



International Swaps and Derivatives Association, Inc.

OVERVIEW OF U.S. AND EU OTC DERIVATIVES REGULATORY REFORMS

These charts provide a comparison of derivatives regulatory reforms under the laws of the United States and the European Union.

THESE CHARTS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH DERIVATIVES REGULATION. YOU SHOULD CONSULT YOUR LEGAL ADVISERS AND ANY OTHER ADVISER YOU DEEM APPROPRIATE IN CONSIDERING THE ISSUES DISCUSSED IN THESE CHARTS. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF THESE MATERIALS OR ANY OTHER DOCUMENTATION PUBLISHED BY ISDA MAY BE PUT.

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
COVERED TRANSACTIONS	"Swaps" / CFTC	<p>"Swap" as defined at § 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx).</p> <p>Generally Includes, <i>inter alia</i>: (i) options on anything, (ii) contracts that provide for a purchase, sale or payment that is contingent on a financial, economic or commercial event (e.g., CDS) (iii) executory payment contracts based on the value or level of an underlier that transfers financial risk but not a property interest in the underlier and (iv) other contracts commonly known as swaps.</p> <p>Excludes security-based swaps (other than "mixed swaps") and other transactions that qualify for a specific exclusion.</p>	<p>"Derivative" or "derivative contract" as defined at Article 2(5) EMIR (by reference to points (4) to (10) of Section C of Annex I to Directive 2004/39/EC).</p> <p>Includes options, futures, swaps, forward rate agreements and other derivative contract in relation to a broad range of underlyings.</p> <p>Includes both "OTC derivatives" and other derivatives. "OTC derivatives" are defined as derivative contracts the execution of which does not take place on a regulated market (as within the meaning of Article 4(1)(14) of Directive 2004/39/EC) or on a third-country market considered as equivalent to a regulated market. There are currently no third-country markets considered to be equivalent to a regulated market.</p>
	"Security-Based Swaps" / SEC	<p>"Security-based swap" is defined at § 3(a)(68) of the Securities Exchange Act of 1934.</p> <p>Generally includes swaps based on (i) a single security or loan; (ii) a "narrow-based security index" (generally, 9 or less); (iii) events relating to an issuer of securities or issuers of securities in a "narrow-based security index" (e.g., single-name CDS).</p>	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
COVERED TRANSACTIONS Exclusions	"Swaps" / CFTC	<ul style="list-style-type: none"> • FX spots (if not "rolling spots"); • Listed futures; • Certain physically-settled commodity forwards; • Certain physically-settled FX forwards and swaps (certain requirements still apply); • Options on securities and indices that are subject to U.S. securities laws; • Physically-settled security forwards subject to U.S. securities laws (unless contingent on a third-party credit event); • Debt securities subject to U.S. securities laws; • Transactions with the U.S. government or a U.S. agency backed by full faith and credit of the United States; • Certain regulated insurance products; • Specified "Consumer" and "Commercial" Contracts. 	<p>The definition of "derivative contracts" excludes spot transactions (broadly, physically settled transactions which settle by T+2 or within the period generally accepted in the market as the standard delivery period for the relevant underlying).</p> <p>There are specific exclusions for commodity transactions, including:</p> <ul style="list-style-type: none"> • Certain physically-settled commodity transactions; • Certain physically-settled transactions on exotic underliers; <p>In addition, guidance indicates that the following instruments would not qualify as "derivative contracts":</p> <ul style="list-style-type: none"> • FX spots (if not "rolling spots"); • Deposits; • Loans.
	"Security-Based Swaps" / SEC	<ul style="list-style-type: none"> • Transactions that are excluded from being "swaps." • Derivatives on U.S. government or agency securities. 	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
EXTRATERRITORIAL APPLICATION	“Swaps” / CFTC	<p>CFTC has jurisdiction over activities outside of the United States which either have a “<i>direct and significant connection with activities in, or effect on, commerce of the United States,</i>” or where it is “<i>necessary or appropriate to prevent evasion.</i>”</p> <p>CFTC “guidance” interprets this jurisdiction and applies CFTC rules based on considerations of connection to the United States and principles of international comity. The guidance generally employs 4 categories of persons to determine when particular requirements apply and/or swaps must be counted for registration purposes:</p> <ul style="list-style-type: none"> • U.S. Persons; • Non-U.S. Persons; • Non-U.S. Persons guaranteed by U.S. Persons; • Non-U.S. Persons that are “conduit affiliates” of U.S. Persons. <p>Special considerations to apply to bank branches and to non-U.S. persons with agents or employees who act from within the United States.</p> <p>CFTC regulatory requirements are themselves categorized as “Entity-Level Requirements” and “Transaction-Level Requirements” (each with sub-categories) for purposes of determining application and whether “substituted compliance” with local law may be available. See <i>Impact of Dodd-Frank Requirements Relating to Swaps on Non-US Persons</i>, published by ISDA on [Date], for additional details.</p>	<p>The clearing and risk mitigation obligations under EMIR apply to contracts entered into between third country entities that would be subject to those obligations if they were established in the EU, provided that those contracts have a direct, substantial and foreseeable effect within the EU or where such obligation is necessary or appropriate to prevent the evasion of any provision of EMIR.</p> <p>ESMA is required to produce draft technical standards specifying when a contract will be considered to have a “direct, substantial and foreseeable effect within the EU” or where it is “necessary or appropriate to prevent evasion”. ESMA’s draft technical standards identify three categories of transactions:</p> <ul style="list-style-type: none"> • Where at least one counterparty is a third country entity benefiting from a guarantee provided by an FC; • Where both counterparties are EU branches of third country entities; • Where the primary purpose of the arrangement is to defeat the object, spirit or purpose of any provision of EMIR that would otherwise apply. <p>Non-EU branches of EU persons are treated in the same way as those EU persons, so a non-EU branch of an FC will also be considered to be an FC.</p> <p>The treatment of EU branches of third country entities is unclear. It seems likely that these should be treated as third country entities (in the same way as the head office of the entity), but there is no specific guidance on this issue.</p> <p>Third country entities may become subject to the clearing obligation under EMIR where they deal in mandatorily clearable</p>

