

trade data, market positions, customers, or counterparties;

e. Prohibit use of the Confidential Information by ABC personnel for any improper purpose, including in connection with trading for their personal benefit or for the benefit of others or with respect to any commercial or business purpose; and

f. Include a process for monitoring compliance with the confidentiality safeguards described herein and for promptly notifying the CFTC, and each SDR from which ABC has received Swap Data, of any violation of such safeguards or failure to fulfill the terms of this Arrangement.

7. Except as provided in Paragraphs 6.d. and 8, ABC will not onward share or otherwise disclose any Confidential Information.

8. ABC undertakes that:

a. If a department, central bank, or agency of the Government of the United States, it will not disclose Confidential Information except in an action or proceeding under the laws of the United States to which it, the CFTC, or the United States is a party;

b. If a department or agency of a State or political subdivision thereof, it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the Act or the laws of [name of either the State or the State and political subdivision] to which it is a party; or

c. If a foreign futures authority or a department, central bank, ministry, or agency of a foreign government or subdivision thereof, or any other Foreign Regulator, as defined in Commission Regulation 49.2(a)(5), it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the laws of [name of country, political subdivision, or (if a supranational organization) supranational lawmaking body] to which it is a party.

9. Prior to complying with any legally enforceable demand for Confidential Information, ABC will notify the CFTC of such demand in writing, assert all available appropriate legal exemptions or privileges with respect to such Confidential Information, and use its best efforts to protect the confidentiality of the Confidential Information.

10. ABC acknowledges that, if it does not fulfill the terms of this Arrangement, the CFTC may direct any SDR to suspend or revoke ABC's access to Swap Data.

11. ABC will comply with all applicable security-related requirements imposed by an SDR in connection with access to Swap Data maintained by the SDR, as such requirements may be revised from time to time.

12. ABC will promptly destroy all Confidential Information for which it no longer has a need or which no longer falls within the scope of its jurisdiction, and will certify to the CFTC, upon request, that ABC has destroyed such Confidential Information.

ARTICLE THREE: ADMINISTRATIVE PROVISIONS

13. This Arrangement may be amended with the written consent of the Authorities.

14. The text of this Arrangement will be executed in English, and may be made available to the public.

15. On the date this Arrangement is signed by the Authorities, it will become effective and may be provided to any SDR that holds and maintains Swap Data that falls within the scope of ABC's jurisdiction.

16. This Arrangement will expire 30 days after any Authority gives written notice to the other Authority of its intention to terminate the Arrangement. In the event of termination of this Arrangement, Confidential Information will continue to remain confidential and will continue to be covered by this Arrangement.

This Arrangement is executed in duplicate, this __ day of __.

[name of Chairman] [name of signatory]

Chairman, [title]

U.S. Commodity Futures Trading Commission [name of foreign/domestic regulator]

[Exhibit A: Description of Scope of Jurisdiction. If ABC is not enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach the Determination Order received from the Commission pursuant to Commission Regulation 49.17(h). If ABC is enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach a sufficiently detailed description of the scope of ABC's jurisdiction as it relates to Swap Data maintained by SDRs. In both cases, the description of the scope of jurisdiction must include elements allowing SDRs to establish, without undue obstacles, objective parameters for determining whether a particular Swap Data request falls within such scope of jurisdiction. Such elements could include legal entity identifiers of all jurisdictional entities and could also include unique product identifiers of all jurisdictional products or, if no CFTC-approved unique product identifier and product classification system is yet available, the internal product identifier or product description used by an SDR from which Swap Data is to be sought.]

[85 FR 75671, Nov. 25, 2020]

PART 50—CLEARING REQUIREMENT AND RELATED RULES

Subpart A—Definitions and Clearing Requirement

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50.1 Definitions.

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§ 50.3

- 50.2 Treatment of swaps subject to a clearing requirement.
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AUTHORITY: 7 U.S.C. 2(h), 6(c), and 7a–1, as amended by Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 77 FR 44455, July 30, 2012, unless otherwise noted.

Subpart A—Definitions and Clearing Requirement

SOURCE: 77 FR 74335, Dec. 13, 2012, unless otherwise noted.

§ 50.1 Definitions.

For the purposes of this part,

Business day means any day other than a Saturday, Sunday, or legal holiday.

