

**INSTITUTE OF INTERNATIONAL BANKERS:  
PROPOSED FRAMEWORK FOR SWAP DEALER REGISTRATION AND REGULATION**

In order to assist the agencies in structuring their swap dealer registration and regulatory frameworks for foreign banks, and to ensure that the agencies’ frameworks do not give rise to market disruption by failing to accommodate the structuring alternatives that must be available to foreign firms, we have summarized below a registration and regulatory framework that we believe appropriately applies sound principles of home/host country regulation in the context of Title VII of the Dodd Frank Act.<sup>1</sup>

The paradigms outlined in this matrix represent the principal (although not the only) structuring paradigms that foreign firms employ to structure their cross-border swap and security-based swap (hereinafter, “swap”) business with U.S.-domiciled counterparties. Individual banks often use different structural paradigms for swaps involving different asset categories, and individual variations on these pure paradigms are not uncommon. No single paradigm would suffice to meet the needs and circumstances of all foreign banks and we do not believe that it is necessary or desirable to impose any single paradigm on foreign banks—whether the bank is ultimately U.S. owned or non-U.S. owned. This matrix illustrates how supervision and oversight of swap dealers can be established under each of the paradigms in a manner that is compliant with the provisions and objectives of Title VII.

We also note that, as an integral part of this framework, it is critical that the relevant U.S. and home country regulators agree upon an appropriate framework for examination, direct supervisory responsibility and access to information that is consistent with the allocation of applicable host/home country law.

	<b>Direct Contacts by Foreign Bank Personnel</b>	<b>U.S. Branch Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. FCM/Broker-Dealer Affiliate Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. Swap Dealer Affiliate Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. Affiliate Deals in Swaps as Principal</b>
<b>Facts</b>	Employees of the foreign bank resident outside the U.S. contact U.S. persons to deal in swaps that the foreign bank enters into as principal. Certain market risks, such as risks relating to swaps involving U.S. underliers, may be risk managed on an agency basis (subject to specified parameters) by personnel of an affiliate or branch located in the U.S., or certain market risks may be hedged through inter-branch	Employees of a U.S. branch, acting as agent for the foreign bank principal, solicit, negotiate and commit to swaps that are booked to the foreign bank. Certain market risks, such as risks relating to swaps involving U.S. underliers, may be risk managed on an agency basis (subject to specified parameters) by personnel of an affiliate or branch located in the U.S., or certain market risks may be	Employees of a U.S. futures commission merchant (“FCM”)/broker-dealer affiliate, acting as agent for the foreign bank principal, solicit, negotiate and commit to swaps that are booked to the foreign bank. Certain market risks, such as risks relating to swaps involving U.S. underliers, may be risk managed on an agency basis (subject to specified parameters) by personnel of an affiliate or	Employees of a U.S. swap dealer affiliate, acting as agent for the foreign bank principal, solicit, negotiate and commit to swaps that are booked to the foreign bank. Certain market risks, such as risks relating to swaps involving U.S. underliers, may be risk managed on an agency basis (subject to specified parameters) by personnel of an affiliate or branch located in the U.S., or certain market risks may	Personnel employed by a U.S. affiliate contact U.S. persons to deal in swaps for the account of the U.S. affiliate. Some or all of the risk arising from this swap activity might be backed-to-back to the foreign bank.

<sup>1</sup> While this framework is, for convenience, described with reference to a foreign bank, the same framework would also apply to a foreign, non-bank financial institution, except that the Commodity Futures Trading Commission (“CFTC”) and the Securities and the Exchange Commission (the “SEC” and, together with the CFTC, the “Commissions”), rather than the Board of Governors of the Federal Reserve System (the “FRB”), would be responsible for capital and margin requirements.

