

Dodd-Frank Act v. EMIR  
Business conduct rules  
October 2012

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# Contents

Introduction and overview	3
Application and scope	5
Internal business conduct rules	7
External business conduct rules	14
Glossary	19

# Introduction

The Dodd-Frank Act will impose certain business conduct standards on swap dealers (SDs) and major swap participants (MSPs). EMIR only imposes limited business conduct standards, but there are corresponding provisions in other EU legislation.

This paper summarises and compares:

- **CFTC rules:** the final rules adopted by the U.S. Commodity Futures Trading Commission (CFTC) amending the regulations under the Commodity Exchange Act (CEA):
  - **Internal business conduct rules:** in April 2012, adding provisions on conflicts of interest, chief compliance officers, reporting, recordkeeping, and daily trading records requirements and duties of SDs and MSPs (17 CFR §1.71, §3.3, §23.600 through §23.206 and §23.607 through §23.206);
  - **External business conduct rules:** in February 2012, adding provisions on business conduct standards for SDs and MSPs dealing with counterparties, including special entities (17 CFR §23.400 through §23.451).
- **EU rules:** the corresponding provisions of the EU Markets in Financial Instruments Directive (MiFID) and the implementing directive and regulation adopted by the European Commission under MiFID (and where relevant changes contemplated by the proposed directive and regulation replacing MiFID), as well as relevant provisions of the EU Regulation on OTC derivatives, central counterparties and trade repositories (EMIR).

See our joint paper “*Dodd-Frank Act v EMIR: Confirmation, reconciliation, compression and documentation rules*” (October 2012) for a comparison of other rules of conduct under the DFA and EMIR.

*This paper is not intended to be comprehensive or to provide legal advice.*

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# There are many similarities in the requirements, but some notable differences including:

- **Scope – parties:** The EU rules under MiFID apply to EU investment firms and credit institutions authorised under MiFID. They only have limited application to non-EU entities when acting through branches in the EU and do not apply to non-financial counterparties over the clearing threshold under EMIR. In contrast, the CFTC rules apply to all SDs and (in many cases) to MSPs, including those that are non-U.S. entities if registered with the CFTC.
- **Scope – transactions:** The EU rules under MiFID apply more broadly to EU authorised firms when performing all investment services and activities covered by MiFID, not just OTC derivatives business. The CFTC rules discussed here apply to SDs and MSPs when entering into or offering to enter into swaps as defined in the DFA.
- **Level of prescription:** While in most cases there are EU rules under MiFID broadly corresponding to the requirements of the CFTC rules, the CFTC rules are generally more prescriptive and impose detailed requirements that may involve significant investment to ensure compliance. Examples include:
  - The specific requirement in the CFTC rules to create informational barriers between business trading units and clearing units.
  - The CFTC's much more detailed record keeping requirements, including requirements for timed data
  - The CFTC's more detailed rules as to the form of a firm's risk management program, supervisory system and business continuity plan.
- **No specific equivalent rules:** There are some CFTC rules where there is no specific equivalent requirement under MiFID or EMIR, such as:
  - The CFTC rules relating to real-time reporting and position limits: these requirements will be introduced through MiFID2/MiFIR
  - The CFTC rules prohibiting unreasonable restraints of trade and anticompetitive burdens; although the general EU competition law would apply to authorised firms
  - The more extensive CFTC requirements on disclosure to counterparties, including the requirement to offer counterparties a scenario analysis, to provide a daily mark and to inform the counterparty of its sole right to select the clearing organisation and (for non-mandatorily clearable swaps) to elect for clearing
  - The specific rules for SDs or MSPs transacting business with special entities (governmental entities and employee benefit plans): under MiFID these entities benefit from the same protections as other professional clients or eligible counterparties depending on their categorisation.