Day of execution means the calendar day of the party to the swap that ends latest, provided that if a swap is:

(1) Entered into after 4:00 p.m. in the location of a party; or

(2) Entered into on a day that is not a business day in the location of a party, then such swap shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day.

§ 50.2 Treatment of swaps subject to a clearing requirement.

(a) All persons executing a swap that:

(1) Is not subject to an exception under section 2(h)(7) of the Act or § 50.50 of this part; and

(2) Is included in a class of swaps identified in § 50.4 of this part, shall submit such swap to any eligible derivatives clearing organization that accepts such swap for clearing as soon as technologically practicable after execution, but in any event by the end of the day of execution.

(b) Each person subject to the requirements of paragraph (a) of this section shall undertake reasonable efforts to verify whether a swap is required to be cleared.

(c) For purposes of paragraph (a) of this section, persons that are not clearing members of an eligible derivatives clearing organization shall be deemed to have complied with paragraph (a) of this section upon submission of such swap to a futures commission merchant or clearing member of a derivatives clearing organization, provided that submission occurs as soon as technologically practicable after execution, but in any event by the end of the day of execution.

§ 50.3 Notice to the public.

(a) In addition to its obligations under § 39.21(c)(1), each derivatives clearing organization shall make publicly available on its Web site a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the Act and this part.

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(b) The Commission shall maintain a current list of all swaps that are required to be cleared and all derivatives clearing organizations that are eligible to clear such swaps on its Web site.

required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are

TABLE 1a

Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).
2. Floating Rate Indexes.	BBSW	CDOR	EURIBOR ..	HIBOR	TIE–BANXICO.	NIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 30 years.	28 days to 50 years.	28 days to 10 years.	28 days to 21 years.	28 days to 10 years.
4. Optionality	No	No	No	No	No	No.
5. Dual Currencies ..	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No.

TABLE 1b

Specification	Fixed-to-floating swap class						
1. Currency	Polish Zloty (PLN).	Singapore Dollar (SGD).	Swedish Krona (SEK).	Swiss Franc (CHF).	Sterling (GBP).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes.	WIBOR	SOR–VWAP.	STIBOR ..	LIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies.	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

TABLE 2

Specification	Basis swap class				
1. Currency	Australian Dollar (AUD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes.	BBSW	EURIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies.	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No.

TABLE 3

Specification	Forward rate agreement class						
1. Currency	Euro (EUR).	Polish Zloty (PLN).	Norwegian Krone (NOK).	Swedish Krona (SEK).	Sterling (GBP).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes.	EURIBOR	WIBOR	NIBOR	STIBOR ..	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	3 days to 3 years.	3 days to 2 years.	3 days to 2 years.	3 days to 3 years.	3 days to 3 years.	3 days to 3 years.	3 days to 3 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies.	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

TABLE 4

Specification	Overnight index swap class				
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD).
2. Floating Rate Indexes.	AONIA-OIS	CORRA-OIS	EONIA	SONIA	FedFunds.
3. Stated Termination Date Range.	7 days to 2 years.	7 days to 2 years.	7 days to 3 years.	7 days to 3 years.	7 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies.	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No.

(b) *Credit default swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared

pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under §39.5(a) of this chapter.

Specification	North American untranch CDS indices class
Reference Entities	Corporate.
Region	North America.
Indices	CDX.NA.IG; CDX.NA.HY.
Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y; CDX.NA.HY: 5Y.
Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
Tranchd	No.
Specification	European untranch CDS indices class
Reference Entities	Corporate.
Region	Europe.
Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.

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Specification	European untranching CDS indices class
Tenor	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
Tranching	No.

[77 FR 74335, Dec. 13, 2012, as amended at 81 FR 71239, Oct. 14, 2016]

§ 50.5 Swaps exempt from a clearing requirement.

(a) Swaps entered into before July 21, 2010 shall be exempt from the clearing requirement under § 50.2 of this part if reported to a swap data repository pursuant to section 2(h)(5)(A) of the Act and § 46.3(a) of this chapter.

(b) Swaps entered into before the application of the clearing requirement for a particular class of swaps under §§ 50.2 and 50.4 of this part shall be exempt from the clearing requirement if reported to a swap data repository pursuant to section 2(h)(5)(B) of the Act and either § 46.3(a) or §§ 45.3 and 45.4 of this chapter, as appropriate.

