



The \$7 trillion collateral question

Migrating from bilateral to
central counterparty clearing



BNP PARIBAS

Executive summary

On September 13, 2012 in New York City, BNP Paribas hosted a client event – **The \$7 trillion collateral question** – to help asset managers and broker-dealers better understand the regulatory dynamics, timelines and extra costs associated with the industry's move from bilateral to central counterparty clearing.

Under the new rules, standardized swaps will be required to trade on open, third-party platforms and be submitted for clearing to central counterparties. The rules also call for higher collateral and margin standards. The new laws, which phase-in from late 2012 throughout 2013, aim to mitigate systemic risk and boost transparency to the swaps marketplace.

In an era of increasingly scarce liquidity, some commentators, notably a Risk.net analysis published in April 2012, suggest a total of \$7 trillion in additional collateral will be needed by market participants to comply with the various reforms in the wake of the financial crisis.

The following is an executive summary of the event.

Swaps clearing mandate – are we ready?

□ **John Williams**, Partner, **Allen & Overy**, the international law firm, delivered a keynote address on the current state of rule-writing by regulators as well as their expected implementation timeline. Mr. Williams, based in New York, advises swap dealers and market participants on the evolving regulatory framework under Dodd-Frank for clearing of both cleared and uncleared swaps, and cross-border implications of relevant US regulation. A credit derivatives specialist, Mr. Williams has served as lead counsel to the International Swaps and Derivatives Association, Inc. (ISDA) on both the Big Bang Protocol and Small Bang Protocol and on its prior CDS Settlement Protocols.

The following is a summary of his key points, and his complete presentation is included in the Appendix.

The key US Commodities Futures Trading Commission (CFTC) rulemaking on central clearing of derivatives is now in place with final rules and proposed regulations

- New business conduct and risk protection standards for Derivatives Clearing Organizations (DCOs) have been written.
- Final rules are in place for the protection of cleared swaps collateral at central clearing counterparties, also known as the LSOC (“legally separate, operationally comingled”) rule. However, the CFTC is meeting with market participants – Futures Commission Merchants (FCMs) and Central Clearing Counterparties (CCPs) and major buy-side firms on some minor mechanical adjustments.
- Proposed rules and exemptions regarding cross-border and affiliated entities’ application of mandatory clearing have been published. In general, Dodd-Frank applies to “US persons” but does not apply to swap activities outside the US unless the swap activity has a strong nexus to US commerce.

Who is subject to mandatory clearing?

- Section 723(a) of Dodd-Frank reads, “...it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization...if the swap is required to be cleared.”
- In general, financial entities, such as swap dealers, commodity pools, private funds, and employee benefit plans are subject to mandatory clearing.

Exemptions from mandatory clearing

- Swaps entered into before mandatory clearing begins are exempt, provided they are reported to a Swaps Data Repository (SDR). Also exempt are swaps that no DCOs are currently clearing.
- Several “end-users” are exempt from mandatory clearing. These include non-financial entities such as merchants who are hedging or mitigating commercial or physical commodity risks. Financial entities exempt from mandatory clearing include affiliates of non-financial entities who hedge commercial risks, captive financial entities and small financial entities – i.e., FDIC banks or thrifts with total assets of \$10 billion or less.

Types of swaps proposed for mandatory clearing

- The types of swaps proposed by the CFTC for mandatory clearing include swaps presently being cleared or proposed to be cleared by a DCO, plus certain Credit Default Swaps (CDS) and Interest Rate Swaps (IRS).
- The two classes of CDS proposed for mandatory clearing include US dollar-denominated untranching indices covering North American corporate credits, and Euro-denominated untranching indices referencing European obligations.
- The four classes of IRS proposed for mandatory clearing include fixed-to-floating swaps, basis swaps, overnight index swaps and forward rate agreements.

