconciliation must be performed depends on whether the entity is a FC, NFC+ or NFC- and the number of outstanding OTC derivative contracts between the counterparties. Portfolio compression applies where counterparties have 500 or more OTC derivative contracts outstanding with each other. **Dispute resolution** (in force from 15 September 2013) Counterparties must have in place agreed detailed procedures and processes in place covering the identification, recording and monitoring of disputes which relate to the recognition or valuation of a transaction and any exchange of collateral. Disputes must be resolved in a timely manner and the procedures must include a specific process for resolution of any dispute that is not resolved within 5 business days. ISDA has published the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol to aid compliance with these requirements by allowing a counterparty to adhere to a single arrangement which will address these requirements with all other counterparties. ISDA has also published a	An acknowledgment is a written or electronic record of all of the terms of a swap. An acknowledgment is not legally binding until it is signed or otherwise executed by a receiving counterparty, upon which it becomes a confirmation. Prior to execution, the prospective counterparty may ask the swap dealer or MSP for a draft acknowledgment specifying all terms of the swap transaction other than the applicable pricing and other relevant terms that are to be expressly agreed at execution. **Mark-to-market** For cleared swaps, each swap dealer or MSP must notify its counterparties of their right to receive, upon request, the daily mark from the appropriate derivatives clearing organization. For uncleared swaps, each swap dealer or MSP must provide its counterparties with a daily mark, which shall be the mid-market mark of the swap. The mid-market mark of the swap shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments. The daily mark shall be provided to the counterparty during the term of the swap as of the close of business or such other time as the parties agree in writing. **Portfolio reconciliation** For swaps where both counterparties are swap dealers and/or MSPs: • terms to be agreed upon in writing; • may be performed on a bilateral basis or by a qualified third party; • portfolio to be reconciled no less frequently than: (a) each business day for each portfolio with ≥500 swaps; (b) weekly for each portfolio with >50 but <500 swaps on any business day during the week; (c) quarterly for each portfolio with ≤50 swaps during the calendar quarter; • each swap dealer and MSP must resolve immediately any discrepancy in a material term of a swap identified as part of a portfolio reconciliation or otherwise; and • each swap dealer and MSP must have policies reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within 5 business days.

Subject	Summary of EU provisions	Summary of US provisions
	bilateral standard amendment agreement, which is based on this Protocol and may be a useful tool for those counterparties who wish to amend their documentation on a bilateral basis. The FCA has said that it expects firms which were initially unable to comply with the portfolio reconciliation; dispute resolution and portfolio compression requirements for uncleared trades to have completed and implemented their plans to achieve compliance by 30 April 2014 and that firms should be able to demonstrate compliance after this date. **Margin requirements** Please see below.	For swaps with non-swap dealers and non-MSPs: • terms to be agreed upon in writing, including agreement on the selection of any third-party service provider; • may be performed on a bilateral basis or by one or more third parties selected by counterparties; • portfolio to be reconciled no less frequently than: (a) quarterly for each portfolio with >100 swaps at any time during calendar quarter; (b) annually for each portfolio with ≤100 swaps at any time during calendar year; and • each swap dealer and MSP must have written procedures reasonably designed to resolve any discrepancies in the material terms or valuation of each swap identified as part of a portfolio reconciliation (difference between lower and higher valuations of ≤10% of the higher valuation need not be deemed a discrepancy). Valuation disputes in excess of $20m to be reported to regulators if not resolved within 3 business days (for swaps with swap dealers and MSPs) or 5 business days (for all other swaps). **Portfolio compression for uncleared swaps** Each swap dealer and MSP must have policies for: (i) terminating each fully offsetting swap with another swap dealer or MSP in a timely fashion, when appropriate, (ii) periodically engaging in bilateral portfolio compression exercises, when appropriate, with other swap dealers and MSPs, and (iii) engaging in multilateral portfolio compression exercises, when appropriate, with other swap dealers and MSPs. Each swap dealer and MSP must have policies for terminating fully offsetting swaps and for engaging in portfolio compression exercises with respect to swaps with non-swap dealers and non-MSPs, to the extent requested by any such counterparty.