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
	"Security-Based Swaps" / SEC	<p>SEC has jurisdiction over activities outside the U.S. where it is "<i>necessary or appropriate to prevent evasion.</i>"</p> <p>The SEC has proposed, but not adopted, rules for determining the ET application of SEC rules governing security-based swaps.</p>	<p>transactions with counterparties that are FCs or NFC+s.</p> <p>Funds established outside the EU may be FCs where they are managed by managers which are required to seek authorization under the Alternative Investment Fund Managers Directive.</p> <p>In addition, non-EU CCPs are required to seek recognition under EMIR where they provide clearing services to clearing members established in the EU.</p>
REGISTRATION / LICENSING REQUIREMENTS	"Swaps" / CFTC	<p>Required to register with the CFTC as a swap dealer ("SD") if "dealing activity" in swaps is above specified thresholds (see Appendix).</p> <p>Required to register with CFTC as a major swap participant ("MSP") if total swap book size is above specified thresholds (see Appendix).</p> <p>Required to register with the CFTC as a swap execution facility ("SEF") or a designated contract market ("DCM") if providing a multiple to multiple swap trading facility.</p>	<p>EMIR does not impose registration requirements for counterparties to derivative contracts.</p> <p>Counterparties to derivative contracts may be required to seek authorization under other legislation (e.g., national legislation implementing EU legislation such as the Markets in Financial Instruments Directive).</p>
	"Security-Based Swaps" / SEC	<p>Parallel registration requirements with the SEC apply. Rules defining "security-based swap dealer" and "major security-based swap participant" have been adopted, but registration requirements have not been implemented.</p>	
REGISTRATION / LICENSING REQUIREMENTS Application to Sovereigns	"Swaps" / CFTC	<p>Non-U.S. governments, Non-U.S. central banks and international financial institutions (e.g., the World Bank) are not subject to the registration requirements.</p>	
	"Security-Based Swaps" / SEC	<p>Non-U.S. governments, Non-U.S. central banks and international financial institutions (e.g., the World Bank) are not subject to the registration requirements.</p>	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
CENTRAL CLEARING	"Swaps" / CFTC	Swaps become subject to mandatory clearing upon issuance of a mandatory clearing determination by the CFTC. Absent an exemption, all market participants are required to submit relevant swaps for clearing if a registered or exempt derivatives clearing organization (" DCO ") makes clearing available.	The European Commission and ESMA may produce technical standards specifying which OTC derivatives shall be subject to mandatory clearing (once a CCP has been authorized or recognized to clear those OTC derivatives). Absent an exemption, transactions in the relevant OTC derivatives between the following counterparty types will be clearable:
	"Security-Based Swaps" / SEC	Security-based swaps become subject to mandatory clearing upon issuance of a mandatory clearing determination by the SEC. Absent an exemption, all market participants are required to submit relevant security-based swaps for clearing if a registered or exempt clearinghouse makes clearing available.	<ul style="list-style-type: none"> • Two FCs; • An FC and an NFC+; • Two NFC+s; • An FC or NFC+ and a third country entity that would have been an FC or NFC+ if it had been established in the EU; • Two third country entities that would have been FCs or NFC+s if they had been established in the EU (provided that the contract has a direct, substantial and foreseeable effect within the EU or where it is necessary or appropriate to prevent the evasion of any provisions of EMIR).
Exceptions	"Swaps" / CFTC	<p>Transactions by (i) end-users that are not "financial entities" (ii) small depository institutions and (iii) captive finance companies in order to hedge commercial risk.</p> <p>Transactions between majority-owned affiliates that meet specified conditions.</p> <p>Transactions by centralized hedging vehicles for corporate end-users that are not financial entities and meet specified conditions.</p> <p>Transactions by cooperatives that meet specified conditions.</p> <p><u>Use of exceptions requires regulatory reporting of use and basis for qualification.</u></p>	<p>Transactions between counterparties in the same group that meet specified conditions, where the counterparties have notified their regulators that they intend to use the exemption (or, where the transaction is between an EU and non-EU entity, where the EU entity has obtained authorization from its regulator to use the exemption).</p> <p>Transactions that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements (as defined in Article 2(10) EMIR). This exemption is time-limited and is only available where the specified conditions are met.</p> <p>Transactions where one counterparty is established in a jurisdiction which the European Commission has determined to be equivalent.</p>