§ 50.6 Delegation of Authority.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, with the consultation of the General Counsel or such other employee or employees as the General Counsel may designate from time to time, the authority:

(1) After prior notice to the Commission, to determine whether one or more swaps submitted by a derivatives clearing organization under § 39.5 falls within a class of swaps as described in § 50.4, provided that inclusion of such swaps is consistent with the Commission's clearing requirement determination for that class of swaps; and

(2) To notify all relevant derivatives clearing organizations of that determination.

(b) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in

this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 50.7–50.9 [Reserved]

§ 50.10 Prevention of evasion of the clearing requirement and abuse of an exception or exemption to the clearing requirement.

(a) It shall be unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the Act or any Commission rule or regulation promulgated thereunder.

(b) It shall be unlawful for any person to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the Act or an exception or exemption under this chapter.

(c) It shall be unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the Act, including any exemption or exception as the Commission may provide by rule, regulation, or order.

§ 50.11–50.24 [Reserved]

Subpart B—Clearing Requirement Compliance Schedule and Compliance Dates

§ 50.25 Clearing requirement compliance schedule.

(a) *Definitions.* For the purposes of this paragraph:

Active fund means 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 Commission issuing a clearing requirement determination under section 2(h)(2) of the Act.

Category 1 Entity means a swap dealer, a security-based swap dealer; a major swap participant; a major security-based swap participant; or an active fund.

Category 2 Entity means a commodity pool; a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 other than an active fund; or a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that, in each case, the entity is not a third-party subaccount.

Third-party Subaccount means 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.

(b) Upon issuing a clearing requirement determination under section 2(h)(2) of the Act, the Commission may determine, based on the group, category, type, or class of swaps subject to such determination, that the following schedule for compliance with the requirements of section 2(h)(1)(A) of the Act shall apply:

(1) A swap between a Category 1 Entity and another Category 1 Entity, or any other entity that desires to clear the transaction, must comply with the

requirements of section 2(h)(1)(A) of the Act no later than ninety (90) days from the date of publication of such clearing requirement determination in the FEDERAL REGISTER.

(2) A swap between a Category 2 Entity and a Category 1 Entity, another Category 2 Entity, or any other entity that desires to clear the transaction, must comply with the requirements of section 2(h)(1)(A) of the Act no later than one hundred and eighty (180) days from the date of publication of such clearing requirement determination in the FEDERAL REGISTER.

(3) All other swaps for which neither of the parties to the swap is eligible to claim the exception from the clearing requirement set forth in section 2(h)(7) of the Act and § 39.6, must comply with the requirements of section 2(h)(1)(A) of the Act no later than two hundred and seventy (270) days from the date of publication of such clearing requirement determination in the FEDERAL REGISTER.

(c) Nothing in this rule shall be construed to prohibit any person from voluntarily complying with the requirements of section 2(h)(1)(A) of the Act sooner than the implementation schedule provided under paragraph (b).

[77 FR 44455, July 30, 2012]

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

TABLE 1 TO PARAGRAPH (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating ...	Euro (EUR) EURIBOR.	28 days to 50 years.	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Fixed-to-Floating ...	Sterling (GBP) LIBOR.	28 days to 50 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Fixed-to-Floating ...	U.S. Dollar (USD) LIBOR.	28 days to 50 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Fixed-to-Floating ...	Yen (JPY) LIBOR ..	28 days to 50 years.	Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.

TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating ...	Australian Dollar (AUD) BBSW.	28 days to 30 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating ...	Canadian Dollar (CAD) CDOR.	28 days to 30 years.	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating ...	Hong Kong Dollar (HKD) HIBOR.	28 days to 10 years.	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating ...	Mexican Peso (MXN) TIIE–BANXICO.	28 days to 21 years.	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating ...	Norwegian Krone (NOK) NIBOR.	28 days to 10 years.	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating ...	Polish Zloty (PLN) WIBOR.	28 days to 10 years.	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating ...	Singapore Dollar (SGD) SOR–VWAP.	28 days to 10 years.	All entities October 15, 2018.
Interest Rate Swap	Fixed-to-Floating ...	Swedish Krona (SEK) STIBOR.	28 days to 15 years.	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating ...	Swiss Franc (CHF) LIBOR.	28 days to 30 years.	All entities October 15, 2018.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR.	28 days to 50 years.	Category 1 entities March 11, 2013.
Interest Rate Swap	Basis	Sterling (GBP) LIBOR.	28 days to 50 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Basis	U.S. Dollar (USD) LIBOR.	28 days to 50 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Basis	Yen (JPY) LIBOR ..	28 days to 30 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. Category 1 entities March 11, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW.	28 days to 30 years.	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement.	Euro (EUR) EURIBOR.	3 days to 3 years ..	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013.
Interest Rate Swap	Forward Rate Agreement.	Sterling (GBP) LIBOR.	3 days to 3 years ..	Category 2 entities September 9, 2013. Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013.
Interest Rate Swap	Forward Rate Agreement.	U.S. Dollar (USD) LIBOR.	3 days to 3 years ..	Category 2 entities September 9, 2013. Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013.
Interest Rate Swap	Forward Rate Agreement.	Yen (JPY) LIBOR ..	3 days to 3 years ..	Category 2 entities September 9, 2013. Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013.
Interest Rate Swap	Forward Rate Agreement.	Polish Zloty (PLN) WIBOR.	3 days to 2 years ..	Category 2 entities September 9, 2013. All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Norwegian Krone (NOK) NIBOR.	3 days to 2 years ..	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Swedish Krona (SEK) STIBOR.	3 days to 3 years ..	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap.	Euro (EUR) EONIA	7 days to 2 years ..	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.

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TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Overnight Index Swap.	Sterling (GBP) SONIA.	2 years + 1 day to 3 years. 7 days to 2 years ..	All entities December 13, 2016. Category 1 entities March 11, 2013.
Interest Rate Swap	Overnight Index Swap.	U.S. Dollar (USD) FedFunds.	2 years + 1 day to 3 years. 7 days to 2 years ..	All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016. Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap.	Australian Dollar (AUD) AONIA–OIS.	2 years + 1 day to 3 years. 7 days to 2 years ..	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap.	Canadian Dollar (CAD) CORRA–OIS.	7 days to 2 years ..	All entities July 10, 2017.

(b) *Compliance dates for credit default swap classes.* The compliance dates for swaps that are required to be cleared under §50.4(b) are specified in the following table.

TABLE 2 TO PARAGRAPH (b)

Swap asset class	Swap class subtype	Indices	Tenor	Clearing requirement compliance date
Credit Default Swap	North American untranched CDS indices.	CDX.NA.IG	3Y, 5Y, 7Y, 10Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap	North American untranched CDS indices.	CDX.NA.HY	5Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap	European untranched CSD indices.	iTraxx Europe	5Y, 10Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap	European untranched CSD indices.	iTraxx Europe Crossover.	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap	European untranched CSD indices.	iTraxx Europe HiVol.	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.

[85 FR 76446, Nov. 30, 2020]

§§ 50.27–50.49 [Reserved]

Subpart C—Exceptions and Exemptions from the Clearing Requirement

SOURCE: 77 FR 74337, Dec. 13, 2012, unless otherwise noted.

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§ 50.50 Non-financial end-user exception to the clearing requirement.

(a) *Non-financial entities.* (1) A counterparty to a swap may elect the exception to the clearing requirement under section 2(h)(7)(A) of the Act if the counterparty:

(i) Is not a “financial entity” as defined in section 2(h)(7)(C)(i) of the Act;

(ii) Is using the swap to hedge or mitigate commercial risk as provided in paragraph (c) of this section; and

(iii) Provides, or causes to be provided, the information specified in paragraph (b) of this section to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission. A counterparty that satisfies the criteria in this paragraph (a)(1) and elects the exception is an “electing counterparty.”

(2) If there is more than one electing counterparty to a swap, the information specified in paragraph (b) of this section shall be provided with respect to each of the electing counterparties.