## Notes:

- Member States have transposed MiFID and the MiFID implementing directive into national law and accordingly the requirements may differ across the EU. In some cases, Member States may impose additional obligations.
- Comments on MiFID2 and MiFIR are based on the Council Presidency compromise text of 28 September 2012, which is subject to change in the legislative process

# Application and scope

# Application and scope

	U.S.: CFTC rules	EU: MiFID	Comment
Effective date	October 12, 2012 (the effective date of the swap definition rule in the Federal Register) but will only apply to SDs registered under the CEA and SDs need not register before December 31, 2012. MSPs need not register before February 28, 2013.	Member States were required to transpose the requirements of MiFID into national law by November 1, 2007.  The proposed directive and regulation replacing MiFID (MiFID2/MIFIR) are unlikely to be implemented before 2015.	
Scope – parties	The relevant CFTC rules apply to SDs and, with some exceptions, MSPs, including non-U.S. entities that are required to register as SDs or MSPs under the CEA.  However, the proposed CFTC guidance grants some relief to non-U.S. SDs.  Certain of the internal business conduct rules apply to futures commission merchants (FCMs) and introducing brokers.	The corresponding rules under MiFID apply to EU investment firms and credit institutions authorised in accordance with MiFID (authorised firms).  Member States should also apply the rules to branches in the EU of non-EU firms that perform investment services or activities covered by MiFID, but may not be required to apply all these rules to non-EU branches of authorised firms at least where not dealing with clients in the EU.  MiFID2 would remove certain exemptions currently relied on by some commodity firms and would address the treatment of EU branches of non-EU firms (but would leave the treatment of non-EU firms conducting cross-border business with EU non-retail clients/counterparties to national law).	The definition of authorised firms under MiFID includes firms that deal for own account or execute orders in derivatives as defined for the purposes of EMIR (subject to certain exemptions).  The MiFID rules would not apply to non-financial counterparties over the clearing threshold defined in EMIR (the category broadly corresponding to the category of MSPs under the DFA).  The European Parliament text for MiFID2 proposes restrictions on non-EU firms conducting cross-border business with EU non-retail clients and counterparties.
Scope – transactions	The relevant CFTC rules apply to SDs and MSPs when entering into or offering to enter into swaps as defined in the DFA.  FX swaps and forwards will be exempt if the proposed Treasury exemption goes into effect.	MiFID applies to authorised firms when performing investment services or activities covered by MiFID, including where appropriate certain ancillary activities. This includes dealing for own account and executing orders in derivatives as defined for the purposes of EMIR but also other activities, including certain foreign exchange services.	

# Internal business conduct rules

# Conflicts of interest

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Conflicts of interest</b>	<p>FCMs must not permit any affiliated SD/MSP to directly or indirectly interfere with, or attempt to influence, the decision of the FCM's clearing unit personnel to provide clearing services and activities to a particular customer (including the choice of DCO, fees, collateral, etc.).</p> <p>FCMs must create and maintain an appropriate informational partition between business trading units of an affiliated SD/MSP and clearing unit personnel of the FCM to reasonably ensure compliance with the CEA and the above rule (including restrictions on trading units affecting decisions on or tying of execution and clearing services).</p> <p>FCMs and introducing brokers must adopt and implement written policies and procedures that mandate the disclosure to its customers of any material incentives and any material conflicts of interest regarding the decision of a customer as to the trade execution and/or clearing of the derivatives transaction.</p> <p>SDs/MSPs are subject to corresponding duties not to interfere and to maintain informational partitions and disclose material incentives/conflicts.</p> <p>17 CFR §1.71 and §23.605.</p>	<p>No specific equivalent requirement under MiFID.</p> <p>However, MiFID requires authorised firms to take steps to identify conflicts of interest between themselves (or their affiliates) and their clients or between one client or another and to maintain and operate effective organisational and administrative arrangements with a view to preventing those conflicts adversely affecting clients' interests. Where those measures are insufficient to prevent risks of damage to client interests, the firm must clearly disclose the conflict to the client before undertaking business on its behalf.</p> <p>The MiFID implementing directive defines relevant conflicts and requires authorised firms to implement and maintain an effective conflicts of interest policy including provisions ensuring the independent conduct of different business activities involving a conflict of interest.</p> <p>It also prohibits authorised firms receiving or paying fees or commissions or non-monetary benefits otherwise than by/to the client, subject to exceptions for fees, commissions or benefits designed to enhance the service if they do not impair the firm's obligation to act in accordance with the client's best interests (and subject to disclosure) or proper fees enabling or necessary for the service to the client.</p> <p>Articles 13(2) and 18 MiFID and Articles 21 to 23 and 26 MiFID implementing directive.</p>	<p>EMSA's draft regulatory technical standards under EMIR would require a clearing member facilitating indirect clearing arrangements by a client to maintain Chinese walls preventing the use for commercial purposes of information about the client's underlying clients.</p>



