



## **What You Need to Know about Dodd Frank Act – Title VII and the Swap Dealer status of Intesa Sanpaolo**

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## 1. INTRODUCTION

*“All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.”*

*Communiqué of the G20 Summit in Pittsburgh*

The information in this brochure is intended to provide a general overview of the Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly referred to as Dodd-Frank Act or DFA) that came into force in 2010 to regulate the U.S. financial sector<sup>1</sup>.

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<sup>1</sup> For further details regarding detailed non-mentioned requirement in the present document, please refer to CFTC regulations or to your legal advisor.

## 2. WHY THIS REGULATION?

Certain types of transactions and concentrations of credit exposure among certain participants in the over-the-counter ("OTC") derivatives market were considered major contributor to the global financial crisis in 2008.

In response, the 2009 G20 summit in Pittsburgh established key principles for OTC reform. The G20 countries committed to reducing systemic, counterparty and operational risk and increasing transparency in the OTC derivatives market. Each G20 country agreed to implement laws and regulations to meet these principles.

Based on G20 principles, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or "DFA") was signed into law in July 2010 for the United States of America ("U.S.") legal framework. In particular, Title VII of DFA:

- amended the Commodity Exchange Act ("CEA") by providing a framework for the regulation and supervision of derivatives products, derivatives market participants and market infrastructure;
- authorized the Commodity Futures Trading Commission ("CFTC") to provide registration requirements for entities that deal OTC derivatives ("swaps") with U.S. counterparties above thresholds within the previous year.

With reference to the OTC derivatives, Title VII provided some requirements in order to:

- regulate derivatives markets based on the CFTC and/or SEC regulations;
- encourage derivatives trading onto exchanges;
- require margin exchange for cleared and uncleared swaps;
- require registration for Swap Dealers and Major Swap Participants;
- increase transparency through more reporting to trade repositories.

### 3. COMPARISON BETWEEN EMIR AND DFA

Both the U.S. and the European Union ("E.U.") have adopted laws and regulations to address the G20 commitments and principles requiring that:

- Standardized OTC derivatives should be traded on-exchange or on electronic platforms, where appropriate
- Standardized OTC derivatives should be cleared through central counterparties
- OTC derivative trades should be reported to trade repositories
- Non-centrally-cleared derivatives should be subject to higher capital and margin requirements

European Securities and Markets Authority ("ESMA") in Europe and the Securities Exchange Commission ("SEC") as well as the Commodities Futures Trading Commission ("CFTC") in the U.S. are also responsible for supervising their respective regulations and decide, respectively, which derivatives are eligible and when the clearing obligation applies.

Furthermore, they are also responsible for supervising these regulations. The U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act was passed in July 2010 and the text of the E.U. Regulation on OTC Derivatives, CCPs and Trade Repositories ("EMIR") was published in the Official Journal in July 2012.

Based on G20 principles, the European Market Infrastructure Regulation ("EMIR") came into force on 16 August 2012 for the E.U. legal framework. EMIR establishes common rules for OTC derivatives, central counterparties and trade repositories, including for the reporting of derivative contracts and implementing risk management standards. The regulation applies to entities incorporated in the E.U. that enter into derivative trades, including for the purposes of trading, hedging or gaining exposure to certain assets.

Intesa Sanpaolo is subject to both U.S. and E.U. regulations above mentioned and issued to address the G20 principles on the OTC derivative market. In fact, Intesa Sanpaolo S.p.A. (or "ISP") registered as a Swap Dealer in 2016 and, as a provisionally registered Swap Dealer, ISP's swaps trading activities with U.S. counterparties are subject to the CFTC's regulatory requirements and the rules of the National Futures Association ("NFA"). These requirements and rules apply regardless of the location of ISP's transactions: in other words, a swap executed in Italy with a U.S. person is subject to CFTC's requirements.

However, ISP is a bank in the EU and is already subject to EU regulations such as EMIR and MiFID II. As such, ISP is able to rely on substituted compliance and no-action relief with respect to certain CFTC requirements.