<table>
<tr><th>Subject</th><th>Summary of EU provisions</th><th>Summary of US provisions</th></tr>
<tr><td>Margin requirements for uncleared trades</td><td>EMIR Article 11 (3)

FCs and NFC+s will be subject to initial and variation margin requirements for uncleared trades.

On 18 March 2015 the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) working group published revisions to their joint report (published on 2 September 2013) on common international standards. The main change was to delay the implementation date of the margin requirements by 9 months, to 1 September 2016. On 10 June 2015 the ESAs launched a second consultation (following the first consultation in April 2014) on the draft regulatory technical standards which provide more detail on the margin requirements for OTC derivatives that are not cleared by a CCP.

Proposals include that the initial margin requirements should be phased in over a 4 year period from 1 September 2016, starting with the largest derivative market participants. At the end of the phase-in period from 1 September 2020, the initial margin requirements will apply to uncleared derivative transactions where both counterparties have or belong to a group, each of which has an aggregate average notional amount of uncleared derivatives of more than EUR 8 billion. There will be a minimum transfer amount of EUR 500,000.

FCs and NFC+s do not need to exchange initial margin or variation margin where their counterparty is an NFC-.

Where the total initial margin for uncleared derivatives between the counterparties at group level is equal to or lower than EUR 50 million, no initial margin needs to be exchanged.

Counterparties will also need to exchange variation margin on a daily basis in respect of new contracts entered into:
from 1 September 2016 (where both counterparties have, or belong to groups, each of which has an aggregate average notional amount of non-centrally cleared derivatives above EUR 3 trillion); and
from 1 March 2017 (for all other counterparties).</td><td>Dodd-Frank Sections 731 and 764

Requirements created by CFTC, SEC and prudential bank regulators.

Pursuant to amendments to the Dodd-Frank Act signed into law on 28 March 2015, margin requirements will not apply to (a) non-financial entities entering into swaps to hedge and mitigate commercial risk, (b) affiliates acting on behalf of such an entity that use swaps to hedge or mitigate the commercial risk of such entity or another affiliate that is not a financial entity, and (c) cooperatives that meet certain regulatory parameters.

Proposed Rule 17 CFR Part 23

In September 2014, the CFTC and the prudential regulators re-proposed their respective margin requirements for uncleared swaps entered into by swap dealers or MSPs. The re-proposed rules closely follow BCBS-IOSCO's 2 September 2013 report.

The amount of margin required under the proposed rules would vary based on the relative risk of the counterparty and of the non-cleared swap. The compliance date for variation margin requirements is proposed to be December 1, 2015. The compliance dates for initial margin requirements will be phased in from December 1, 2015 to December 1, 2019, depending on the average daily aggregate notional amounts of the counterparties and their affiliates. The CFTC and the prudential regulators are likely to re-propose the rules in light of recent amendments to the Dodd-Frank Act.

Trades between swap dealers/MSPs and other swap dealers/MSPs: swap dealer/MSP must post and collect initial margin and variation margin for each trade.

Trades between swap dealers/MSPs and financial end users with a material swaps exposure: swap dealer/MSP must post and collect initial and variation margin for each trade. Trades between swap dealers/MSPs and financial end users without a material swaps exposure: swap dealer/MSP posts and collects initial margin as it determines to be appropriate and is required to post and collect variation margin.