# Research and compliance officer

	U.S.: CFTC rules	EU: MiFID	Comment
Research	FCMs, introducing brokers, SDs and MSPs are subject to specific rules in respect of research relating to derivatives to address conflicts of interest, including rules on segregation of activities, research analyst communications, control over compensation of analysts, promises of favourable research and research disclosure requirements (subject to some exceptions for small introducing brokers). 17 CFR §1.71 and §23.605.	Authorised firms are subject to specific organisational rules in respect of research relating to financial instruments to address conflicts of interest, including rules on personal transactions inducements, promises of favourable research and prior review of research by non-research personnel (Article 25 MiFID implementing directive). In addition, an implementing directive under the EU Market Abuse Directive (MAD) imposes requirements with respect to the fair presentation of investment recommendations relating to financial instruments, including derivatives, admitted to trading on EU regulated markets (including disclosure requirements).	The proposals to replace MAD with a new EU regulation on market abuse would extend the scope of the fair presentation requirements to financial instruments, including derivatives, traded on multilateral trading facilities and organised trading facilities.
Chief compliance officer	FCMs, SDs and MSPs must appoint a chief compliance officer reporting to its board/senior officer, who must among other things submit an annual report to the CFTC on the firm's policies and procedures and compliance with the CEA and CFTC regulations (after review by the board/senior officer). 17 CFR §3.3.	Authorised firms are required to maintain a permanent and effective compliance function that operates independently. The rules include requirements to ensure that the compliance function has the necessary authority, resources, expertise and access to information, to appoint a compliance officer responsible for the compliance function and internal reporting on it and to ensure at least annual internal reports to senior management and the supervisory function on specified compliance matters. Articles 6 and 9 MiFID implementing directive.	MiFID does not require an annual report to regulators on compliance matters.

# Records and reporting

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Required records</b>	SDs/MSPs must keep full, complete and systematic records of swaps activities (including transaction records, position records, records of transactions executed on SEF or cleared through a DCO), related business activities (minutes, organisation charts, senior executive bios, job descriptions, plans, financial records, complaints, marketing and sales material) and mandatory reported data. 17 CFR §23.201.	No specific equivalent requirement under MiFID.  General requirement in MiFID for authorised firms to keep records to enable competent authority to monitor compliance with MiFID requirements (Article 13(6)).  EMIR requires counterparties (not defined) to keep records of all derivative contracts and any modifications (Article 9(2)).	
<b>Daily trading records</b>	SDs/MSPs must keep daily trading records allowing accurate trade reconstruction (identifiable and searchable by counterparty/transaction) plus: <ul style="list-style-type: none"> <li>▪ Pre-execution information: including records of oral/written communications and timed data as to quotes;</li> <li>▪ Execution information: including terms, trade tickets, timed execution data, unique swap counterparty and product identifiers, swap documentation titles and dates, price and expense data;</li> <li>▪ Post-execution information: including data on post trade processing and events (e.g. timed confirmations, termination, novation, clearing, valuation, reconciliation, compression, etc.);</li> <li>▪ Ledgers: recording daily calculations of valuations, potential future exposure, collateral, etc.</li> </ul> <p>Similar rules apply to related cash/forward transactions. 17 CFR §23.202.</p>	See above.	The CFTC rules allow the CFTC to establish an alternative compliance schedule for these requirements where implementation is technologically or economically impractical (17 CFR § 23.206).