Timeline for compliance with mandatory clearing; phase-in during 2013

- The comment period on the types of swaps proposed for mandatory clearing closed on September 6, 2012. No later than 60 days from September 6, the CFTC must publish its final mandatory clearing requirements. This is expected in early November.
- Swap Dealers, Major Swap Participants and “Active Funds” must have their swaps cleared by a DCO starting within 90 days after early November, approximately March 2013.

A second group of entities, which includes most financial institutions, must comply within 180 days of early November, or by June 2013.

A third group of entities, including mostly pension funds and mutual funds, must start mandatory clearing within 270 days of November, which would be September 2013.

- The three types of entities are known as either Category 1, 2 or 3 entities.
 - Category 1 entities include swap and security-based swap dealers, major swap and security-based swap participants, and active funds (private funds that execute 200 or more swaps per month, but not third-party sub-accounts).
 - Category 2 entities include commodity pools, private funds, and banks.
 - Category 3 entities include all other entities, third-party sub-accounts, and ERISA plans.
- From a practical perspective the mandatory clearing mechanisms must be in place by March 2013. Swap dealers will need to have all the systems, documents, risk management and reporting tools ready to go by the Category 1 deadline.

Protection of cleared swaps customer accounts and collateral

- Beginning November 8, 2012, the LSOC rule promulgated by the CFTC goes into effect for US CCPs. Under LSOC, upon the default of an FCM, a DCO can no longer access the collateral of non-defaulting cleared swaps customers. While FCMs and DCOs can operationally comingle funds, they must maintain legally segregated customer accounts. Importantly, for the protection of customers, DCOs will no longer be able to access a non-defaulting customer's collateral to cover losses incurred by defaulting customers or other FCMs. The swaps market will therefore limit what is known as "fellow customer" risk, but such limitations are not applicable to the listed futures market.
- The LSOC rule likely does not provide enough customer protection and a further commercial solution will be needed in the future. One of the problems is that the current bankruptcy code allows for pro-rata sharing of losses by customers, should an FCM go into default.
- New CFTC rules are restricting how FCMs can invest cleared swaps customers' collateral. The focus is on prudently safeguarding the investment with a preference for the highest rated US government securities.

The new swap clearing mandates – how will they affect market participants?

Following the keynote address which identified the final CFTC rules, a panel of active swaps market participants opined on how the new mandates would affect their trading and business practices, immediately and going forward. The panelists (named below) included experts from the buy-side and sell-side, a central counterparty, and an industry consultant:

- **Kip Allardt**, Chief Operating Officer, **Discovery Capital Management**, an \$8 billion AUM, global macro fund based in Norwalk, CT. He is also a founder and board member of the Regulatory Compliance Association.
- **Joseph Buthorn**, Managing Director, US Foreign Exchange Prime Brokerage and Head of OTC Derivatives Client Clearing, **BNP Paribas**, New York.
- **Michael Kobida**, Executive Director of Collateral Services, **Chicago Mercantile Exchange (CME Group)**, Chicago. He is actively engaged in building out CME's collateral programs in anticipation the new Dodd-Frank rules.
- **Robert Push**, **Derivatives and Collateral Management Consultant** and the former Treasurer of the International Derivatives Clearing House. He is a derivatives industry expert in the areas of collateral and liquidity management, CCP finance, regulatory compliance, risk management and now LSOC.
- The panel was moderated by **John Graham**, Head of US Derivatives Clearing Sales, **BNP Paribas**, based in New York, who directed a series of open and individual questions to panel participants. The questions and condensed participant responses are summarized here.

The \$7 trillion in collateral needed – your view on Dodd-Frank?