Material swaps exposure is defined to mean that the entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign</td></tr>
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Subject	Summary of EU provisions	Summary of US provisions
	Eligible collateral broadly includes: • cash; • allocated gold; • debt securities issued by government entities, multilateral development banks, credit institutions or investment firms; • corporate bonds; • the most senior tranche of a securitization (provided it is not a re-securitization); and • equities. In addition, there are collateral eligibility criteria and concentration limits. Counterparties also need to put in place robust operational requirements, including clear senior management reporting, an escalation procedure and documentation requirements.	exchange swaps with all counterparties for June, July and August of the previous year that exceeds $3 billion, where such amount is calculated only for business days. Under proposed rules, swap dealers/MSPs may adopt a maximum initial margin threshold amount of $65 million, below which the swap dealer/MSP need not collect or post initial margin from or to other swap dealers/MSPs and financial end users with material swaps exposure. A minimum transfer amount of up to $650,000 is proposed. In July 2015, the CFTC proposed new rules with respect to cross-border application of the CFTC's margin requirements under the Dodd-Frank Act for uncleared swaps entered into by CFTC-registered swap dealers and MSPs for which there is no prudential regulator. If the proposed new rules are adopted, the CFTC will have two separate cross-border frameworks with respect to the application of certain rules promulgated pursuant to the Dodd-Frank Act (one framework with respect to the applicability of swap dealer/MSP rules and regulations to cross-border swap transactions and another framework for the applicability of uncleared margin requirements to cross-border transactions). The proposed new rules with respect to cross-border application of the CFTC's uncleared margin requirements would work as follows: • U.S. covered swap entities (which refers to swap dealers/MSPs registered with the CFTC) would be required to comply with the CFTC's margin rules for all uncleared swaps but would be eligible for substituted compliance with respect to margin that they post (but not that they collect) for swaps with certain non-U.S. counterparties. • Uncleared swaps of non-U.S. covered swap entities whose obligations under the relevant swap are guaranteed by a U.S. person would be treated the same as uncleared swaps of U.S. covered swap entities. • Uncleared swaps of non-U.S. covered swap entities whose obligations under the relevant swap are not guaranteed by a U.S. person would be eligible for substituted compliance unless the

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		counterparty to the swap is a U.S. covered swap entity or a non-U.S. covered swap entity whose obligations under the swap are guaranteed by a U.S. person. Uncleared swaps between a non-U.S. covered swap entity and a non-U.S. counterparty would be excluded from the CFTC margin rules, if neither party's obligations under the relevant swap are guaranteed by a U.S. person and neither party is a U.S. branch of a non-U.S. covered swap entity nor consolidated in the financial statements of a U.S. person.
Position limits	**MiFID II** MiFID II proposes transparent non-discriminatory position limits in relation to commodity derivatives that trading venues must apply. MiFID II empowers ESMA to co-ordinate measures taken by EU competent authorities to manage positions, including the setting of position limits and ESMA will have specific powers when certain criteria are met and can demand information on the site and purpose of a position or exposure entered into via a derivative and request that steps be taken to reduce the site of the exposure or position. Position limits will not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity. The consultation paper and discussion paper issued by ESMA in December 2014 contain further commentary on the requirements for position limits and position reporting in relation to commodity derivatives, together with a discussion of the scope of the application of MiFiD II to such derivatives. The existing exemptions for commodities firms have largely been lifted, thereby bringing most, if not all, commodities trades under the scope of MiFID II. MiFID II should apply from 3 January 2017.	**Dodd-Frank Section 737** In November 2011, the CFTC issued a final rule on position limits. On 28 September 2012, a US federal district judge vacated the final rule. Following the court decision, the CFTC issued a new proposed rule in November 2013. The latest public comment period ended 22 January 2015. The CFTC is expected to approve final rules after reviewing the comments. **Proposed Rule** **17 CFR Part 150** • 28 Core Referenced Futures Contracts: • 9 "legacy" agricultural contracts • 10 "non-legacy" agricultural contracts • 4 energy contracts • 5 metal contracts Two types of speculative limits: spot-month position limits and non-spot-month position limits. Spot-month position limits apply in the period immediately before delivery obligations are incurred for physical delivery contracts or the period immediately before contracts are liquidated by the clearinghouse based on a reference price for cash-settled contracts. Spot-month period is specific to each commodity contract, need not correspond to a month-long period, and may extend through the period when the contract is no longer listed for trade or available for transfer. Generally, spot-month position limits for Referenced Contracts will be set at 25% of estimated deliverable supply. Example: New York Mercantile Exchange Light