	<b>Direct Contacts by Foreign Bank Personnel</b>	<b>U.S. Branch Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. FCM/Broker-Dealer Affiliate Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. Swap Dealer Affiliate Personnel, on an Agency Basis, Solicit, Negotiate and Commit to Swaps that are “Booked” to the Foreign Bank</b>	<b>U.S. Affiliate Deals in Swaps as Principal</b>
	or inter-affiliate swaps.	hedged through inter-branch or inter-affiliate swaps.	branch located in the U.S., or certain market risks may be hedged through inter-branch or inter-affiliate swaps.	be hedged through inter-branch or inter-affiliate swaps.	
<b>Registration (Commodity Exchange Act (“CEA”) § 4s(a)(1) / Securities Exchange Act of 1934 (“SEA”) § 15F(a)(1))</b>	The foreign bank would register in the U.S. as a swap dealer, but registration and regulation (other than with respect to entity-wide prudential regulation requirements identified below) would be limited to the U.S.-facing activities of the branch/separately identifiable department or division that is involved in the execution of swaps with U.S. persons. Other branches/divisions would not be subject to U.S. regulation.	The foreign bank would register in the U.S. as a swap dealer, but registration and regulation (other than with respect to entity-wide prudential regulation requirements identified below) would be limited to the U.S. branch activities. Foreign branches would not be subject to U.S. regulation.	The U.S. affiliate, since it is engaged in soliciting and accepting orders for swaps on behalf of the foreign bank, would register as an introducing broker or securities broker (or, if it is registered as an FCM/broker-dealer, otherwise qualify).  The foreign bank would register in the U.S. as a swap dealer, but registration and regulation (other than with respect to entity-wide prudential regulation requirements identified below) would be limited to the U.S.-facing activities.	The U.S. affiliate would register as a swap dealer.  The foreign bank “booking entity” would either register in the U.S. as a swap dealer solely with respect to its role as the contractual counterparty on U.S. customer-facing swaps <u>or</u> , as a condition to not registering, be required to be subject to and comply with home country standards determined by the FRB and the Commissions, as applicable, to be comparable to U.S. capital, risk management, and other prudential requirements (in which case the foreign bank would undertake to notify the FRB and the Commissions of any violations of or material changes to those home country standards, which could constitute a basis for revoking the exception from registration).	The U.S. affiliate would register as a swap dealer.  The foreign bank affiliated with the U.S. swap dealer would not be subject to U.S. regulation, including in cases where:  (a) market risk is hedged back to the foreign bank by the U.S. swap dealer; and/or  (b) the foreign bank guarantees the U.S. swap dealer’s obligations.
<b>Capital (CEA § 4s(e) / SEA § 15F(e))</b>	The FRB would be responsible for the foreign bank’s capital, but would defer to comparable home	The FRB would be responsible for the foreign bank’s capital, but would defer to comparable home	The FRB would be responsible for the foreign bank’s capital, but would defer to comparable home	The U.S. swap dealer affiliate would comply with U.S. capital requirements, as established by the Commissions. Under these	The U.S. swap dealer affiliate would comply with U.S. capital requirements, as established by the Commissions or the relevant

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	<p>country standards.</p> <p>Failure to comply with home country standards would constitute a violation of FRB requirements by the foreign bank.</p>	<p>country standards.</p> <p>Failure to comply with home country standards would constitute a violation of FRB requirements by the foreign bank.</p>	<p>country standards.</p> <p>Failure to comply with home country standards would constitute a violation of FRB requirements by the foreign bank.</p>	<p>requirements, the U.S. swap dealer affiliate would not be required to hold capital against the market and credit risk arising from positions booked in the foreign bank so long as either:</p> <p>(a) the foreign bank counterparty registers as a swap dealer, in which case the FRB would defer to comparable home country standards, and failure to comply with those standards would constitute a violation of FRB rules by the foreign bank; or</p> <p>(b) the U.S. swap dealer affiliate obtains a determination from the FRB that the foreign bank booking entity is subject to comparable home country capital standards and undertakes to notify the FRB and the Commissions of any violations of or material changes to those standards, which could constitute a basis for revoking the exception from registration.</p>	<p>prudential regulator.</p>
<b>Margin (CEA § 4s(e) / SEA § 15F(e))</b>	<p>The FRB would be responsible for the foreign bank’s margin requirements, but would defer to comparable home country standards.</p> <p>Failure to comply with home</p>	<p>The FRB would be responsible for the foreign bank’s margin requirements, but would defer to comparable home country standards.</p> <p>Failure to comply with home</p>	<p>The FRB would be responsible for the foreign bank’s margin requirements, but would defer to comparable home country standards.</p> <p>Failure to comply with home</p>	<p>Foreign banks would agree to comply with U.S. requirements applicable to the affiliate for transactions intermediated by the affiliate.</p>	<p>The U.S. swap dealer affiliate would comply with U.S. margin requirements, as established by the Commissions or the relevant prudential regulator.</p>

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	country standards would constitute a violation of FRB requirements by the foreign bank.	country standards would constitute a violation of FRB requirements by the foreign bank.	country standards would constitute a violation of FRB requirements by the foreign bank.  With respect to the FCM/broker-dealer, Commission rules for FCMs/broker-dealers would apply.		
<b>Financial and Operational Records (CEA § 4s(f)(1) / SEA § 15F(f)(1))<sup>2</sup></b>	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.  With respect to the FCM/broker-dealer, Commission rules for FCMs/broker-dealers would apply.	The U.S. swap dealer affiliate would comply with Commission requirements.  For the limited registration foreign bank swap dealer, if any, the Commissions would defer to comparable home country standards, and failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	The U.S. swap dealer affiliate would comply with Commission requirements.
<b>Risk Management Procedures (including Business Continuity / Disaster Recovery) (CEA § 4s(j)(2) / SEA § 15F(j)(2))</b>	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.	Since these requirements are integrally related to capital adequacy and overall safety and soundness, the Commissions would defer to comparable home country standards.	The U.S. swap dealer affiliate would comply with Commission requirements, but these should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational	The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational

<sup>2</sup> U.S. regulators would, in consultation with home country regulators, establish an allocation for the exercise of examination authority and access to financial, operational, and other supervisory information.