## Records and reporting (2)

	U.S.: CFTC rules	EU: MiFID	Comment
Record retention	Records must be kept at principal place of business (if outside the US must be available in US within 72 hours). Retention period 5 years (readily accessible for life of transaction and next 2 years) or 1 year for recordings of oral communications. 17 CFR §23.203 (and see §23.606 for disclosure of information to CFTC and other regulators).	MiFID and EMIR require records to be kept for at least 5 years (and records of contractual terms for at least the duration of the relationship/ transaction). Member State discretion on rules for records of telephone calls/electronic communications. Article 51 MiFID implementing directive; Article 9(2) EMIR.	UK FSA has rules on records of telephone calls/electronic communications.
Reporting	SDs/MSPs must comply with the requirement to report specified information to swap data repositories and the real time public reporting requirement under the DFA. 17 CFR §§23.204 and 205.	EMIR imposes an obligation to report to trade repositories (Article 9).  Currently, there is no equivalent requirement for real time public reporting of OTC derivative transactions, but one is contemplated under MiFIR.	

# Other duties

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Risk management program</b>	<p>SDs/MSPs must establish a risk management program for swaps activities, with written risk management procedures (approved by governing body of the SD/MSP) and must establish a risk management unit.</p> <p>The program must include identification of risks and risk tolerance limits; quarterly internal risk exposure reports (also must be provided to CFTC), new product policy; policies to monitor and manage market, credit, liquidity, legal, operational and settlement risk, use of CCPs; compliance with margin and capital requirements; and policies to monitor compliance with the risk management program.</p> <p>They must also have trading policies approved by governing body (including procedures for intra-day monitoring of trading limits). Program must be reviewed/tested at least annually and policies/procedures distributed to relevant personnel. Copies of required written approvals to be kept in accordance with record keeping requirements.</p> <p>17 CFR §23.600.</p>	<p>No specific equivalent requirement under MiFID.</p> <p>The MiFID implementing directive requires authorised firms to establish, implement and maintain adequate risk management policies and procedures, to monitor their effectiveness and level of compliance and to establish (where appropriate and proportionate) an independent risk management function (Article 7). In addition, it requires authorised firms to establish (where appropriate and proportionate) an independent internal audit function (Article 8).</p>	
<b>Monitoring of position limits</b>	<p>SDs/MSPs must establish policies to ensure compliance with the position limits established by the CFTC. 17 CFR §23.601</p>	<p>Currently, there is no equivalent requirement to observe position limits, but one is contemplated under MiFIR.</p>	

## Other duties (2)

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Supervisory system</b>	SDs/MSPs must establish a system for supervision of all activities relating to its business designed to achieve compliance the CEA and CFTC regulations, including designation of one person as responsible for swaps business. 17 CFR §23.602.	No specific equivalent requirement under MiFID  The MiFID implementing directive requires authorised firms to establish, implement and maintain adequate policies and procedures to detect and minimise risk of failure to comply with MiFID (Article 6(1)) and must allocate responsibility for ensuring compliance to senior management and where appropriate the supervisory function (Article 9(1)).	
<b>Business continuity</b>	SDs/MSPs must establish and maintain business continuity and disaster recovery plans (and specifies the components of that plan and procedures for its testing and maintenance). There are requirements to notify the CFTC of disruptions and to provide emergency contacts. Plans to be tested annually by an independent internal or external party. 17 CFR §23.603	Authorised firms are required to establish, implement and maintain an adequate business continuity policy aimed at ensuring the preservation of essential data and functions and maintenance of investment services and activities (or where not possible timely recovery). Article 5(3) MiFID implementing directive.	
<b>Antitrust</b>	SDs/MSPs must not take action that results in an unreasonable restraint of trade or impose any material anticompetitive burden on trading or clearing (unless necessary or appropriate for the purposes of the CEA). 17 CFR §23.607.	No specific equivalent requirement under MiFID.  Authorised firms are subject to general requirements of EU and national competition law.	