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		Sweet Crude Oil spot-month limit: 3,000. Aggregation is generally required if one entity owns 10% or more of another entity. However, any person with an ownership or equity interest in an entity (financial or non-financial) of between 10% and 50% may disaggregate the owned entity's positions upon demonstrating independence of trading. Disaggregation is allowed if one entity owns more than 50% of another entity only upon the approval of an application to the CFTC. There is an exemption for bona fide hedging transactions, which mean any of the following: • sales or purchases of Referenced Contracts that do not exceed a certain quantity; • offsetting sales or purchases of Referenced Contracts that do not exceed a certain quantity; • purchases or sales by an agent who does not own or has not contracted to sell or purchase the offsetting cash commodity at a fixed price; • anticipated royalty hedges; • anticipated service hedges; • cross-commodity hedges; • pass-through swaps; or • pass-through swap offsets.
Extraterritorial Issues	**EMIR Articles 4 and 11** Under EMIR, the obligation to clear OTC derivative transactions applies to OTC derivative transactions between a FC or NFC+ in the EU and a non-EU entity if the non-EU entity would be subject to the clearing obligation under EMIR if it were established within the EU. The clearing obligation and requirement to put in place risk mitigation techniques for uncleared trades under EMIR	On 26 July 2013, the CFTC issued final interpretative guidance concerning the cross-border application of certain swap provisions of the Commodity Exchange Act. **Definition of "US person"** Per the interpretive guidance, "US person" is any person that is: (i) any natural person who is a resident of the

Subject	Summary of EU provisions	Summary of US provisions
	also applies to OTC derivative trades between two non-EU counterparties where both non-EU counterparties would be subject to the clearing obligation if they were established in the EU and the contract has a "direct, substantial and foreseeable effect or where such obligation is necessary or appropriate to prevent the evasion of any provisions of EMIR". Under Commission Delegated Regulation No 285/2014 (which applied from 10 October 2014), an OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the EU where: • the two non-EU entities that would be FCs if established in the EU execute transactions via their EU branches; or • one of the two non-EU entities benefits from a guarantee from an EU FC which meets certain conditions. Where one or more counterparties is located in a third country that has been declared to be equivalent by the European Commission adopting an implementing act, EMIR can be disapplied if the third country framework allows reaching an outcome equivalent to that of EMIR and the counterparty will be deemed to comply with EMIR. On 30 October 2014 the European Commission announced the first equivalence decisions regarding the regulatory regimes of CCPs in Australia, Hong Kong, Japan and Singapore and subsequently in April 2015 10 CCPs from those jurisdictions were recognised by ESMA as being qualifying CCPs. **MiFID II** Under MiFID II, certain standardized derivatives contracts must be traded on regulated trading venues, which may include third country (non-EU) trading venues, provided that the third country: • Is deemed to have a legal and supervisory framework for trading venues equivalent to that of the EU;	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; (vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in any of the above prongs, except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-US persons and not offered to US persons; (vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity; and (viii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in any of the above prongs. • The above definition is non-exhaustive. Parties may ask CFTC staff for written advice or guidance as to their status. • A foreign branch of a US person would be covered by virtue of the fact that it is a part, or an extension, of a US person.