- Given the complexity of the new rules and the cost of capital, that \$7 trillion in new collateral will come down, because the trades just will not be there in the OTC space – they will find cheaper ways to be expressed. Many participants will be in denial that the rules have changed. **(Allardt, Discovery Capital Management, Buy-side)**
- As these rules phase in, cash will be withdrawn from the system that will affect liquidity, pricing, capital availability and balance sheets. The main goal is to understand the changes and to facilitate clients and their strategies through the transition. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**

- The CME currently has about \$90 billion of collateral on deposit and expects multiples of this amount to be deposited as the mandatory clearing mandate takes effect. The CME has built the plumbing the market will require to handle a dynamic process in order to actively manage collateral for swaps as the buy-side moves collateral to the FCMs, who will then put it on deposit with us. Already, CME volumes have risen. **(Kobida, Collateral Services, CME Group, CCP)**
- I am working with the buy-side on mechanisms that ensure protection of collateral at the FCMs and CCPs posted for swap trades, in the event of defaults at these firms. While the rules limit systemic risk, collateral portability is of utmost importance for the buy-side. As a collateral manager, I'd like to see \$7 trillion added to the market. However, my research, based on the ISDA Margin Survey this year, points to about \$2 trillion, far less than the \$7 billion cited. **(Push, Derivatives and Collateral Management Consultant)**

Changes in the swap markets since Dodd-Frank was passed 2 years ago?

- The firm is looking to limit their counter-party and collateral exposure since the financial crisis. Generally, it works with only certain brokers who have the highest credit quality – but this has been standard operating procedure for the last five years. The firm's investors have been quite aware of these risks for a long time. **(Allardt, Discovery Capital Management, Buy-side)**
- The sell-side is grappling with the issue of collateral transformation, which consumes their balance sheet. The buy-side is on the sidelines, waiting for guidance from the sell-side providers. The CCPs are now keenly aware that they must have systems in place to protect customer assets, and are avoiding a race to the bottom regarding the acceptable collateral that they take. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**
- In addition to Dodd-Frank, there are changing capital rules, such as Basel III, which have created "lots of roads under construction at once." Given that the environment is in flux, clients are doing less business, risk appetite all around has diminished, and liquidity is down, particularly as bond inventories are down at the sell-side. Until the rules take effect and there is more certainty regarding capital rules, the market is likely to continue at this pace. **(Push, Derivatives and Collateral Management Consultant)**

What is collateral eligibility at the CCP level going to look like under the new mandates?

- The standard now is that the regulators expect that collateral held at CCPs is highly liquid and that can be transferred to cash very quickly in the event of a default. CCPs are not interested in significantly lowering collateral standards or creating a race to the bottom, despite pressure from the buy-side for the CCPs to take on new asset classes. **(Kobida, Collateral Services, CME Group, CCP)**

What will be the collateral eligibility at the sell-side and how will this affect the business?

- Because the standards of collateral are restricted to the highest grades of collateral, activity is likely to be constrained. Further, the costs to transform low grade to high grade collateral charged by the sell-side will be high for the buy-side investors. As a result, investors may decide to sell their lower grade collateral for cash. Initially, the swaps business will likely lessen because of the higher standards. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**

Under the new Dodd-Frank rules, will your firm have the same concerns with collateral valuation and stress testing, or will there be new concerns?

- Generally, the buy-side will have the same concerns as always: how to optimize portfolio returns versus the operational costs and risks for putting on trades. Further, while the pricing by credit providers is increasing, they will still need to evaluate risk, pricing and expected return. The need to qualitatively evaluate counterparty risk is always paramount to avoid the next Lehman and MF Global. Plus, there is now a steep learning curve in understanding how risk is managed in the OTC markets, and how to quickly de-lever when the market is overly stressed. **(Allardt, Discovery Capital Management, Buy-side)**
- The new rules add an enormous amount of fixed cost and new responsibilities across the board for dealers. But the costs are well worth having. There's clearly a benefit to having the system more transparent and more stable – which are good goals for all participants. It is not really a pricing issue day-to-day, just another cost of doing business. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**

- Dodd-Frank adds new concerns for the CME. A typical liquidation now might be \$2 billion worth of collateral on single day. The CME considers having to sell \$20-30 billion on single day in the future, which would be on the order of magnitude of a Treasury auction. CME contracts with liquidation agents to assist it with large asset liquidations and has a significant amount of committed liquidity in place to support orderly liquidations. **(Kobida, Collateral Services, CME Group, CCP)**

Collateral optimization and transformation – how does this work?