#### **4. WHAT IS THE TERRITORIAL SCOPE OF DODD-FRANK ACT?**

The Dodd-Frank Act establishes the territorial scope of the CFTC's and SEC's jurisdiction over the derivatives market.

Title VII of Dodd-Frank Act doesn't provide a geographic scope by defining entity-related terms (i.e. U.S. person), but it has been designed to reach more broadly by focusing on whether the activities of a person or entity have a significant connection to the U.S. jurisdiction. Consequently, it doesn't consider only the mere geographic location of organization or entity itself, but the principles contained in Dodd-Frank apply wherever the current business of an entity is linked to the U.S., whether through U.S. entities, U.S. based resource, U.S. assets or U.S. counterparties.

According to guidance from CFTC and SEC on the territorial scope provisions, the territorial scope of Dodd-Frank is not limited to the U.S. territory.

## 5. WHICH ENTITIES AND ORGANIZATIONS ARE IN THE SCOPE OF DFA?

DFA provisions apply to users, dealers and infrastructure providers of the OTC derivatives market, as the followings:

- Swap Data Repositories (“SDRs”);
- Derivatives Clearing Organizations (“DCOs”);
- Designated Contract Markets (“DCMs”);
- Swap Execution Facilities (“SEFs”);
- Swap Dealers (“SDs”);
- Major Swap Participants (“MSPs”);
- Swap counterparties who are neither swap dealers nor major swap participants, including Eligible Contract Participants (“ECPs”) and “without limitation” counterparties entitled to elect the clearing requirement exception.



## 6. WHAT ARE THE PRODUCTS COVERED BY DFA?

Derivative instruments generally covered by DFA are the followings: all security-based products, listed Single Name Equity Futures and Options, Credit Default Swaps (Single Names and Narrow-Based Index), Equity Swaps (Single Names and Narrow-Based Index), Futures, Futures Options, Interest-Rate Swaps/Derivatives, Credit Default Swaps/Derivatives (Broad Based Indexes), Commodity Swaps/Derivatives, Equity Swaps/Derivative (Broad Based Indexes), Foreign Exchange Swaps/Derivatives (some exceptions).

However, according to Swap Dealer Status of Intesa Sanpaolo, which is subject only to CFTC jurisdiction, derivatives asset classes under the DFA perimeter are:

- Rates,
- Currencies,
- Non-deliverable forwards
- Commodities,
- Broad-based securities indices derivatives, and
- Most indexed credit derivatives.

Forex spot are out of the DFA scope.

## 7. WHAT ARE THE OTC DERIVATIVES REQUIREMENTS?

### 7.1 All market participant

Any OTC derivative transaction sourced, executed, booked or settled in the U.S. or settled in the U.S. or through a U.S.-based financial institution will be subject to requirements under the Dodd-Frank Act. These include:

- Classification of major buyers and sellers in U.S. derivatives markets as either a MSP or SD, which requires registration with regulators and brings these parties fully in scope for the derivatives rules set out in Title VII.
- Designation as an MSP or an SD by comparing derivatives activity to thresholds set by the regulators, excluding qualifying FX and commercial hedging activity as well as swaps between majority owned affiliates.
- Swaps deemed eligible by regulators must be cleared through a central counterparty.
- Eligible trades must be executed through a DCM or SEF.
- Additional capital and collateral requirements for both cleared and non-cleared trades, with tighter rules to protect customer assets.
- Rapid reporting of all derivatives trades to a SDR.
- Positions in certain commodities will be subject to quantitative limits.
- Requirements are split between the CFTC and the SEC (and sometimes jointly regulated) depending upon the nature of the swap and its underlying asset.

### 7.2 Major Swaps Participant (MSP)

An entity may be deemed as an MSP if it maintains substantial positions in any of the major swap's categories. The requirements for a Major Swap Participant are the followings:

- a MSP must register with the CFTC and/or the SEC;
- if a MSP meet the threshold of \$8 billion it will be subject to the clearing requirements above, including additional risk management, reporting and record keeping. Otherwise, the entity will be subject to higher collateral requirements for uncleared trades.