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	and • has an equivalent system for the recognition of EU trading venues for the purposes of any similar trading obligation in the third country's jurisdiction. The trading obligation will also apply to non-EU entities that would be subject to the clearing obligation if they were established in the EU and which enter into derivatives transactions that have a "direct, substantial and foreseeable effect" within the EU, or where the application of the trading obligation is necessary or appropriate to prevent the evasion of any provision of MiFIR.	• A US branch of a non-US swap dealer or non-US MSP is a non-US person (however, it is still subject to Dodd-Frank). This latter requirement that a US branch of a non-US swap dealer, though a non-US person, is still subject to Dodd-Frank is based on footnote 513 of the Interpretive Guidance. In November, 2013, the CFTC Staff issued a clarification with regards to this footnote, stating that non-US SDs/MSPs who regularly use personnel or agents located in the US to arrange, negotiate, or execute a swap with non-US person generally would be required to comply with Transaction-Level requirements. The CFTC Staff's reasoning was based on the fact that such persons perform core, front-office activities in the US, and thus must be subject to Dodd-Frank. However, the CFTC has issued time-limited no-action relief from compliance with this requirement until 30 September 2016. **Substituted compliance** Substituted compliance is a concept whereby counterparties may comply with their home jurisdiction's laws and regulations in lieu of compliance with CFTC rules. The CFTC must first determine that such foreign jurisdiction's requirements are comparable with and as comprehensive as the corollary areas of regulatory obligations encompassed by the entity-level and transaction-level requirements. The CFTC's substituted compliance determinations may be made on a requirement-by-requirement basis rather than on the basis of a regime as a whole. Thus, market participants eligible for substituted compliance may have to comply with US regulations for some requirements and may comply with their home jurisdiction rules for other requirements, depending on how much of their home jurisdiction regime is covered by CFTC substituted compliance determinations. On 20 December 2013, the CFTC issued entity-level comparability determinations for swap dealers and MSPs for the European Union, Switzerland, Hong Kong, Australia, Japan and Canada derivatives regulation regimes and transaction-level substituted compliance determinations for certain regulations for the European Union and Japan regimes. **Entity-level requirements**

Subject	Summary of EU provisions	Summary of US provisions
		For entity-level requirements, swap dealers and major swap participants must comply with Dodd-Frank or substituted compliance by the earlier of (1) 21 December 2013 or (2) 30 days after the issuance of an applicable substituted compliance determination for relevant entity-level requirement of the relevant jurisdiction. **Transaction-level requirements** The CFTC's swap dealer oversight division has issued an advisory stating that it believes that a non-US swap dealer (regardless of whether it is an affiliate of a US person) regularly using personnel or agents located in the US to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with transaction-level requirements. Pursuant to CFTC no-action relief, non-US swap dealers (regardless of whether they are affiliated with a US person) that enter into swaps with non-US persons that are not guaranteed affiliates or conduit affiliates of a US person using personnel or agents located in the US to arrange, negotiate or execute such swaps do not have to comply with transaction-level requirements until 30 September 2016 (except that if such a swap is with a non-US swap dealer, then multilateral portfolio compression and swap trading relationship requirements are outside the scope of this relief). Accordingly, for those types of transactions, the following deadlines do not apply. Clearing for swaps between US persons and non-US swap-dealers, non-US MSPs or foreign branches of US swap dealers or MSPs went into effect on 9 October 2013. For other transaction-level requirements (e.g., execution on an SEF, swap-trading relationship documentation) for swaps with non-US swap dealers and MSPs or foreign branches of US swap dealers or MSPs (in either situation, only those in the EU, Switzerland, Hong Kong, Australia, Canada and Japan), compliance with Dodd-Frank or substituted compliance is required by the earlier of (1) 21 December 2013 or (2) 30 days after the issuance of an applicable substituted compliance determination for the relevant transaction-level requirement of the relevant jurisdiction. Real-time reporting for swaps between foreign branches of US swap dealers and MSPs in EU, Switzerland, Hong Kong, Australia, Canada and Japan and guaranteed affiliates of US persons went into effect on 30 September 2013.

Subject	Summary of EU provisions	Summary of US provisions
		Transaction-level requirements for swaps with foreign branches of US swap dealers and MSPs located outside the jurisdictions listed above went into effect on 9 October 2013. Swaps between guaranteed affiliates of US persons are subject to Dodd-Frank beginning 9 October 2013. Swaps between non-US swap dealers and MSPs and guaranteed affiliates of US persons are subject to Dodd-Frank beginning: • 30 September 2013 if the non-US swap dealer or MSP is in EU, Switzerland, Hong Kong, Australia, Canada and Japan • 9 October 2013 otherwise **Foreign branches** The swap should be considered to be with the foreign branch of a US bank if: (i) the employees negotiating and agreeing to the terms of the swap (or, if the swap is executed electronically, managing the execution of the swap), other than employees with functions that are solely clerical or ministerial, are located in such foreign branch or in another foreign branch of the US bank; (ii) the foreign branch or another foreign branch is the office through which the US bank makes and receives payments and deliveries under the swap on behalf of the foreign branch pursuant to a master netting or similar trading agreement, and the documentation of the swap specifies that the office for the US bank is such foreign branch; (iii) the swap is entered into by such foreign branch in its normal course of business; (iv) the swap is treated as a swap of the foreign branch for tax purposes; and (v) the swap is reflected in the local accounts of the foreign branch. **Guarantees and affiliate conduits** Transaction-level requirements apply to swaps with non-US persons that are guaranteed by, or "affiliate conduits" of, a US person. "Guarantee'' includes not only traditional guarantees of payment or performance of the related swaps, but also other formal