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
	“Security-Based Swaps” / SEC	No rules or guidance published, though there are statutory exceptions that will apply for transactions by (i) end-users that are not “financial entities” (ii) small depository institutions and (iii) captive finance companies in order to hedge commercial risk.	There is no end-user exemption, but transactions to which an NFC- is a counterparty will not be subject to the clearing obligation.
CENTRAL CLEARING Application to sovereigns	“Swaps” / CFTC	The CFTC does not require non-U.S. governments, non-U.S. central banks and international financial institutions (e.g., the World Bank) to clear.	<p>Sovereigns are likely to be out of scope of the clearing obligation under EMIR. The clearing obligation only applies to transactions between entities which are FCs, NFC+s or third country entities which would have been FCs or NFC+s if they had been established in the EU. FCs are entities authorized under one of the specified directives, and NFCs are undertakings established in the EU (other than FCs or CCPs). Sovereigns will not be FCs and they would not normally be considered to be "undertakings" where they act in their capacity as public authorities.</p> <p>The following entities are exempt from the clearing obligation:</p> <ul style="list-style-type: none"> • EU central banks and other Member States' bodies performing similar functions and other Union public bodies charged with or intervening in the management of the public debt; • US and Japanese central banks and public bodies charged with or intervening in the management of the public debt;

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	<ul style="list-style-type: none"> • BIS; • Specified multilateral development banks; • Certain public sector entities owned by central governments and benefiting from explicit guarantee arrangements from central governments; • The European Financial Stability Facility and the European Stability Mechanism. <p>The European Commission may also exempt the central banks and public debt management offices of other non-EU jurisdictions, and is currently monitoring the regimes in Switzerland, Australia, Canada and Hong Kong.</p>
CENTRAL CLEARING Historical trades	“Swaps” / CFTC	Trades entered into prior to the effective date of a clearing requirement need not be submitted for clearing if the trade has been reported in accordance with applicable CFTC regulatory reporting obligations.	<p>Certain trades entered into prior to the effective date of a clearing requirement will be required to be submitted for clearing ("frontloading").</p> <p>This will be the case where the trade was entered into after a CCP had obtained authorization to clear that type of transaction, and where the transaction exceeds a minimum remaining maturity to be specified by ESMA.</p>
	“Security-Based Swaps” / SEC	No rules or guidance published.	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
CENTRAL CLEARING Start Dates	"Swaps" / CFTC	<p><u>Mandatory clearing determinations in effect for:</u></p> <ul style="list-style-type: none"> Specified classes of interest rate swaps (fixed-to-floating, basis, forward rates, overnight index swaps) and Index credit default swaps (specified CDX North America and iTraxx Europe indices). <p>Future mandatory clearing determinations for other asset classes will be implemented on a phased basis.</p>	<p>The first OTC derivative contracts are currently expected to become subject to the mandatory clearing obligation between summer 2014 and July 2015.</p>
	"Security-Based Swaps" / SEC	<p>No mandatory clearing determinations have been made and no implementation schedule has been adopted.</p>	
TRADE EXECUTION	"Swaps" / CFTC	<p>Mandatory execution on a SEF or DCM where a swap (1) is subject to mandatory clearing and (2) has been made "available to trade" by a SEF and reviewed by the CFTC.</p> <p>SEFs and DCMs are permitted to submit "made available to trade" or "MAT" determinations to the CFTC for approval if the swaps are listed by the SEF and there is adequate liquidity in the market generally.</p> <p>Trades subject to mandatory SEF or DCM execution must be executed on a centralized order book on a DCM or SEF or through a "request for quote system" on a SEF.</p>	<p>EMIR does not impose mandatory venue execution requirements. These are contained in the proposed MiFID 2 / MiFIR¹. Under MiFID 2 / MiFIR, ESMA shall determine the classes of derivatives which will be subject to mandatory venue execution.</p> <p>In order to become subject to the mandatory venue execution obligation, derivatives must be subject to the clearing obligation under EMIR, admitted to trading or traded on at least one trading venue (regulated market, MTF, OTF or equivalent third country venue) and sufficiently liquid to trade only on those trading venues.</p> <p>The mandatory venue execution obligation will apply to transactions between the following types of counterparties:</p> <ul style="list-style-type: none"> Two FCs;