- There are three levels of collateral optimization for the sell-side to use:
 - The first is basically a repurchase agreement, a swap of assets with a balance sheet effect, which is a multi-trillion dollar market in its own right.
 - The second is called a “cleared/un-cleared offset,” where a set of assets, one cleared, one un-cleared, with high degrees of correlation, are combined as a risk pool to meet a margin call. This includes some collateral relief.
 - The third type of optimization is “portfolio margining,” which looks at the client’s total portfolio from a VAR perspective and is then transformed into the required collateral. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**
- The firm uses “portfolio margining” where its entire portfolio is placed as collateral. Then documentation is used to limit the rights and remedies of the dealer to reach into the portfolio for a margin call. Optimization of collateral for Discovery Capital is the ability to quickly move assets in and out of the pool of collateral that would be subject to a margin call. **(Allardt, Discovery Capital Management, Buy-side)**

Collateral transformation in the context of cash variation margin requirements – what’s new in this area at the CCPs?

- Buy-side firms that have long positions solely in securities and no cash have asked the CCPs to create a collateralized variation swap product with an asset instead of cash. CCPs are looking into this, but it is not typically a best practice. However, there is a consensus in the industry that CCPs need to consider collateral optimization for the variation component for customers who do not have cash, only securities. Obviously, some of the securities can be transformed into cash. **(Allardt, Discovery Capital Management, Buy-side)**

What else is changing or has changed with respect to your firm's approach to asset protection?

- Investors are less concerned about return on capital; they are more concerned with getting it returned. Following the MF Global and Peregrine bankruptcies, investors are again reminded of the risks involved as they seek to safeguard their collateral. Investors favor the LSOC rule because they do not want to be exposed to other customers' risks. **(Push, Derivatives and Collateral Management Consultant)**
- From the fund management perspective, clients entrust managers with their money, so reasonable risks can be taken to provide returns better than treasuries. Custodial costs are relatively insignificant, but will rise. Fiduciary practices dictate that funds must make sure that the assets are protected and act as the best stewards of those assets. The fund educates its customers that asset protection standards – and the value proposition for this protection – are changing. Accordingly, the firm allocates fairly for asset protection, including sub-custodians and segregated accounts, and clients realize this is the right thing to do, and to pay for, coming out of the financial crisis. **(Allardt, Discovery Capital Management, Buy-side)**
- CCPs are very concerned with protecting client assets and are working with the industry to protect client assets from the defaults of FCMs, CCPs and fellow customers. To this end, the CCPs are exploring the use of third-party custodians and other processes to protect client assets. **(Kobida, Collateral Services, CME Group, CCP)**
- The Dodd-Frank implementations and the experiences of the next few years aim to restore trust in the banks as a place where clients can custody their assets and cash, and get it back with a return. Over time, because of these rules, banks will become safer, better capitalized, and will enhance the perception that they are a strong and valid place for the safekeeping of assets. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**

Is there an impact on increased collateral requirements on asset managers' front-office strategies and performance?

- There is some impact on performance, but it would be extremely difficult to measure. For one, IRR is typically much higher than the incremental cost of collateral. What is affected is the liquidity and rates of the repo market, where higher quality collateral is preferred over lower quality collateral. Strategically, the risk a firm may incur to get exposure to a European market might be shifted from an equity, to fixed income, to foreign exchange depending on the liquidity in the repo markets. **(Allardt, Discovery Capital Management, Buy-side)**

Is there an upside to Dodd-Frank and mandatory clearing besides crisis avoidance?