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	Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.  With respect to the FCM/broker-dealer, Commission rules for FCMs/broker-dealers would apply.	structures that comport with home country standards that are comparable in objective to U.S. standards.  For the limited registration foreign bank swap dealer, if any, the Commissions would defer to comparable home country standards, and failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	structures that comport with home country standards that are comparable in objective to U.S. standards.
<b>Conflicts of Interest (including Information Barriers) (CEA § 4s(j)(5) / SEA § 15F(j)(5))</b>	Where comparable (i.e., reasonably designed to achieve the same objectives), the Commissions would defer to home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Where comparable (i.e., reasonably designed to achieve the same objectives), the Commissions would defer to home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	Where comparable (i.e., reasonably designed to achieve the same objectives), the Commissions would defer to home country standards.  Failure to comply with home country standards would constitute a violation of Commission rules by the foreign bank.	The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.	The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.
<b>Position Limits / Monitoring of Trading (CEA §§ 4s(h)(1)(C) and (j)(1) / SEA §§ 15F(h)(1)(C) and (j)(1))</b>	The foreign bank would comply with Commission requirements, but these should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in	The foreign bank would comply with Commission requirements, but these should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in	The foreign bank would comply with Commission requirements, but these should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in	The foreign bank would comply with Commission requirements, but these should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in	The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are

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	objective to U.S. standards.	objective to U.S. standards.	objective to U.S. standards.	objective to U.S. standards.	comparable in objective to U.S. standards.
<b>Diligent Supervision (CEA § 4s(h)(1)(B) / SEA § 15F(h)(1)(B)) / Chief Compliance Officer (CEA § 4s(k) / SEA § 15F(k))</b>	<p>The branch/division that is involved in the execution of swaps with U.S. persons would establish a system for supervision of compliance with applicable U.S. requirements, including designation of supervisory personnel, but requirements should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p> <p>The foreign bank would designate the branch/division involved in the execution of swaps with U.S. persons as responsible for complying with these requirements. Examination for compliance would occur at the branch/division where the relevant customer-facing activity occurs.</p>	<p>The U.S. branch would establish a system for supervision of compliance with applicable U.S. requirements, including designation of supervisory personnel, but requirements should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p> <p>The foreign bank would designate the U.S. branch as responsible for complying with these requirements. Examination for compliance would occur at the U.S. branch where the relevant customer-facing activity occurs.</p>	<p>The foreign bank, in conjunction with the U.S. FCM/Broker-dealer affiliate, would establish an integrated system for supervision of compliance with applicable U.S. requirements, including designation of supervisory personnel at the foreign bank, but requirements should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p>	<p>The U.S. swap dealer affiliate would establish a system for supervision of compliance with applicable U.S. requirements, including designation of supervisory personnel, but requirements should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p>	<p>The U.S. swap dealer affiliate would establish a system for supervision of compliance with applicable U.S. requirements, including designation of supervisory personnel, but requirements should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p>
<b>Business Conduct Standards with Counterparties (CEA §§ 4s(h)(3), (4) and (5) / SEA §§ 15F(h)(3), (4) and (5))</b>	U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons	U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by U.S. branch personnel, and would not apply to transactions	U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons	The U.S. swap dealer affiliate would comply with, and be responsible for, U.S. requirements as though it were	U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by the U.S. swap dealer affiliate.

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	<p>domiciled abroad.</p> <p>The foreign bank would designate the branch/division involved in the execution of swaps with U.S. persons as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the branch/division where the relevant customer-facing activity occurs. No U.S. examination of or enforcement relating to conduct associated with non-U.S. transactions.</p>	<p>executed with non-U.S. persons by foreign bank personnel located outside the U.S.</p> <p>The foreign bank would designate the U.S. branch as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the U.S. branch where the relevant customer-facing activity occurs.</p>	<p>domiciled abroad.</p> <p>The foreign bank would outsource the performance, but <u>not</u> responsibility for due performance, of those requirements to the U.S. FCM/broker-dealer affiliate. Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs.</p> <p>With respect to the FCM/broker-dealer, Commission rules for FCMs/broker-dealers would apply.</p>	<p>the counterparty.</p> <p>Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs.</p>	
<b>Back Office / Documentation Standards (CEA § 4s(i) / SEA § 15F(i))<sup>3</sup></b>	<p>U.S. requirements that apply to particular transactions/ counterparties (e.g., acknowledgement, confirmation, trading relationship documentation) would apply to transactions with U.S. persons, but should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with</p>	<p>U.S. requirements that apply to particular transactions/ counterparties (e.g., acknowledgement, confirmation, trading relationship documentation) would apply to transactions with U.S. persons, but should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with</p>	<p>U.S. requirements that apply to particular transactions/ counterparties (e.g., acknowledgement, confirmation, trading relationship documentation) would apply to transactions with U.S. persons, but should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with</p>	<p>The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p>	<p>The U.S. swap dealer affiliate would comply with Commission requirements, which should be flexible enough to accommodate group-structured systems, policies and procedures and different organizational structures that comport with home country standards that are comparable in objective to U.S. standards.</p>