¹ References to MiFID 2 / MiFIR are references to the Council text of 18 June 2013.

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	<ul style="list-style-type: none"> • An FC and an NFC+; • Two NFC+s; • An FC or NFC+ and a third country entity that would have been an FC or NFC+ if it had been established in the EU; • Two third country entities that would have been FCs or NFC+s if they had been established in the EU (provided that the contract has a direct, substantial and foreseeable effect within the EU or where it is necessary or appropriate to prevent the evasion of any provisions of MiFIR). <p>Derivatives subject to mandatory venue execution must be executed on a regulated market, MTF, OTF or equivalent third country venue.</p>
TRADE EXECUTION Exceptions	“Swaps” / CFTC	<p>Transactions by end users, small depository institutions, captive finance company and central hedging affiliates are eligible for an exemption from mandatory SEF/DCM trading.</p> <p>Block trades above specified size thresholds may be executed bilaterally and reported to a SEF for submission to clearing and trade reporting.</p>	<p>Transactions between counterparties in the same group that meet specified conditions.</p> <p>Transactions where one counterparty is established in a jurisdiction which the European Commission has determined to be equivalent.</p> <p>There is no end-user exemption, but transactions to which an NFC- is a counterparty will not be subject to the mandatory venue execution obligation.</p>
	“Security-Based Swaps” / SEC	No rules or guidance published.	
TRADE EXECUTION Application to sovereigns	“Swaps” / CFTC	Likely also excluded based on CFTC guidance that mandatory clearing does not apply.	Sovereigns are likely to be out of scope of the venue execution obligation under MiFIR. The venue execution obligation only applies to transactions between entities which are FCs, NFC+s or third country entities which would have been FCs or NFC+s if they had been established in the EU. FCs are entities authorized under

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	<p>one of the specified directives, and NFCs are undertakings established in the EU (other than FCs or CCPs). Sovereigns will not be FCs and they would not normally be considered to be "undertakings" where they act in their capacity as public authorities.</p> <p>There are no specific exemptions for sovereigns, central banks or public debt management offices.</p>
TRADE REPORTING	“Swaps” / CFTC	<p>All swaps (cleared and uncleared) must be reported to a swap data repository (“SDR”) registered with the CFTC, or if none, directly to the CFTC.</p> <p>CFTC regulations establish which counterparty must report an uncleared swap that is executed bilaterally. Swaps executed on SEFs and block trades executed pursuant to their rules are reported by the SEFs. Cleared swaps are reported by the DCO provided that they are cleared within specified timeframes.</p>	<p>FCs, NFCs and CCPs must report all derivative contracts (OTC and exchange-traded, cleared and uncleared) to an EU registered or non-EU recognized trade repository. If no trade repository is available, reports must be submitted to ESMA.</p> <p>EMIR does not specify which counterparty must report – both counterparties are required to report, and to ensure that reports are made without duplication. However, counterparties may delegate reporting to each other or to a third party.</p>
	“Security-Based Swaps” / SEC	No rules or guidance published.	
TRADE REPORTING Application to sovereigns	“Swaps” / CFTC	Reporting requirements apply, but CFTC reporting rules obligate a swap dealer, MSP or U.S. person to file the report when transacting with a non-U.S. sovereign.	Sovereigns are likely to be out of scope of the reporting obligation under EMIR. The reporting obligation only applies to entities which are FCs or NFCs. FCs are entities authorized under one of the specified directives, and NFCs are undertakings established in the EU (other than FCs or CCPs). Sovereigns will not be FCs and they would not normally be considered to be "undertakings" where they