(b) *Reporting.* (1) When a counterparty elects the exception to the clearing requirement under section 2(h)(7)(A) of the Act, one of the counterparties to the swap (the “reporting counterparty,” as determined in accordance with § 45.8 of this part) shall provide, or cause to be provided, the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(i) Notice of the election of the exception;

(ii) The identity of the electing counterparty to the swap; and

(iii) The following information, unless such information has previously been provided by the electing counterparty in a current annual filing pursuant to paragraph (b)(2) of this section:

(A) Whether the electing counterparty is a “financial entity” as defined in section 2(h)(7)(C)(i) of the Act, and if the electing counterparty is a financial entity, whether it is:

(1) Electing the exception in accordance with section 2(h)(7)(C)(iii) or section 2(h)(7)(D) of the Act; or

(2) Exempt from the definition of “financial entity” as described in § 50.53;

(B) Whether the swap or swaps for which the electing counterparty is electing the exception are used by the electing counterparty to hedge or mitigate commercial risk as provided in paragraph (c) of this section;

(C) How the electing counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable:

(1) A written credit support agreement;

(2) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(3) A written third-party guarantee;

(4) The electing counterparty’s available financial resources; or

(5) Means other than those described in paragraphs (b)(1)(iii)(C)(1), (2), (3) or (4) of this section; and

(D) Whether the electing counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934, and if so:

(1) The relevant SEC Central Index Key number for that counterparty; and

(2) Whether an appropriate committee of that counterparty’s board of directors (or equivalent body) has reviewed and approved the decision to enter into swaps that are exempt from the requirements of sections 2(h)(1) and 2(h)(8) of the Act.

(2) An entity that qualifies for an exception to the clearing requirement under this section may report the information listed in paragraph (b)(1)(iii) of this section annually in anticipation of electing the exception for one or more swaps. Any such reporting under this paragraph shall be effective for purposes of paragraph (b)(1)(iii) of this section for swaps entered into by the entity for 365 days following the date of such reporting. During such period, the entity shall amend such information as

necessary to reflect any material changes to the information reported.

(3) Each reporting counterparty shall have a reasonable basis to believe that the electing counterparty meets the requirements for an exception to the clearing requirement under this section.

(c) *Hedging or mitigating commercial risk.* For purposes of section 2(h)(7)(A)(ii) of the Act and paragraph (b)(1)(iii)(B) of this section, a swap is used to hedge or mitigate commercial risk if:

(1) Such swap:

(i) Is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from:

(A) The potential change in the value of assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise;

(B) The potential change in the value of liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise;

(C) The potential change in the value of services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise;

(D) The potential change in the value of assets, services, inputs, products, or commodities that a person owns, produces, manufactures, processes, merchandises, leases, or sells, or reasonably anticipates owning, producing, manufacturing, processing, merchandising, leasing, or selling in the ordinary course of business of the enterprise;

(E) Any potential change in value related to any of the foregoing arising from interest, currency, or foreign exchange rate movements associated with such assets, liabilities, services, inputs, products, or commodities; or

(F) Any fluctuation in interest, currency, or foreign exchange rate exposures arising from a person's current or anticipated assets or liabilities; or

(ii) Qualifies as bona fide hedging for purposes of an exemption from position limits under the Act; or

(iii) Qualifies for hedging treatment under:

(A) Financial Accounting Standards Board Accounting Standards Codification Topic 815, Derivatives and Hedging (formerly known as Statement No. 133); or

(B) Governmental Accounting Standards Board Statement 53, Accounting and Financial Reporting for Derivative Instruments; and

(2) Such swap is:

(i) Not used for a purpose that is in the nature of speculation, investing, or trading; and

(ii) Not used to hedge or mitigate the risk of another swap or security-based swap position, unless that other position itself is used to hedge or mitigate commercial risk as defined by this rule or § 240.3a67-4 of this title.

[77 FR 74337, Dec. 13, 2012, as amended at 85 FR 76448, Nov. 30, 2020]

§ 50.51 Cooperatives exempt from the clearing requirement.

Exemption for cooperatives. Exempt cooperatives may elect not to clear certain swaps identified in paragraph (b) of this section that are otherwise subject to the clearing requirement of section 2(h)(1)(A) of the Act if the following requirements are satisfied.

(a) For the purposes of this paragraph, an *exempt cooperative* means a cooperative:

(1) Formed and existing pursuant to Federal or state law as a cooperative;

(2) That is a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, solely because of section 2(h)(7)(C)(i)(VIII) of the Act; and

(3) Each member of which is not a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, or if any member is a financial entity solely because of section 2(h)(7)(C)(i)(VIII) of the Act, such member is:

(i) Exempt from the definition of "financial entity" pursuant to § 50.53; or

(ii) A cooperative formed under Federal or state law as a cooperative and each member thereof is either not a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, or is exempt from the definition of "financial entity" pursuant to § 50.53.