### 7.3 Swap Dealer (SD)

An entity will be required to register as Swap Dealer with the CFTC and/or the SEC if it:

- hold itself out as a dealer in swaps or make a market as a dealer in swaps;
- regularly enter into swaps with counterparties as an ordinary course of business for own account;
- engage in any activity causing the entity to be commonly known as a dealer or market maker in swaps.

If an entity meets the criteria it will be subject to the clearing requirements above (the same as all market participants), including additional risk management, reporting and record keeping.

## 8. THE APPLICABLE SWAP DEALER REGIME

Following to swap dealer registration, the applicable main requirements are as follows:

- a) **Capital adequacy.** 12 CFR § 237.12 requires swap dealers to comply with certain capital requirements. However, this rule allows banks to rely on Basel III Regulations, when implemented in their home country;
- b) **Chief compliance officer.** 17 CFR §§ 3.1 and 3.3 (i) require the Board of Directors or Senior Officer of a swap dealer to appoint a Chief Compliance Officer (CCO) and (ii) state that the CCO is responsible for developing and administering the firm's policies and procedures, preparing an annual report of compliance and reporting to the Board or Senior Officer. Generally, these CFTC rules do not apply in practice to ISP provided that substituted compliance conditions are met;
- c) **Risk management.** 17 CFR §§ 23.600-23.603, 23.605, 23.606 and 23.609 require each swap dealer (SD) and major swap participant (MSP) to establish internal policies and procedures designed to, among other things, address risk management, monitor compliance with position limits, prevent conflicts of interest, and promote diligent supervision, as well as maintain business continuity and disaster recovery programs. The CFTC adopted regulations to implement the statute. These CFTC regulations do not apply in practice to ISP provided that substituted compliance conditions are met;
- d) **Position limits.** 17 CFR § 23.601 requires swap dealers to prevent violations of applicable position limits established by the CFTC. The CFTC has finalized a rule to implement a swap position limits regime, which is codified at 17 CFR Part 150;
- e) **Swap data recordkeeping, except for recordkeeping rules relating to customer complaints and sales and marketing materials.** 17 CFR §§ 23.201 and 23.203 require maintenance of books and records for all activities related to the swaps business. Generally, these CFTC rules (except those recordkeeping rules relating to customer complaints and sales and marketing materials – 17 CFR § 23.201 (b)) do not apply in practice to ISP provided that substituted compliance conditions are met;
- f) **Swap data recordkeeping requirements relating to customer complaints and sales and marketing materials.** 17 CFR § 23.201 (b) requires maintenance of records relating to customer complaints and sales and marketing materials;
- g) **SDR reporting.** 17 CFR Part 45 requires reporting of swap transaction data to a swap data repository (SDR), including data related to historical swaps;
- h) **Large trader reporting for physical commodity swaps.** 17 CFR Part 20 requires reports from swap dealers that maintain significant positions in swaps linked to physical commodities;
- i) **Mandatory clearing and swap processing.** 17 CFR § 23.506 requires certain swaps to be submitted for clearing to a Derivative Clearing Organization (DCO), unless one of the parties to the swap is an end-user and elects not to clear;