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	<p>act in their capacity as public authorities.</p> <p>The following entities are exempt from the reporting obligation:</p> <ul style="list-style-type: none"> • EU central banks and other Member States' bodies performing similar functions and other Union public bodies charged with or intervening in the management of the public debt; • US and Japanese central banks and public bodies charged with or intervening in the management of the public debt; • BIS. <p>The European Commission may also exempt the central banks and public debt management offices of other non-EU jurisdictions, and is currently monitoring the regimes in Switzerland, Australia, Canada and Hong Kong.</p> <p>* FCs and NFCs dealing with exempt central banks and public debt management bodies, as well as out of scope entities (e.g., sovereigns acting in their capacity as public authorities) will still have to report the transaction.</p>
TRADE REPORTING Back-loading	“Swaps” / CFTC	All historical swaps (i) entered into before July 21, 2010 (date of enactment of Dodd-Frank) and outstanding on or after that date and (ii) entered into after July 21, 2010 but before reporting regulations came into effect, were required to be reported.	Counterparties must back-load derivative contracts entered into or outstanding on or after Aug 16, 2012 (date of entry into force of EMIR). They are also subject to recordkeeping requirements in relation to these derivative contracts.
	“Security-Based Swaps” / SEC	No rules established; however, parties to security-based swaps outstanding on or after July 21, 2010, are subject to recordkeeping requirements as to such swaps.	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
TRADE REPORTING Start date	“Swaps” / CFTC	<p>All deadlines for reporting swaps (new and historical) have expired.²</p> <p><u>IRS and CDS</u></p> <p>For SDs – date on which they registered as SD (if after Jan 1, 2013).</p> <p>For MSPs – date on which they registered as MSPs (if earlier than Apr 10, 2013).</p> <p>For non-SDs and non-MSPs that are “financial entities” (as defined in Section 2(h)(7)(C) of the CEA) – Apr 10, 2013.</p> <p>For non-SDs and non-MSPs that are not financial entities – Jul 1, 2013.</p> <p><u>FX, Equity and Commodity</u></p> <p>For SDs and MSPs – Feb 28, 2013.</p> <p>For non-SDs and non-MSPs that are financial entities - May 29, 2013.</p> <p>For non-SDs and non-MSPs that are not financial entities – Aug 19, 2013.</p>	The reporting obligation will apply from 12 February 2014.
	“Security-Based Swaps” / SEC	No rules or guidance published.	

² CFTC staff provided time-limited no-action relief for particular market participants and asset classes. The dates provided here may differ from the actual deadlines where relief was provided. All such no-action relief has expired.