(b) An exempt cooperative may elect not to clear a swap that is subject to

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the clearing requirement of section 2(h)(1)(A) of the Act if the swap:

(1) Is entered into with a member of the exempt cooperative in connection with originating loan or loans for the member, which means the requirements of paragraphs (5)(i), (ii), and (iii) of the definition of *swap dealer* in §1.3 of this chapter are satisfied; *provided that*, for this purpose, the term “insured depository institution” as used in those paragraphs is replaced with the term “exempt cooperative” and the word “customer” is replaced with the word “member”; or

(2) Hedges or mitigates commercial risk, in accordance with §50.50(c), related to loans to members or arising from a swap or swaps that meet the requirements of paragraph (b)(1) of this section.

(c) An exempt cooperative that elects the exemption provided in this section shall comply with the requirements of §50.50(b). For this purpose, the exempt cooperative shall be the “electing counterparty,” as such term is used in §50.50(b), and for purposes of §50.50(b)(1)(iii)(A), the reporting counterparty, as determined pursuant to §45.8, shall report that an exemption is being elected in accordance with this section.

[78 FR 52307, Aug. 22, 2013, as amended at 83 FR 7997, Feb. 23, 2018; 85 FR 76448, Nov. 30, 2020]

§ 50.52 Affiliated entities exempt from the clearing requirement.

(a) *Eligible affiliate counterparty status*. Subject to the conditions in paragraph (b) of this section:

(1) Counterparties to a swap may elect not to clear a swap subject to the clearing requirement of section 2(h)(1)(A) of the Act and this part if:

(i) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned counterparty; or

(ii) A third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the swap counterparties.

(2) For purposes of this section:

(i) A counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership;

(ii) The term “eligible affiliate counterparty” means an entity that meets the requirements of this paragraph; and

(iii) The term “United States” means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Additional conditions*. Eligible affiliate counterparties to a swap may elect the exemption described in paragraph (a) of this section if:

(1) Both counterparties elect not to clear the swap;

(2)(i) A swap dealer or major swap participant that is an eligible affiliate counterparty to the swap satisfies the requirements of §23.504 of this chapter; or

(ii) If neither eligible affiliate counterparty is a swap dealer or major swap participant, the terms of the swap are documented in a swap trading relationship document that shall be in writing and shall include all terms governing the trading relationship between the eligible affiliate counterparties;

(3) The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap. If at least one of the eligible affiliate counterparties is a swap dealer or major swap participant, this centralized risk management requirement shall be satisfied by complying with

the requirements of §23.600 of this chapter; and

(4)(i) Subject to paragraphs (b)(4)(ii) and (iii) of this section, each eligible affiliate counterparty that enters into a swap, which is included in a class of swaps identified in §50.4, with an unaffiliated counterparty shall:

(A) Comply with the requirements for clearing the swap in section 2(h) of the Act and this part;

(B) Comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission;

(C) Comply with an exception or exemption under section 2(h)(7) of the Act or this part;

(D) Comply with an exception or exemption under a foreign jurisdiction's clearing mandate, provided that:

(1) The foreign jurisdiction's clearing mandate is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission; and

(2) The foreign jurisdiction's exception or exemption is comparable to an exception or exemption under section 2(h)(7) of the Act or this part, as determined by the Commission; or

(E) Clear such swap through a registered derivatives clearing organization or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the Principles for Financial Market Infrastructures.

(ii) If one of the eligible affiliate counterparties is located in Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, or the United Kingdom and each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties, the requirements

of paragraph (b)(4)(i) of this section shall be satisfied.

(iii) If an eligible affiliate counterparty located in the United States enters into swaps, which are included in a class of swaps identified in §50.4, with eligible affiliate counterparties located in jurisdictions other than Australia, Canada, the European Union, Hong Kong, Japan, Mexico, Singapore, Switzerland, the United Kingdom, or the United States, and the aggregate notional value of such swaps, which are included in a class of swaps identified in §50.4, does not exceed five percent of the aggregate notional value of all swaps, which are included in a class of swaps identified in §50.4, in each instance the notional value as measured in U.S. dollar equivalents and calculated for each calendar quarter, entered into by the eligible affiliate counterparty located in the United States, then the requirements of paragraph (b)(4)(i) of this section shall be satisfied when each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties.