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		arrangements that, in view of all the facts and circumstances, support the non-US person's ability to pay or perform its swap obligations with respect to its swaps. It is the substance, rather than the form, of the arrangement that determines whether the arrangement should be considered a guarantee. The following factors are relevant in determining whether a non-US person is an affiliate conduit: (i) the non-US person is majority-owned, directly or indirectly, by a US person; (ii) the non-US person is controlled by, or is in common control with, the US person; (iii) in the regular course of business, the non-US person engages in swaps with non-US third parties for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its US affiliate(s), and enters into offsetting swaps or other arrangements with such US affiliates(s) in order to transfer the risks and benefits of such swaps with third parties to its US affiliate(s); and (iv) the non-US person's financial results are included in the consolidated financial statements of the US person.
Business Conduct	There is detailed existing conduct of business rules for investment firms and credit institutions under MiFID that national regulators are required to have transposed into national regulation. MiFID II expands the existing MiFID requirements and the main changes include: • advisers in financial instruments will have to elect whether to be independent (i.e.	**17 CFR Parts 4 and 23** "Know your counterparty" provisions: swap dealers must implement policies and procedures designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary for conducting business with the counterparty. Prohibition on fraud, manipulation and other

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	advising on the whole market) or restricted (i.e. advising on a limited range of products); • payment of commission to third parties such as issuers or product providers will be restricted in certain circumstances; • ESMA, the EBA and national regulators will be permitted to intervene to ban or restrict products in certain circumstances; and • the conduct of business rules will be extended so that they apply to eligible counterparties.	abusive practices. Swap dealers and MSPs must verify that counterparties meet the eligibility standards for an eligible contract participant. Prior to entering into a swap, swap dealers and MSPs must disclose to their counterparties (other than swap dealers, MSPs, security-based swap dealers or major security-based swap participants) material characteristics and risks of the swap as well as the swap dealer's or MSP's material incentives and conflicts of interest, amongst other disclosures. Swap dealers and MSPs must inform their counterparties that they have the sole right to choose the DCO or, for swaps not subject to mandatory clearing, that they may elect to have the swap cleared. Swap dealers that recommend a swap or a trading strategy involving a swap must undertake reasonable diligence to understand the potential risks and rewards and must have a reasonable basis to believe that the recommended swap or strategy is suitable for the counterparty, unless a safe harbor exception applies.

The Volcker Rule - Proprietary Transactions in the US

The final rules pursuant to the Volcker Rule were issued on 10 December 2013 and were published on 31 January 2014 in 17 CFR Part 75.

Prohibited activities

The Volcker Rule generally prohibits "banking entities" from:

- engaging in proprietary trading;
- acquiring and retaining any "ownership interest" in or sponsoring "covered funds";
- entering into (or their affiliates entering into) "covered transactions" with a covered fund that the banking entity sponsors or to which it provides investment advice or investment management services (the so-called "Super 23A prohibition" because it incorporates the restrictions under Section 23A of the Bank Holding Company Act but without the benefit of that provision's exclusions); and
- engaging in transactions otherwise permitted under specified provisions of the Volcker Rule if the transaction involves or results in specified conflicts of interest.

Covered Funds

Volcker Rule
Dodd-Frank Section 619
17 CFR Part 75

All entities that rely on Section 3(c)(1) or Section 3(c) (7) of the US Investment Company Act of 1940 as an exemption from registration under such Act are "covered funds" unless an exclusion from being a covered fund applies.

