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17 CFR Ch. I (4–1–20 Edition)

limit the duty they owe to counterparties, including Special Entities, provided that the parties exchange the appropriate representations.

Subpart I—Swap Documentation

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§ 23.500 Definitions.

For purposes of this subpart I, the following terms shall be defined as provided.

(a) *Acknowledgment* means a written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other.

(b) *Bilateral portfolio compression exercise* means an exercise in which two swap counterparties wholly terminate or change the notional value of some or all of the swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated swaps with other swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated swaps in the exercise.

(c) *Confirmation* means 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.

(d) *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.

(e) *Financial entity* means a counterparty that is not a swap dealer or a major swap participant and that is one of the following:

(1) A commodity pool as defined in Section 1a(5) of the Act;

(2) A private fund as defined in Section 202(a) of the Investment Advisors Act of 1940;

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974;

(4) 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; and

(5) A security-based swap dealer or a major security-based swap participant.

(f) *Fully offsetting swaps* means swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

(g) *Material terms* means the minimum primary economic terms (as defined in appendix 1 of part 45 of this chapter) of a swap other than the following:

(1) An indication of whether the reporting counterparty is a swap dealer with respect to the swap;

(2) An indication of whether the reporting party is a major swap participant with respect to the swap;

(3) If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Act;

(4) An indication of whether the reporting counterparty is a U.S. person;

(5) An indication that the swap will be allocated;

(6) If the swap will be allocated, or is a post-allocation swap, the legal entity identifier of the agent;

(7) An indication of whether the swap is a post-allocation swap;

(8) If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent;

(9) An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap;

(10) An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap;

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(11) If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in section 2(h)(7)(c) of the Act;

(12) An indication of whether the non-reporting counterparty is a U.S. person;

(13) An indication that the swap is a multi-asset swap;

(14) For a multi-asset swap, an indication of the primary asset class;

(15) For a multi-asset swap, an indication of the secondary asset class(es);

(16) An indication that the swap is a mixed swap;

(17) For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any to which the swap is or will be reported);

(18) Block trade indicator;

(19) Execution timestamp;

(20) Timestamp for submission to swap data repository;

(21) Clearing indicator;

(22) Clearing venue;

(23) If the swap will not be cleared, an indication of whether the clearing requirement exception in section 2(h)(7) of the Act was elected; and

(24) The identity of the counterparty electing the clearing requirement exception in section 2(h)(7) of the Act.

(h) *Multilateral portfolio compression exercise* means an exercise in which multiple swap counterparties wholly terminate or change the notional value of some or all of the swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated swaps with other swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated swaps in the compression exercise.

(i) *Portfolio reconciliation* means any process by which the two parties to one or more swaps:

(1) Exchange the material terms of all swaps in the swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each swap in the swap portfolio between the counterparties as

of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in material terms and valuations.

(j) *Prudential regulator* has the meaning given to the term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(k) *Swap portfolio* means all swaps currently in effect between a particular swap dealer or major swap participant and a particular counterparty.

(l) *Swap transaction* means any event that results in a new swap or in a change to the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap.

(m) *Valuation* means the current market value or net present value of a swap.

[77 FR 55960, Sept. 11, 2012, as amended at 81 FR 27314, May 6, 2016]

§ 23.501 Swap confirmation.

(a) *Confirmation*. Subject to the compliance schedule in paragraph (c) of this section:

(1) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is a swap dealer or major swap participant shall execute a confirmation for the swap transaction as soon as technologically practicable, but in any event by the end of first business day following the day of execution.

(2) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is not a swap dealer or a major swap participant shall send an acknowledgment of such swap transaction as soon as technologically practicable, but in any event by the end of the first business day following the day of execution.

(3) (i) Each swap dealer and major swap participant shall establish, maintain, and follow written policies and