(c) *Reporting requirements.* When the exemption described in paragraph (a) of this section is elected, the reporting counterparty, as determined in accordance with §45.8 of this chapter, shall provide or cause to be provided the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(1) Confirmation that both eligible affiliate counterparties to the swap are electing not to clear the swap and that each of the electing eligible affiliate counterparties satisfies the requirements in paragraph (b) of this section applicable to it;

(2) For each electing eligible affiliate counterparty, how the counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or

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more of the following categories, as applicable:

(i) A written credit support agreement;

(ii) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(iii) A written guarantee from another party;

(iv) The electing counterparty's available financial resources; or

(v) Means other than those described in paragraphs (c)(2)(i), (ii), (iii) or (iv) of this section; and

(3) If an electing eligible affiliate counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934:

(i) The relevant SEC Central Index Key number for that counterparty; and

(ii) Acknowledgment that an appropriate committee of the board of directors (or equivalent body) of the eligible affiliate counterparty has reviewed and approved the decision to enter into swaps that are exempt from the requirements of section 2(h)(1) and 2(h)(8) of the Act.

(d) *Annual reporting.* An eligible affiliate counterparty that qualifies for the exemption described in paragraph (a) of this section may report the information listed in paragraphs (c)(2) and (3) of this section annually in anticipation of electing the exemption for one or more swaps. Any such reporting by a reporting counterparty under this paragraph will be effective for purposes of paragraphs (c)(2) and (3) of this section for 365 days following the date of such reporting. During the 365-day period, the reporting counterparty shall amend the report as necessary to reflect any material changes to the information reported. Each reporting counterparty shall have a reasonable basis to believe that the eligible affiliate counterparties meet the requirements for the exemption under this section.

[78 FR 21783, Apr. 11, 2013, as amended at 85 FR 44181, July 22, 2020]

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§ 50.53 Banks, savings associations, farm credit system institutions, and credit unions exempt from the clearing requirement.

For purposes of section 2(h)(7)(A) of the Act, a person that is a “financial entity” solely because of section 2(h)(7)(C)(i)(VIII) shall be exempt from the definition of “financial entity” and is eligible to elect the exception to the clearing requirement under § 50.50, if such person:

(a) Is organized as a bank, as defined in section 3(a) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings association, as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a farm credit system institution chartered under the Farm Credit Act of 1971; or an insured Federal credit union or State-chartered credit union under the Federal Credit Union Act; and

(b) Has total assets of \$10,000,000,000 or less on the last day of such person's most recent fiscal year;

(c) Reports, or causes to be reported, the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports, or causes to be reported, all information as provided in paragraph (b) of § 50.50 to a swap data repository; and

(d) Is using the swap to hedge or mitigate commercial risk as provided in paragraph (c) of § 50.50.

[85 FR 76448, Nov. 30, 2020]

Subpart D—Swaps Not Subject to the Clearing Requirement

SOURCE: 85 FR 76448, Nov. 30, 2020, unless otherwise noted.

§ 50.75 Swaps entered into by central banks or sovereign entities.

Swaps entered into by a central bank or sovereign entity shall be exempt from the clearing requirement of section 2(h)(1)(A) of the Act.

(a) For the purposes of this section, the term *central bank* means a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve

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System or any of the Federal Reserve Banks) or the Bank for International Settlements.

(b) For the purposes of this section, the term *sovereign entity* means a central government (including the U.S. Government), or an agency, department, or ministry of a central government.

§ 50.76 Swaps entered into by international financial institutions.

(a) Swaps entered into by an international financial institution shall be exempt from the clearing requirement of section 2(h)(1)(A) of the Act.