- The better the firm, its clients and market participants understand the risks and the costs, the more efficient the markets will become. The price transparency inherent to mandatory clearing will ultimately add to market liquidity. **(Allardt, Discovery Capital Management, Buy-side)**
- As the rules get finalized and practices begin, the markets may experience some initial dislocation. But at the end of this, if the result is a more transparent, stable and safer system that is better capitalized. This will be good for the swap markets. It will ultimately attract more entrants, which will lead to more liquidity and more confident trading in the years ahead. **(Buthorn, Derivatives Client Clearing, BNP Paribas, Sell-side)**
- From a CCP's perspective, the transparency of pricing, the netting and novation of cleared trades, the potential risk-offsets across product classes, and the efficiencies of risk management standards in a cleared model will be the notable benefits to this market resulting from implementing the Dodd-Frank rules. **(Kobida, Collateral Services, CME Group, CCP)**
- It may be a painful and bumpy road ahead, but the rules will bring more stability and confidence to the markets. **(Push, Derivatives and Collateral Management Consultant)**

BNP Paribas' value proposition

- A global bank with operations in 34 countries, a presence in 100 countries and \$6.4 trillion in assets under custody, BNP Paribas offers an extensive range of securities and fund administration services to help clients – sell-side, buy-side and issuers – successfully organize and profitably manage their market activities, in particular their swaps contracts, collateral flows, and liquidity and central counterparty obligations.
- BNP Paribas is engaged on all current and pending country-specific collateral management regulations and market trends in all the key markets. We continuously monitor and report to clients on regulatory and compliance developments and market trends that can positively impact their operational and execution strategies.
- We encourage clients to express their views and expectations on their domestic or international collateral management endeavors. BNP Paribas can advise and implement market-specific solutions and systems that are fully regulatory compliant and provide cost-efficiency and best-in-class service.
- If you have further questions on any collateral management, liquidity or swaps issues, please contact your local relationship manager or email: SecuritiesServices_NorthAmerica@us.bnpparibas.com

Images from event



Appendix

ALLEN & OVERY

Swaps Clearing Mandate – Are We Ready?

John Williams – Partner, Allen & Overy LLP

September 13, 2012

Agenda

1. Key CFTC rulemaking
2. Who is Subject to Mandatory Clearing
3. Swaps Proposed for Mandatory Clearing
4. Timeline for Compliance with Mandatory Clearing
5. Protection of Cleared Swaps Customer Collateral - LSOC
6. The impact of “Extra-Territoriality” on Mandatory Clearing
7. Panel discussion
8. Q&A to follow panel

Key CFTC rulemaking

- Derivatives Clearing Organization General Provisions and Core Principles (Final - Nov 8, 2011)
- Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions (Final - Feb 7, 2012)
- End-User Exception to the Clearing Requirement for Swaps (Final - Jul 19, 2012)
- Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the Commodity Exchange Act (the **CEA**) (Final - Jul 30, 2012)
- Clearing Requirement Determination Under Section 2(h) of the CEA (Proposed - Aug 7, 2012)
- Cross-Border Application of Certain Swaps Provisions of the CEA (Proposed - Jul 12, 2012)
- Exemptive Order Regarding Compliance With Certain Swap Regulations (Proposed – Jul 12, 2012)
- Clearing Exemption for Certain Swaps Entered Into by Cooperatives (Proposed July 17, 2012)
- Clearing Exemption for Swaps Between Certain Affiliated Entities (Proposed – August 21, 2012)

Who is Subject to Mandatory Clearing

- Section 723(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**)

“it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization...if the swap is required to be cleared”

Clearing Exemptions

- Pre-existing swaps if reported to an SDR
- Swaps that no clearing organization is clearing
- End-user exception:
 - Is not a “financial entity” or is an “exempted” financial entity
 - Hedging or mitigating commercial risk
 - Provides certain specified information to an SDR (or CFTC, if no available SDR), including how it meets its financial obligations for non-cleared swaps