# External business conduct rules

# General

	U.S.: CFTC rules	EU: MiFID	Comment
<b>General compliance</b>	SDs/MSPs must implement policies and procedures to ensure compliance and prevent evasion or participation in or facilitation of evasion of CEA or CFTC regulations. 17 CFR §23.402(a).	No specific equivalent requirement under MiFID.  The MiFID implementing directive requires authorised firms to establish, implement and maintain adequate policies and procedures to detect and minimise risk of failure to comply with MiFID (Article 6(1)).	EMIR does not contain a general anti-evasion rule (other than in relation to transactions between two non-EU counterparties – Articles 4(1)(a)(v) and 11(12)).
<b>Know your counterparty</b>	SDs must implement policies and procedures to obtain and keep a record of essential facts about their counterparties (before engaging in transaction). Rules allow reasonable reliance on representations for these purposes. 17 CFR §23.402(b).  SDs/MSPs must also verify counterparty's status as an eligible contract participant or special entity (defined to cover certain governmental entities, endowments and employee benefit plans). Rules allow reliance on representations for this purpose. 17 CFR §23.430.	The MiFID implementing directive imposes duties on authorised firms to classify clients as retail, professional or eligible counterparties (which requires information about the client) and to obtain information about the client in the context of the suitability and appropriateness obligations to retail and professional clients (Articles 28 and 35). Authorised firms are also subject to duties to obtain information about clients under anti-money laundering rules.	
<b>Fraud, manipulation and abusive practices</b>	SDs/MSPs must not engage in devices, schemes, artifices to defraud a special entity or engage in transactions, etc. that operate as a fraud or deceit on special entity.  SDs/MSPs must not engage in acts, etc. that are fraudulent, deceptive or manipulative.  17 CFR §23.410(a) and (b).	No special provisions relating to governmental entities or employee benefit plans. If treated as eligible counterparties, authorised firms are subject to general obligations relating to conflicts of interest (see above). If treated as retail or professional clients, authorised firms will also be subject to other client protection duties, including the duty to act honestly, fairly and professionally in accordance with the best interests of its clients (Article 19(1) MiFID).	The rules against insider dealing and market manipulation in the MAD have a limited application to OTC derivatives unless the derivatives' value depends on a financial instrument admitted to trading on a regulated market. There are proposals to replace MAD with an EU regulation having a somewhat broader application to OTC derivatives.

# Confidentiality and disclosures

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Confidentiality</b>	SDs/MSPs must not disclose to any other person or use for its own purposes (in a way material adverse to counterparty) material confidential information provided by counterparties, except with written consent, or where necessary for swap execution, hedging of swap related risks or compliance with regulators' request, and must implement policies and procedures reasonably designed to protect that information. 17 CFR §23.410(c).	No specific equivalent obligation under MiFID but see above relating to general duties to clients.  Some Member States have specific rules on client confidentiality and additional requirements may arise under data protection laws.	
<b>Disclosures of material information</b>	SDs/MSPs must give advance disclosure to counterparties of: the material risks of the transaction; the material characteristics of the particular swap; and material incentives/conflicts of interest (including price and mid-market price).  For counterparties other than SDs/MSPs, SDs/MSPs must also: <ul style="list-style-type: none"> <li>▪ notify the counterparty that it can request and help design a scenario analysis to assess its potential exposure;</li> <li>▪ for cleared swaps notify the counterparty that it can receive the daily mark from the DCO; and</li> <li>▪ for uncleared swaps, provide the counterparty with a daily mark at mid-market (and disclose the methodology and assumptions).</li> </ul> There are some exemptions for transactions available for trading or initiated on a DCM or SEF or traded anonymously. 17 CFR §23.431.	Authorised firms are required to give professional and retail clients (but not eligible counterparties) a general description of the nature and risks of financial instruments, taking into account their categorisation, in sufficient detail to enable the client to make an informed investment decision (Member States may specify further information required). Article 19(3) MiFID and Article 31 MiFID implementing directive.  Authorised firms generally may not receive fees, commissions or non-monetary benefits in relation to a service except where they are designed to enhance the quality of the service, do not impair the firm's obligation to act in accordance with the client's best interests and are disclosed to the client. Article 26 MiFID implementing directive.	