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
MARGIN AND SEGREGATION REQUIREMENTS FOR UNCLEARED SWAPS	“Swaps” / CFTC	<p>Dodd-Frank mandates the imposition of regulatory margin requirements on SDs and MSPs as well as requirements for SDs and MSPs to segregate initial margin on request of the counterparty.</p> <p>CFTC final rules on segregation require SDs and MSPs to notify counterparties of the right to require segregation of initial margin.</p> <p>Bank regulators and the CFTC have proposed margin rules that would provide partial or full carve-outs if the counterparty is a non-financial entity.</p> <p>With publication of the BCBS-IOSCO final policy framework for margin requirements for non-centrally cleared derivatives in Sep 2013, the U.S. regulators are expected to issue new proposals aligned with the BCBS-IOSCO framework to the extent permitted by Dodd-Frank.</p>	<p>FCs and NFC+s are required to have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivatives.</p> <p>ESMA is expected to produce draft technical standards specifying the precise requirements for exchange of collateral, implementing the BCBS IOSCO framework.</p>
	“Security-Based Swaps” / SEC	<p>Dodd-Frank mandates the imposition of regulatory margin requirements on SBSDs and MSBSPs as well as requirements for SBSDs and MSBSPs to segregate initial margin on request of the counterparty. Bank regulators and the SEC have proposed margin rules that would provide partial or full carve-outs if the counterparty is a non-financial entity.</p> <p>As with margin for “swaps,” new proposals are likely to come to be aligned with the BCBS-IOSCO framework.</p>	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
MARGIN AND SEGREGATION REQUIREMENTS FOR UNCLEARED SWAPS Application to sovereigns	“Swaps” / CFTC	BCBS-IOSCO’s final framework recommends that transactions with sovereigns, central banks, multilateral development banks and BIS be exempted.	Sovereigns are likely to be out of scope of the clearing obligation under EMIR. The margin obligation is only expected to apply to transactions between entities which are FCs or NFC+s (and potentially also third country entities which would have been FCs or NFC+s if they had been established in the EU). FCs are entities authorized under one of the specified directives, and NFCs are undertakings established in the EU (other than FCs or CCPs). Sovereigns will not be FCs and they would not normally be considered to be "undertakings" where they act in their capacity as public authorities. The following entities are exempt from the margin obligation: <ul style="list-style-type: none"> • EU central banks and other Member States' bodies performing similar functions and other Union public bodies charged with or intervening in the management of the public debt; • US and Japanese central banks and public bodies charged with or intervening in the management of the public debt; • BIS; • Specified multilateral development banks; • Certain public sector entities owned by central governments and benefiting from explicit guarantee arrangements from central governments; • The European Financial Stability Facility and the European Stability Mechanism. The European Commission may also exempt the central banks and public debt management offices of other non-EU jurisdictions, and is currently monitoring the regimes in Switzerland, Australia, Canada and Hong Kong.
	“Security-Based Swaps” / SEC	Same as above.	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
BUSINESS CONDUCT REQUIREMENTS	“Swaps” / CFTC	<p>Note: These requirements only apply directly to SDs and MSPs, though they also have a material impact on counterparties.</p> <ul style="list-style-type: none"> • <u>Know Your Customer</u>. Must obtain essential facts about the counterparty and verify “eligible contract participant” status prior to trading. • <u>Confidentiality</u>: Prohibitions on disclosure or use of counterparty confidential information. • <u>Risk and Other Disclosures</u>. Prior to trading, must disclose material risks, swap characteristics, and conflicts of interest and provide other specified disclosures. • <u>Pre-Trade Marks</u>: Must provide pre-trade marks at mid-market and exclusive of amounts for profit, hedging, funding etc. • <u>Scenario Analysis</u>: Must provide scenario analyses to counterparties upon request. • <u>Suitability</u>. Must determine general suitability of each swap. Must also determine counterparty-specific suitability of any “recommended” swap absent a safe harbor, which can generally be established by receiving counterparty representations. • <u>Special Entities</u>. Must verify that special entities (e.g., municipalities and pension plans) have qualified independent representatives satisfying specified criteria prior to trading. Must also perform an enhanced suitability or “best interests” analysis if providing a “recommendation” unless safe harbor representations are provided by the counterparty and independent representative (safe harbor unavailable for some special entities if SD gives an “opinion” about the swap). • <u>Political Contributions</u>: Limits on political contributions to governmental special entities. 	<ul style="list-style-type: none"> • <u>Daily valuation</u>. FCs and NFC+s are required to daily mark-to-market their OTC derivative exposures (or to mark-to-model where market conditions prevent marking to market). <p>Other than this, EMIR does not impose business conduct requirements of the sort imposed by the CFTC.</p> <p>However, authorized entities may already be subject to similar business conduct requirements under other legislation.</p>