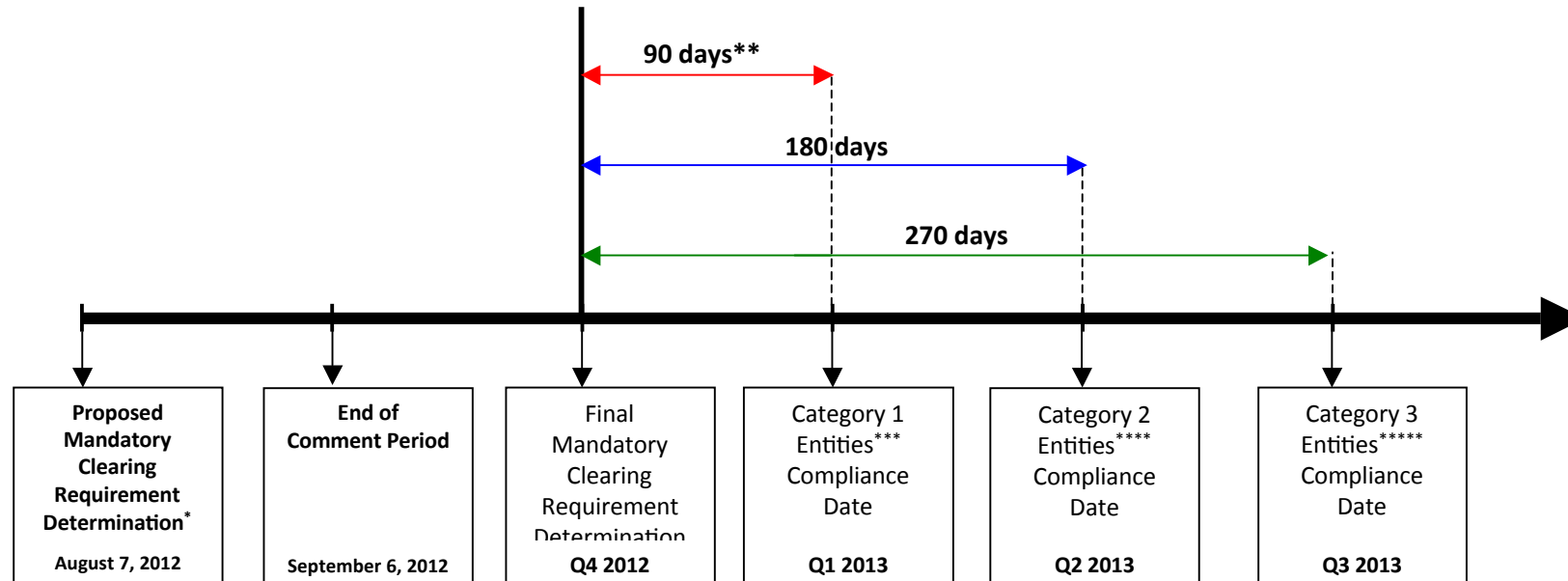
End-user Exception

- Must not be a “financial entity” so cannot be a:
 - Swap dealer
 - Security-based swap dealer
 - Major swap participant
 - Major security-based swap participant
 - Commodity pool
 - Private fund
 - Employee benefit plan
 - Person predominantly engaged in activities that are in the business of banking or financial in nature
- An “exempted” financial entity includes:
 - Affiliate of Non-financial Entity
 - Affiliate, acting as agent of Non-financial Entity, hedges or mitigates commercial risk of Non-financial Entity or other affiliate that is a Non-financial Entity
 - Captive Finance Entity
 - Person with primary business in providing financing; and uses derivatives to hedge exposures, 90% of which arise from financing the purchase or lease of products, 90% of which are manufactured by parent company or another subsidiary of parent company
 - Small Financial Entity
 - is a bank or savings association insured by the FDIC with total assets of \$10 billion or less

Swaps Proposed for Mandatory Clearing

- CFTC issued proposed regulations to require certain credit default swaps (**CDS**) and interest rate swaps (**IRS**) to be cleared
 - Two classes of CDS:
 - U.S. dollar-denominated untranching CDS indices covering North America corporate credits
 - Euro-denominated untranching CDS indices referencing European obligations
 - Four classes of IRS:
 - Fixed-to-floating swaps
 - Basis swaps
 - Overnight index swaps
 - Forward rate agreements
- Comment period ends on September 6, 2012