- j) **Customer Clearing Documentation and Timing of Acceptance.** 17 CFR §§ 23.608, 23.610 require ISP to avoid certain arrangements when entering into a swap that will be submitted for clearing with a counterparty that is the customer of a Futures Commission Merchant (FCM). In addition, these rules require that ISP coordinates with DCO to establish systems that enable ISP to complete the trade submission for clearing as soon as technologically practicable;
- k) **Mandatory trade execution.** 17 CFR § 37.9 requires particular swaps subject to the clearing requirement to be executed on a Designated Contract Market (DCM) or Swap Execution Facility (SEF);
- l) **Trade confirmation.** 17 CFR § 23.501 requires timely and accurate confirmation of swaps, including execution, termination and material amendment;
- m) **Portfolio reconciliation and compression.** 17 CFR §§ 23.502 and 23.503 require periodic reconciliation and compression of swap portfolios and a dispute resolution process for material discrepancies in valuations or material terms;
- n) **Swap trading relationship documentation.** 17 CFR § 23.504 requires execution of documentation detailing all terms governing the swaps trading relationship;
- o) **Real-time public reporting.** 17 CFR Part 43 requires real-time submission of high-level data about certain swaps to a swap data repository for public dissemination;
- p) **Daily trading records.** 17 CFR § 23.202 requires maintenance of trade information related to pre-execution, execution and post-execution data necessary for trade reconstruction;
- q) **Margining and segregation of collateral for uncleared swaps.** Margin requirements issued by US banking regulators apply to ISP. In addition, 17 CFR §§ 23.700-23.704 require swap dealers to provide certain notifications to counterparties related to segregation of initial margin. Margin requirements apply to ISP provided that initial margin is agreed to be collected by ISP from a counterparty to an uncleared swap by contract (or Elective Initial Margin) and the PR Margin Rules require neither the collection of such margin by ISP nor the posting of such margin by ISP's counterparty. US banking regulators set forth additional requirements applicable to ISP (12 CFR §§ 237.1 - 237.2, 237.4 - 237.6, 237.9 - 237.11);
- r) **External business conduct standards.** 17 CFR §§ 23.400 - 23.451 regulate interactions with customers, including verifying eligibility to trade, disclosing material information and making suitable recommendations;
- s) **Market practice - Anti-Fraud, Anti-Manipulation and Anti-Disruptive Practices.** 17 CFR §§ 23.410 - 23.433 prohibits ISP from engaging in any act, practice or course of business that is fraudulent or deceptive and requires that all ISP's communications with counterparties, whether oral or written, must be fair and balanced and based on the principles of fair dealing and good faith;
- t) **Antitrust Considerations.** 17 CFR § 23.607 requires swap dealers to adopt policies and procedures to prevent actions that result in unreasonable restraints of trade or impose any material anticompetitive burden on trading or clearing;

- u) **Transactions with special entities.** 17 CFR §§ 23.440, 23.450 and 23.451 govern interactions with customers classified as Special Entities, providing additional business conduct standards when entering into a swap with this type of customer.

The CFTC issued guidance in 2013 (the “Cross-Border Guidance”) and adopted a rule in 2020 (the “Cross-Border Rule”) and together with the Cross-Border Guidance, the “Cross-Border Regime”) on the applicability of certain swap regulatory requirements to cross-border swap activities. The CFTC’s Cross-Border Regime covers topics such as:

- how swap-related requirements are applied to cross-border swap transactions and when substituted compliance would be available if the CFTC determines that a foreign jurisdiction’s rules are comparable to its own;
- the definition of a U.S. person for the purposes of the CFTC’s swap regulatory regime, though the Cross-Border Guidance and Cross-Border Rule have different definitions for a U.S. person;
- which swaps a non-U.S. person must include in, and exclude from, its swap dealer de minimis and MSP threshold calculations; and
- the types of offices the CFTC would consider to be a “foreign branch” of a U.S. swap dealer or MSP and the circumstances in which a swap transaction would be considered to be “with” such a foreign branch.

The CFTC Cross-Border Guidance was partly superseded by the Cross-Border Rule; however, where not superseded by the Cross-Border Rule, the Cross-Border Guidance remains in effect.<sup>1</sup>

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<sup>1</sup> The cross-border regime for margin requirements is based on the prudential regulators’ rules.

## 9. GLOSSARY

### **Acknowledgment**

Written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other.

### **Central Clearing**

Central clearing is the process in which transactions are processed, guaranteed, and settled by a central counterparty ("CCP" or clearing house) that steps in between the two parties. Contracts submitted for clearing are novated to the CCP, meaning that the CCP essentially becomes the buyer to every seller and the seller to every buyer.

### **Commodity Futures Trading Commission (CFTC)**

The Federal regulatory agency established by the Commodity Futures Trading Act of 1974 to administer the Commodity Exchange Act.

### **Confirmation**

The consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the counterparties to all of the terms of a swap transaction. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise). A confirmation is created when an acknowledgment is manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

### **Derivatives Clearing Organizations (DCOs)**

In general, the term "derivatives clearing organization" means a clearing house, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction:

- Enables each party to the contract to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties.
- Arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, transactions.
- Provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such contracts.