(b) For purposes of this section, the term *international financial institution* means:

- (1) African Development Bank;
- (2) African Development Fund;
- (3) Asian Development Bank;
- (4) Banco Centroamericano de Integración Económica;
- (5) Bank for Economic Cooperation and Development in the Middle East and North Africa;
- (6) Caribbean Development Bank;
- (7) Corporación Andina de Fomento;
- (8) Council of Europe Development Bank;
- (9) European Bank for Reconstruction and Development;
- (10) European Investment Bank;
- (11) European Investment Fund;
- (12) European Stability Mechanism;
- (13) Inter-American Development Bank;
- (14) Inter-American Investment Corporation;
- (15) International Bank for Reconstruction and Development;
- (16) International Development Association;
- (17) International Finance Corporation;
- (18) International Monetary Fund;
- (19) Islamic Development Bank;
- (20) Multilateral Investment Guarantee Agency;
- (21) Nordic Investment Bank;
- (22) North American Development Bank; and
- (23) Any other entity that provides financing for national or regional development in which the U.S. Government is a shareholder or contributing member.

§ 50.77 Interest rate swaps entered into by community development financial institutions.

(a) For the purposes of this section, the term *community development financial institution* means an entity that satisfies the definition in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994, and is certified by the U.S. Department of the Treasury's Community Development Financial Institution Fund as meeting the requirements set forth in 12 CFR 1805.201(b).

(b) A swap entered into by a community development financial institution shall not be subject to the clearing requirement of section 2(h)(1)(A) of the Act and this part if:

- (1) The swap is a U.S. dollar denominated interest rate swap in the fixed-to-floating class or the forward rate agreement class of swaps that would otherwise be subject to the clearing requirement under § 50.4(a);
- (2) The total aggregate notional value of all swaps entered into by the community development financial institution during the 365 calendar days prior to the day of execution of the swap is less than or equal to \$200,000,000;
- (3) The swap is one of ten or fewer swap transactions that the community development financial institution enters into within a period of 365 calendar days;
- (4) One of the counterparties to the swap reports the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports all information as provided in paragraph (b) of § 50.50 to a swap data repository; and
- (5) The swap is used to hedge or mitigate commercial risk as provided in paragraph (c) of § 50.50.

§ 50.78 Swaps entered into by bank holding companies.

(a) For purposes of this section, the term *bank holding company* means an entity that is organized as a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956.

(b) A swap entered into by a bank holding company shall not be subject to the clearing requirement of section 2(h)(1)(A) of the Act and this part if:

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(1) The bank holding company has aggregated assets, including the assets of all of its subsidiaries, that do not exceed \$10,000,000,000 according to the value of assets of each subsidiary on the last day of each subsidiary's most recent fiscal year;

(2) One of the counterparties to the swap reports the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports all information as provided in paragraph (b) of § 50.50 to a swap data repository; and

(3) The swap is used to hedge or mitigate commercial risk as provided in paragraph (c) of § 50.50.

§ 50.79 Swaps entered into by savings and loan holding companies.

(a) For purposes of this section, the term *savings and loan holding company* means an entity that is organized as a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act of 1933.

(b) A swap entered into by a savings and loan holding company shall not be subject to the clearing requirement of section 2(h)(1)(A) of the Act and this part if:

(1) The savings and loan holding company has aggregated assets, including the assets of all of its subsidiaries, that do not exceed \$10,000,000,000 according to the value of assets of each subsidiary on the last day of each subsidiary's most recent fiscal year;

(2) One of the counterparties to the swap reports the swap to a swap data repository pursuant to §§ 45.3 and 45.4 of this chapter, and reports all information as provided in paragraph (b) of § 50.50 to a swap data repository; and

(3) The swap is used to hedge or mitigate commercial risk as provided in paragraph (c) of § 50.50.

PART 75—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

Subpart A—Authority and Definitions

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75.16 Ownership of interests in and sponsorship of issuers of certain collateralized debt obligations backed by trust-preferred securities.

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75.20 Program for compliance; reporting.

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APPENDIX A TO PART 75—REPORTING AND RECORDKEEPING REQUIREMENTS FOR COVERED TRADING ACTIVITIES

AUTHORITY: 12 U.S.C. 1851.

SOURCE: 79 FR 6048, Jan. 31, 2014, unless otherwise noted.

Subpart A—Authority and Definitions

§ 75.1 Authority, purpose, scope, and relationship to other authorities.

(a) *Authority.* This part is issued by the Commission under section 13 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1851).

(b) *Purpose.* Section 13 of the Bank Holding Company Act establishes prohibitions and restrictions on proprietary trading by, and investments in or relationships with covered funds by,