Timeline for Compliance with Mandatory Clearing: Phase-in Compliance



- * The CFTC issued a proposed rule setting out certain classes of CDS and IRS that would be subject to mandatory clearing. The proposed rule is open for a 30-day public comment period.
- ** Pursuant to the proposed exemptive order published in the Federal Register on July 12, 2012, subject to certain conditions, a foreign branch of a U.S. SD/MSP, a U.S. branch of a foreign SD/MSP, and a foreign SD/MSP would not need to comply with the mandatory clearing requirement for swaps with non-U.S. persons for up to 1 year from the date of publication of the proposed exemptive order in the Federal Register (*i.e.*, July 2013).
- *** "Category 1 Entity" means (1) a swap dealer, (2) a security-based swap dealer; (3) a major swap participant; (4) a major security-based swap participant; or (5) an **active fund**.
- **** "Category 2 Entity" means (1) a commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 other than an active fund; or (3) 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, provided that, in each case, the entity is not a third-party subaccount.
- ***** "Category 3 Entity" means all other entities, including third-party subaccounts, ERISA plans and those not exempted from the clearing requirement.
- ***** Swap is subject to the latest compliance date for one of the counterparties.

“Active Fund”

- “Active Fund” is:
 - Any private fund as defined in section 202(a) of the Investment Advisers Act of 1940:
 - that is not a *third-party subaccount*, and
 - that executes 200 or more swaps per month based on a monthly average over the 12 months preceding the CFTC issuing a clearing requirement determination
- “Third-party Subaccount” is:
 - an account that is managed by an investment manager that:
 - is independent of and unaffiliated with the account’s beneficial owner or sponsor, and
 - is responsible for the documentation necessary for the account’s beneficial owner to clear swaps

Protection of Cleared Swaps Customer Contracts and Collateral

- "Complete Legal Segregation" (LSOC)
 - Upon a default of an FCM, a DCO may access collateral of all defaulting cleared swaps customers of that FCM, but not the collateral of non-defaulting cleared swaps customers
 - Collateral of non-defaulting cleared swaps customers would be immediately available for transfer to a non-defaulting FCM
- CMs must provide the DCO at least once each day with information regarding:
 - Identity of the underlying customers whose positions are held in the omnibus account
 - Portfolio of positions held by each customer
 - Value of the margin associated with those positions
- Acceptable Collateral – subject to applicable rules of the FCM and DCO
- Investable Assets (i.e., assets in which an FCM can invest cleared swaps customer collateral) – Subject to CFTC Regulation 1.25

The impact of “Extra-Territoriality” on Mandatory Clearing

- Proposed Cross Border Guidance interprets the provisions of Dodd-Frank Act relating to its extraterritorial reach:
 - CFTC: Dodd-Frank § 722(d): Dodd-Frank Act does not apply to swap activities outside of the United States UNLESS:
 - US nexus – “direct and significant connection with activities in, or effect on,” US commerce or
 - Anti-evasion – activity contravenes CFTC anti-evasion rules

Who is a U.S. Person?

- “U.S. Person” refers to:
 - Any natural person who is a US resident
 - Any corporation, partnership, LLC, trust, association, joint-stock company, fund or similar enterprise
 - That is organized under US laws or has its principal place of business in the US (legal entity) or
 - In which the direct or indirect owners are responsible for the liabilities and one or more of such owners is a US person
 - Any individual account (discretionary or not) where the beneficial owner is a US person

Who is a U.S. Person? (cont'd)

- “U.S. Person” refers to:
 - Any commodity pool, pooled account or collective investment vehicle (whether or not US-organized) of which majority ownership is held directly or indirectly by US persons
 - Any commodity pool, pooled account, or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the Commodity Exchange Act
 - A pension plan for the employees, officers, or principals of a legal entity with its principal place of business inside the United States; or
 - An estate or trust, the income of which is subject to US income tax regardless of source

Questions?

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