<sup>3</sup> To the extent that the Commissions adopt portfolio compression requirements pursuant to these provisions, we would regard those requirements, like risk management requirements, as integrally related to capital adequacy and overall safety and soundness. Accordingly, under this framework, the Commissions would defer to comparable home country standards designed to address the same objectives as the Commissions’ portfolio compression requirements, and failure to comply with home country standards would constitute a violation of Commission rules.

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	<p>home country standards that are comparable in objective to U.S. standards.</p> <p>The foreign bank would designate the branch/division involved in the execution of swaps with U.S. persons as responsible for complying with these requirements. Examination for compliance would occur at the branch/division where the relevant customer-facing activity occurs. No U.S. examination of or enforcement relating to conduct associated with non-U.S. transactions.</p>	<p>home country standards that are comparable in objective to U.S. standards.</p> <p>The foreign bank would designate the U.S. branch as responsible for complying with these requirements. Examination for compliance would occur at the U.S. branch where the relevant customer-facing activity occurs.</p>	<p>home country standards that are comparable in objective to U.S. standards.</p> <p>The foreign bank would outsource the performance, but <u>not</u> responsibility for due performance, of those requirements to the U.S. FCM/broker-dealer affiliate. Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs.</p>		
<b>Trading Records (CEA § 4s(g) / SEA § 15F(g))</b>	<p>U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons domiciled abroad.</p> <p>The foreign bank would designate the branch/division involved in the execution of swaps with U.S. persons as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the branch/division where the relevant customer-facing activity occurs. No U.S. examination of</p>	<p>U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by U.S. branch personnel, and would not apply to transactions executed with non-U.S. persons by foreign bank personnel located outside the U.S.</p> <p>The foreign bank would designate the U.S. branch as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the U.S. branch where the relevant</p>	<p>U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons domiciled abroad.</p> <p>The foreign bank would outsource the performance, but <u>not</u> responsibility for due performance, of those requirements to the U.S. FCM/broker-dealer affiliate. Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs. Books and records relevant to compliance with respect to all</p>	<p>The U.S. swap dealer affiliate would comply with, and be responsible for, U.S. requirements as though it were the counterparty.</p> <p>Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs.</p>	<p>U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by the U.S. swap dealer affiliate.</p>



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	or enforcement relating to conduct associated with non-U.S. transactions.	customer-facing activity occurs.	activities conducted by the U.S. affiliate on behalf of the foreign bank swap dealer would be accessible in the U.S.  With respect to the FCM/broker-dealer, Commission rules for FCMs/broker-dealers would apply.		
<b>Segregation Requirements (CEA § 4s(1) / SEA § 3E(f))</b>	U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons domiciled abroad.  The foreign bank would designate the branch/division involved in the execution of swaps with U.S. persons as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the branch/division where the relevant customer-facing activity occurs. No U.S. examination of or enforcement relating to conduct associated with non-U.S. transactions.	U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by U.S. branch personnel, and would not apply to transactions executed with non-U.S. persons by foreign bank personnel located outside the U.S.  The foreign bank would designate the U.S. branch as responsible for complying with such U.S. regulations applicable to its transactions with U.S. persons. Examination for compliance would occur at the U.S. branch where the relevant customer-facing activity occurs.	U.S. requirements would apply directly to transactions with U.S. persons, but would not apply to transactions with persons domiciled abroad.  The foreign bank would outsource the performance, but <u>not</u> responsibility for due performance, of those requirements to the U.S. FCM/broker-dealer affiliate. Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs. <sup>4</sup>	The U.S. swap dealer affiliate would comply with, and be responsible for, U.S. requirements as though it were the counterparty.  Examination for compliance would occur at the U.S. affiliate where the relevant customer-facing activity occurs.	U.S. requirements would apply to all transactions (with U.S. and non-U.S. persons) executed by the U.S. swap dealer affiliate.

<sup>4</sup> As discussed above, books and records relevant to compliance with respect to all activities conducted by the U.S. affiliate on behalf of the foreign bank swap dealer would be accessible in the U.S.