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

		U.S.	EU
DOCUMENTATION REQUIREMENTS	“Swaps” / CFTC	<p>Note: These requirements only apply directly to SDs and MSPs, though they also generally necessitate agreements with counterparties.</p> <ul style="list-style-type: none"> • Relationship Documentation. Must have swap trading relationship documentation (“STRD”) including specified terms typical of master agreements with all counterparties prior to transacting. • Valuation Procedures: STRD with swap dealers, MSPs, financial entities and other requesting parties must include agreed processes for daily valuation of swaps for purposes of regulatory margin and risk management that must include back-up inputs or a dispute resolution mechanism. • Confirmations. Must complete “legally binding” written confirms within specified time frames. • Portfolio Reconciliation. Must perform periodic reconciliations with other SDs and MSPs and have procedures for engaging in periodic portfolio reconciliations with non-SD/MSP counterparties. Also must report valuation disputes above \$20 million that are not rapidly resolved. Portfolio reconciliations must be performed pursuant to written agreements with the counterparty. • Portfolio Compression: Must have policies and procedures to engage in periodic portfolio compression exercises with other SDs and MSPs and with other counterparties on request. 	<ul style="list-style-type: none"> • Confirmations. FCs and NFCs must have appropriate procedures and arrangements in place to ensure timely confirmation of transactions. FCs must also report any trades which are unconfirmed for more than five business days. • Portfolio Reconciliation. FCs and NFCs must agree in writing or other equivalent electronic means on the arrangements under which their portfolios will be reconciled. Must also perform periodic reconciliations with other FCs and NFCs (and third country entities which would have been FCs or NFCs if they had been established in the EU). Must identify any discrepancy in a material term of an OTC derivative contract (including its valuation). • Portfolio Compression. FCs and NFCs with 500 or more OTC derivative contracts outstanding with a counterparty must have in place procedures and arrangements for engaging in periodic portfolio compression exercises. • Dispute Resolution. FCs and NFCs must have agreed detailed procedures and processes in relation to dispute resolution. FCs must also report any dispute relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least 15 business days. • Reporting to trade repositories. FCs and NFCs must have processes in place for agreeing the common data to be reported to trade repositories. <p>Note: EMIR does not impose general requirements regarding relationship documentation. However, authorized entities may already be subject to similar requirements (amongst others) under other legislation</p>

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

	U.S.		EU
	“Security-Based Swaps” / SEC	No rules or guidance published.	

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

Swap Dealer.³ Generally means a person who:

- Holds itself out as a swap dealer;
 - Makes a market in swaps;
 - Regularly enters into swaps as an ordinary course of business; and
 - Engages in activities causing person to be known as a swap dealer.
- A person is not a swap dealer if it does not engage “dealing activity” above *de minimis* threshold (see below).
 - “Dealing activity” generally does not include entering into swaps as principal, when it is not as part of a “regular business.”
 - In addition, the following are excluded:
 - Swaps by insured depository institutions to the extent deemed offered to customers in connection with originating loans;
 - Swaps between majority-owned affiliates;
 - Swaps between a cooperative and a coop member;
 - Hedging swaps meeting specified qualifications.

Indicators of dealing activity

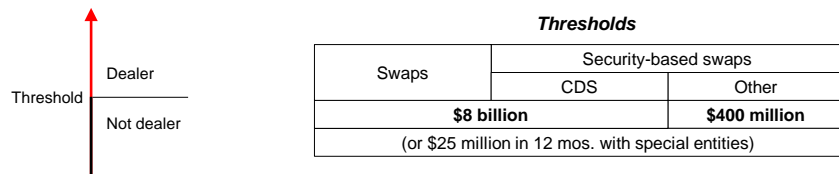
Liquidity	• Seeking to profit by providing liquidity.
Advice	• Providing advice in connection with swaps or structuring.
Clients	• Presence of regular clientele and actively soliciting clients.
Brokers	• Use of inter-dealer brokers.
Market maker	• Acting as a market maker on an organized exchange or trading system.
Set prices	• Helping to set prices offered in the market.

- 90 swap dealers have registered with the CFTC as of Nov 14, 2013 <http://www.cftc.gov/LawRegulation/DoddFrankAct/registerwapdealer>
- No security-based swap dealers have registered with the SEC, as no registration rules have been adopted.

³ Note that a generally parallel definition applies to the term “security-based swap dealer.”

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

De minimis exception to Swap Dealer registration⁴



- Thresholds are based on gross notional amounts of dealing activity over prior 12 months.
- A U.S. person must count all “dealing activity” swaps.
- A guaranteed entity or conduit affiliate (“**GCA**”) must count all “dealing activity” swaps.
- A non-U.S. person that is not a GCA must count all “dealing activity” swaps with:
 - U.S. persons other than foreign branches of U.S. bank SDs.
 - Guaranteed affiliates, except where the guaranteed affiliate is:
 - Registered as a SD,
 - Not a SD but engages in de minimis swap dealing activity and is affiliated with a SD, or
 - Guaranteed by a non-financial entity.
- A non-U.S. person that is not a GCA need not count swaps entered into anonymously on a DCM, SEF or FBOT and cleared.
- Swaps of all affiliated entities (except an entity that is registered as a SD) must be aggregated towards the threshold.