Exemptions. The term "derivatives clearing organization" does not include an entity, facility, system, or organization solely because it arranges or provides for:

- Settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty.
- Settlement or netting of cash payments through an interbank payment system;
  - Settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

### **Designated Contract Markets (DCMs)**

A Designated Contract Market is a board of trade (or exchanges) that operate under the regulatory oversight of the CFTC. DCMs are designated to trade futures, swaps, and/or options. A designated contract market can allow both institutional and retail participants and can list for trading contracts on any commodity, providing that each contract is not readily susceptible to manipulation. DCMs may list for trading futures or option contracts based on any underlying commodity, index or instrument. A Designated contract market can be considered both as a regulated market or as OTC.

### **Eligible Contract Participant**

Means an eligible contract participant, as defined in Section 1a(18) of the CEA and 17 C.F.R. § 1.3. The term "eligible contract participant" means:

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this title, the term "eligible contract participant" shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keep well, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding \$1,000,000; and



(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding \$5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this chapter;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii)

(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this title;

(viii)

(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o 5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) \$10,000,000; or

(II)

\$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)

(i)

a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii)

an investment adviser subject to regulation under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], a commodity trading advisor subject to regulation under this chapter, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

### **Execution**

Means, with respect to a Swap Transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the Swap Transaction that legally binds the counterparties to such terms under applicable law.

### **Futures Commission Merchant (FCM)**

Individuals, associations, partnerships, corporations, and trusts that:

- solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange; and
- accept payment from or extend credit to those whose orders are accepted.

The Commission, by rule or regulation, may include within, or exclude from, the term “futures commission merchant” any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this chapter, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

FCM maintains two types of cleared swap customer accounts:

- FCM customer account (maintained at a bank) to hold assets not on deposit with DCO (“FCM Customer Account”).
- Account maintained by the DCO for FCM's cleared swap customers (“DCO Customer account”).

### **Major Swap Participants (MSPs)**

A Major Swap Participant is defined as any person who is not a swap dealer, and satisfies any one of them:

- A person that maintains a ‘substantial position’ in any of the major swap categories, excluding positions held for hedging or mitigation commercial risk and positions maintained by certain employee benefit plans for hedging or mitigating risks in the operation of the plan.
- A person whose outstanding swaps create ‘substantial’ counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.
- Any financial entity that is ‘highly leveraged’ relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency and that maintains a substantial position in any of the major swap categories.

### **Swaps**

- Credit swap: any swap that is primarily based on instruments of indebtedness, including, without limitation:

- any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and
- any swap that is an index credit swap or total return swap on one or more indices of debt instruments.
- Equity swap: any swap that is primarily based on equity securities, including, without limitation:
  - Any swap primarily based on one or more broad-based indices of equity securities; and
  - any total return swap on one or more equity indices.
- Foreign exchange swap: does not include swaps primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (cross-currency swaps).
- Interest rate swap: any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (cross-currency swaps).
- Other commodity swap means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

#### **Swap Data Repositories (SDRs)**

The term "Swap data repositories (SDRs)" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

#### **Swap Dealers (SDs)**

The Dodd-Frank Act identifies a "swap dealer" as any person who:

- Holds itself out as a dealer in swaps;
- Makes a market in swaps;
- Regularly enters into swaps with counterparties as an ordinary course of business for its own account;
- Engages in activity causing itself to be commonly known in the trade as a dealer or market maker in swaps.

The CFTC requires that persons engaged in these activities register as swap dealers after they have reached a "de minimis" threshold, meaning that, the aggregate gross notional amount of the swaps, with certain exceptions, that the person enters into over the prior 12 months in connection with dealing activities exceeds \$8 billion.

#### **Swap Execution Facilities (SEFs)**

Means a trading system or platform created by the Dodd-Frank Act 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. The Dodd-Frank Act imposed different statutory provisions on SEFs than on designated contract markets.