# Disclosures and recommendations

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Clearing disclosures</b>	SDs/MSPs must notify counterparties (other than SDs/MSPs) on mandatorily cleared swaps, of the counterparty's sole right to select the DCO for clearing and in other transactions of the counterparty's right to elect to require clearing and counterparty's sole right to select the clearing organisation. 17 CFR §23.432.	No specific equivalent requirement under MiFID or EMIR.	
<b>Communications: fair dealing</b>	SDs/MSPs shall communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. 17 CFR §23.433.	Information provided by authorised firms to clients or prospective clients (retail or professional) shall be fair, clear and not misleading and marketing communications shall be clearly identifiable as such. Article 19(2) MiFID.  No specific equivalent obligation for communications to eligible counterparties but there are proposals in MiFID2 to change this.	
<b>Recommendations: suitability</b>	SDs recommending swaps or swap trading strategies to counterparties (other than SDs/MSPs) must undertake reasonable diligence and have a reasonable basis for belief as to the suitability, of the transaction for the counterparty. There is an exception where counterparty or its agent is capable of independently evaluating risks and the parties make appropriate representations to each other as to their roles and responsibilities (additional rules apply where the counterparty is a special entity). 17 CFR §23.434.	MiFID imposes a general requirement where an authorised firm provides investment advice (i.e. personal recommendations with respect to transactions) to ensure the suitability of the advice, which requires the firm to obtain information from the client. Where the firm is not providing investment advice, there is a duty to obtain information from the client to assess the appropriateness of the service or product (but this duty is limited in relation to professional clients). Article 19(4) and (5) MiFID and Articles 35 to 37 MiFID implementing directive. In any event, an authorised firm must act honestly, fairly and professionally in accordance with the best interests of its clients (Article 19(1) MiFID).	

# Special entities

	U.S.: CFTC rules	EU: MiFID	Comment
<b>Advice to special entities</b>	SDs that recommend swaps or trading strategies to special entities involving a swap tailored to the particular needs or characteristics of the special entity are to additional duties is subject to make a reasonable determination that the transaction is in the best interests of the counterparty. SD may reasonably rely on written representations of the special entity. There is a safe harbour where the special entity is advised by a fiduciary and certain conditions are met. 17 CFR §23.440.	See above. There are no specific additional requirements under MiFID when giving advice to governmental entities or employee benefit plans.	
<b>Special entities as counterparties</b>	SDs/MSPs transacting with special entities (other than ERISA plans) must have a reasonable basis for belief that the counterparty is represented by a representative able to evaluate the transaction and meeting certain other requirements. SD may reasonably rely on written representations of the special entity. 17 CFR §23.450.	See above. There are no specific additional requirements under MiFID when entering into transactions with governmental entities or employee benefit plans.	
<b>Political contributions</b>	SDs shall not offer to enter into or enter into swaps with a governmental special entity within 2 years after any contribution to an official of such special entity by the SD or any covered associate (subject to certain exceptions). 17 CFR §23.451.	No specific equivalent requirement under MiFID. However, see above in relation to the general rule against the payment of fees or commissions or non-monetary benefits.	