Major Swap Participant⁵

- A major swap participant is a person other than a swap dealer who:
 - Maintains a substantial position in swaps in any major swap category (excluding positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan for the primary purpose of hedging or mitigating risks directly associated with the operation of the plan), or
 - Has substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets, or
 - Is a financial entity that is not subject to capital requirements imposed by any federal banking agency, is highly leveraged relative to the amount of capital it holds and maintains a substantial position in swaps in any major swap category.
- Substantial position test:
 - Daily average current uncollateralized exposure of USD 1 billion (credit, equity and commodity swap categories) or USD 3 billion (rate swaps), or
 - Daily average current uncollateralized exposure plus potential future exposure of USD 2 billion (credit, equity and commodity swap categories) or USD 6 billion (rate swaps).

⁴ Thresholds listed are thresholds for an initial phase-in period which terminates not later than 5 years after certain data is collected.

⁵ Note that a generally parallel definition applies to the term “major security-based swap participant.”

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

- Substantial counterparty exposure test:
 - Daily average current uncollateralized exposure of USD 5 billion for all swaps, or
 - Daily average current uncollateralized exposure plus potential future exposure of USD 8 billion for all swaps.
- Tests are calculated based on daily positions averaged over a fiscal quarter. If a threshold is exceeded by less than 20% in a quarter, registration is not required unless a threshold is exceeded in the next quarter.
- Safe harbor based on caps on uncollateralized exposures and notional positions. Additional safe harbors based on caps on uncollateralized exposure plus computation on a monthly (instead of daily) basis.
- 2 major swap participants have registered as of December 13, 2013 <http://www.cftc.gov/LawRegulation/DoddFrankAct/registermajorswappart>
- A U.S. person must count all direct swaps plus all swaps guaranteed by the person (with recourse).
- A GCA must count:
 - all direct swaps;
 - swaps guaranteed by the GCA (with recourse) if the GCA guarantees obligations that run to a U.S. person or a guaranteed affiliate.
- A non-U.S. person that is not a GCA but *is a financial entity* must count:
 - Swaps with U.S. persons; *provided that* swaps with non-U.S. branches of U.S. bank SDs may be excluded, *provided that* (i) the swap is cleared or (ii) the parties exchange daily variation margin;
 - Swaps with entities guaranteed by U.S. persons (other than SDs);
 - Swaps guaranteed by the non-U.S. person (with recourse) if it guarantees obligations that run to a U.S. person or a guaranteed affiliate.
- A non-U.S. person that is not a GCA and *is not a financial entity* must count:
 - Swaps with U.S. persons other than swaps with non-U.S. branches of U.S. bank SDs;
 - Swaps with entities guaranteed by U.S. persons (other than SDs);
 - Swaps guaranteed by the non-U.S. person (with recourse) if it guarantees obligations that run to a U.S. person or a guaranteed affiliate.

Swap Execution Facility

- A swap execution facility is a “many-to-many” trading platform that allows participants to execute swaps with each other (and that is not registered as a DCM).
- A facility meeting the SEF definition and that has U.S. persons as participants must register as a SEF.
- Swaps that are subject to a mandatory clearing requirement must be executed on a SEF or DCM once a SEF or DCM makes the swap available to trade - “Required Transactions”. SEFs and DCMs will initially determine whether a swap they list for trading should be made available to trade, and either submit such determination to the CFTC for approval, or self-certify (subject to CFTC’s review) that the swap is available to trade.
- Other swaps that are listed for trading by a SEF or DCM are “Permitted Transactions”. Such swaps may, but need not, be executed on a SEF or DCM.

This note does not constitute legal advice or purport to be a guide to or an explanation of all relevant issues or considerations. You should consult your own legal and any other adviser you deem appropriate.

Financial counterparty (FC)

These are:

- Investment firms authorized in accordance with Directive 2004/39/EC;
- Credit institutions authorized in accordance with Directive 2006/48/EC;
- Insurance undertakings authorized in accordance with Directive 73.239.EEC;
- Assurance undertakings authorized in accordance with Directive 2002/83/EC;
- Reinsurance undertakings authorized in accordance with Directive 2005/68/EC;
- A UCITS and, where relevant, its management company, authorized in accordance with Directive 2009/65/EC; an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC; and
- An alternative investment fund managed by AIFMs authorized or registered in accordance with Directive 2011/61/EU.

Non-financial counterparty (NFC)

An undertaking established in the EU other than an FC or a CCP.

NFC+

An NFC which has crossed the clearing thresholds. The clearing thresholds are:

- EUR 1 billion in gross notional value for OTC credit derivative contracts;
- EUR 1 billion in gross notional value for OTC equity derivative contracts;
- EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not mentioned above.

NFC-

An NFC which has not crossed the clearing thresholds.

CCP

A legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.