Many structured finance and some ABS issuers rely on Section 3(c)(1) [less than 100 investors] or Section 3(c)(7) [only qualified institutional buyers/qualified purchasers] exemptions and thus are likely to be "covered funds". Excluding a fund from the definition of covered funds has significant beneficial consequences including that a banking entity may acquire and retain any "ownership interest" in or sponsor such fund and may engage in activities with the fund that would otherwise be prohibited covered transactions.

Under the "loan securitization exclusion" a banking entity is allowed to own and sponsor a fund that is an ABS issuer, the assets of which are solely composed of:

- loans (defined as any loan, lease, extension of credit or secured or unsecured receivable that is not a security or derivative);
- rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of asset-backed securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring the loans (if such assets are securities, they must be cash equivalents or securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities);
- interest rate or foreign exchange derivatives that (i) directly relate to the terms of such loans or contractual rights; and (ii) are used for hedging purposes with respect to the securitization structure (notional amount must be tied to the securitization exposure); and

- special units of beneficial interest and collateral certificates that meet the following requirements.

Covered Transactions

Volcker Rule
Dodd-Frank Section 619
17 CFR Part 75

- extensions of credit;
- investments in securities (other than fund ownership interests permitted under the Volcker Rule);
- purchases of assets from the fund (including repos);
- acceptance of securities from the covered fund as collateral for a loan made by the banking entity;
- issuances of guarantees, acceptances or letters of credit on behalf of the covered fund; and
- exposure to the covered fund arising out of derivative, repo and securities lending transactions.

For ABCP conduits and certain other ABS issuers, the Super 23A prohibition as written in the proposed rule was problematic because it would have prevented a bank sponsor/investment adviser/manager from providing credit, hedging or liquidity facilities to support such transactions. By excluding various structures from the definition of covered fund, the final rule will resolve this issue for many structured finance transactions.

Possible structured notes and structured finance exclusions

Volcker Rule
Dodd-Frank Section 619
17 CFR Part 75

Any structured finance entity that meets the requirements for an exclusion under Rule 3a-7 or section 3(c)(5) of the Investment Company Act, or any other exclusion or exemption from the definition of "investment company" under the Investment Company Act (other than sections 3(c)(1) or 3(c)(7) of the Investment Company Act), does not fall under the definition of "covered fund".. Rule 3a-7 was adopted in 1992 to exclude asset backed structured finance issuers from the definition of investment company under the Act upon the satisfaction of certain conditions, including:

- that the issuer issues fixed-income or other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets; and
- at the time of initial sale, the securities are rated in one of the four highest categories assigned to long-term debt, or an equivalent for short-term debt, by at least one nationally recognized statistical rating agency or are sold to "accredited investors" or "qualified institutional buyers" as such terms are defined in the Securities Act of 1933.

Foreign banking entities are permitted to acquire or retain ownership in, or to sponsor, a covered fund under the following circumstances:

- the banking entity must not be directly or indirectly controlled by a banking entity that is organized under federal or state laws;
- to qualify for the exemption, the banking entity must either be a qualifying foreign banking organization conducting the activity in compliance with subpart B of the Federal Reserve Board’s Regulation K or meet at least two of the following on a fully consolidated basis:
  - (i) total assets held outside of the US exceed total assets held in the US;
  - (ii) total revenues derived from outside of the US exceed total revenues derived from in the US; or
  - (iii) total net income derived from outside of the US exceeds total net income derived from in the US.
- **no ownership interest in the covered fund is offered for sale or sold to a resident of the US; and**
- the activity must have occurred solely outside of the US.

Conformance Period

Volcker Rule
Dodd-Frank Section 619
12 CFR Part 75

Regulations under the Volcker Rule went into effect on April 1, 2014 but initially provided for a "conformance period" through July 21, 2015. Banking entities have until July 21, 2017 to divest or conform investments in and relationsips with covered funds and foreign funds that were in place prior to December 31, 2013 (known as "legacy covered funds").