# Glossary

# U.S. glossary

- **CEA:** U.S. Commodity Exchange Act
- **CFTC:** U.S. Commodity Futures Trading Commission
- **DCM:** designated contract market under the CEA
- **DCO:** derivatives clearing organisation under the CEA
- **DFA:** U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act
- **End user:** this term is not expressly defined under the CEA, but based on Section 2(h)(7) of the CEA would be an entity that is not a financial entity and is using swaps to hedge or mitigate commercial risk.
- **Exempt FX instruments:** foreign exchange forwards and foreign exchange swaps (under the proposed U.S. Treasury exemption for FX transactions)
- **Financial entity:** defined by the DFA to include SDs, MSPs, commodity pools, private funds (as defined in the Investment Advisers Act of 1940), employee benefit plans and persons predominantly engaged in activities that are in the business of banking or in activities that are financial in nature, but excludes certain captive finance affiliates
- **Foreign exchange forward:** a transaction that solely involves the exchange of two different currencies on a specific future date at a fixed rate agreed upon at the inception of the contract
- **Foreign exchange swap:** a transaction that solely involves an exchange of two different currencies and a reverse exchange at a later date, at a fixed rate that is agreed upon at the inception of the contract
- **FCM:** futures commission merchant under the CEA
- **MSP:** major swap participant as defined under the DFA, which covers a person, other than an SD, that maintains a substantial position in swaps (excluding positions held for hedging or mitigating commercial risk), has substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets, or is highly leveraged relative to the amount of capital it holds
- **SD:** swap dealer as defined under the DFA
- **SEC:** U.S. Securities Exchange Commission
- **SEF:** swap execution facility under the CEA
- **Special entity:** as defined in the CFTC rules to cover certain governmental entities, endowments and employee benefit plans
- **Swap:** the DFA defines a swap broadly to include interest rate, equity, currency, fixed income, commodity, agricultural, energy and broad-based security index swaps, forwards and options, and total return swaps referencing broad-based security indices

# EU glossary

- **Authorised firm:** an EU investment firm or credit institution authorised to perform investment services or activities in accordance with MiFID
- **CCP:** central counterparty
- **Clearing threshold:** the threshold size of derivatives positions specified for the purposes of determining whether a non-financial counterparty is subject to the clearing requirement under EMIR
- **Commission:** the European Commission
- **Derivative:** as defined in EMIR, i.e. a financial instrument as set out in points (4) to (10) Section C, Annex 1, MiFID, as implemented by the MiFID implementing regulation
- **EMIR:** the EU regulation on OTC derivatives, central counterparties and trade repositories
- **ESMA:** European Securities and Markets Authority
- **EU:** European Union
- **FC:** financial counterparty as defined in EMIR, i.e. an investment firm, credit institution, insurance/reinsurance undertaking, UCITS, pension scheme and alternative investment fund managed by an alternative investment manager, in each case where authorised or registered in accordance with the relevant EU directive
- **FX:** foreign exchange
- **Level 2 measure:** delegated or implementing act (including RTS) adopted by the Commission under powers conferred by an EU regulation or directive
- **MAD:** the EU Market Abuse Directive
- **Member State:** member state of the EU
- **MiFID:** the EU Markets in Financial Instruments Directive
- **MiFID implementing directive and regulation:** the directive and regulation adopted by the Commission to implement certain provisions of MiFID
- **MiFID2 and MiFIR:** the proposed EU directive and regulation intended to replace MiFID
- **NFC:** non-financial counterparty as defined in EMIR, i.e. an undertaking established in the EU which is not a financial counterparty
- **NFC+:** a non-financial counterparty whose positions in OTC derivatives (excluding positions reducing risks directly relating to commercial or treasury financing activity) exceed the clearing threshold
- **OTC derivative:** over-the-counter derivative as defined in EMIR, i.e. a derivative executed outside a regulated market (as defined in MiFID) or equivalent non-EU market
- **RTS:** regulatory technical standards proposed by an ESA and adopted by the Commission under powers conferred by an EU regulation or directive

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