The Federal Reserve Board has issued guidance which provides that banking entities by statute have to conform all of their activities and investments to the Volcker Rule, and that "during the conformance period, banking entities should engage in good-faith planning efforts, appropriate for their activities and investments, to enable them to conform their activities and investments to the requirements of [the Volcker Rule] and final implementing rules by no later than the end of the conformance period."

- June 30, 2014 – banking entities with $50 billion or more in consolidated trading assets and liabilities began reporting quantitative measurements to regulators
- July 21, 2015 – beginning of Volcker Rule compliance with respect to proprietary trading activities.
- April 30, 2016 – banking entities with at least $25 billion but less than $50 billion in consolidated trading assets and liabilities must begin reporting quantitative measurements to regulators
- December 31, 2016 – banking entities with at least $10 billion but less than $25 billion in consolidated trading assets and liabilities must begin reporting quantitative measurements to regulators

Conflict of interest

Volcker Rule
Dodd-Frank Section 621
17 CFR Part 75

Banking entities cannot engage in permitted covered transactions or permitted proprietary trading activities if they would:

(i) involve or result in a material conflict of interest between the banking entity and its clients, customers or counterparties;

(ii) result, directly or indirectly, in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or

(iii) pose a threat to the safety and soundness of the banking entity or to the financial stability of the US.

A material conflict exists if the bank enters into any transaction, class of transactions or activity that would result in the bank's interests being materially adverse to interests of its client, customer or counterparty, unless the bank has appropriately addressed and mitigated the conflict through timely and effective disclosure or informational barriers.

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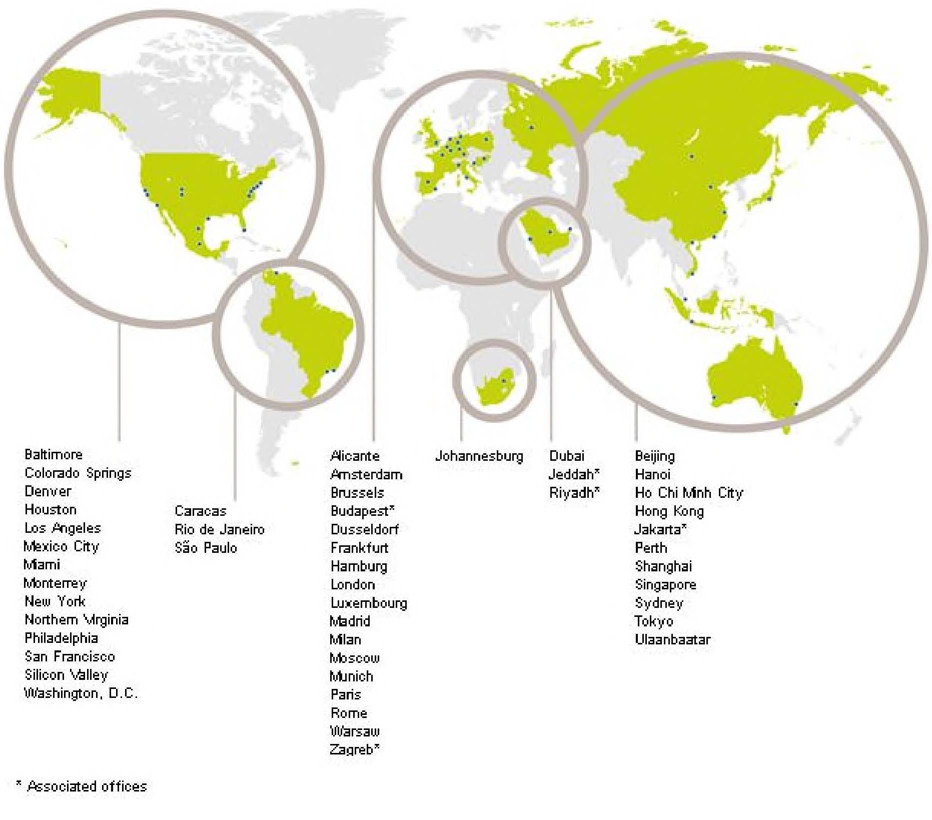

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