



Cross-Border Phase-In of Title VII of the Dodd-Frank Act

- Commission Regulations § 3.10 will require each person who is a swap dealer or major swap participant to apply for registration no later than the latest effective date of definitional rules under Title VII.
- However, a necessary precondition to determining the legal entities that will conduct the specific activities that will require registration and be subject to regulation under Title VII is knowing the scope of activities that will be subject to regulation under Title VII, and the impact on related arrangements involving guarantees and inter-affiliate hedging transactions, among others.
- Accordingly, we recommend that the Commission adopt the following transitional approach to allow firms to come into compliance with registration and other final Commission rules without prejudice to the different organizational paradigms that firms currently or, after final cross-border guidance, ultimately choose to employ:
 - Registration. U.S.-domiciled and non-U.S.-domiciled firms engaged in swap dealing activities with “U.S. persons” following the registration date (but prior to issuance of final cross-border guidance) would provisionally register, subject to the phase-in described below. “U.S. persons” would, during this transition period, include persons domiciled or located in the United States, and would exclude foreign branches and affiliates of U.S.-domiciled firms.
 - Phase-In.
 - Transaction-Based Rules – Swaps with U.S. Persons. U.S.-domiciled and non-U.S.-domiciled registrants would comply with Title VII transaction-based rules as those rules take effect only with respect to transactions with U.S. persons. “Transaction-based” rules for these purposes would include rules regarding: external business conduct; daily trading records; margin and segregation for non-cleared swaps; mandatory clearing; mandatory trading; reporting; trading relationship and clearing documentation; and portfolio compression, portfolio reconciliation and confirmations.
 - Transaction-Based Rules – Swaps with Non-U.S. Persons. For transactions with non-U.S. persons, U.S.-domiciled and non-U.S.-domiciled registrants would, during the transition period, only be required to comply with such transaction-based rules as may be required by the jurisdiction of the non-U.S. person counterparty until an appropriate period after the finalization of cross-border guidance, at which time they

would comply with Title VII transaction-based rules in the event that doing so is required under that guidance.

- Entity-Based Rules – U.S.-Domiciled Registrants. U.S.-domiciled registrants would comply with Title VII entity-based rules. “Entity-based” rules for these purposes would include rules regarding: capital; risk management, business continuity and other duties; chief compliance officers; internal research and clearing conflicts of interest policies and procedures; and records other than daily trading records.
- Entity-Based Rules – Non-U.S.-Domiciled Registrants. Non-U.S.-domiciled registrants would certify compliance with local prudential entity-based rules (*i.e.*, capital, risk management and business continuity rules) administered by a regulator whose capital regime satisfies Basel (and hence would satisfy U.S. prudential regulator rules as they will be implemented under the Dodd-Frank Act) until an appropriate period after the finalization of cross-border guidance, at which time they would comply with Title VII prudential and non-prudential entity-based rules in the event that doing so is required under that guidance.
- Related Clarifications and Conforming Changes. As corollaries to the above approach, certain related clarifications and conforming changes would be made:
 - *Associated Persons.* Only those individuals who are directly involved in soliciting or accepting swaps with U.S. persons, or directly supervising individuals so involved, would be regarded as “associated persons.”
 - *Principals.* Registration of individuals as “principals” would apply at the level of the U.S. swap dealing business giving rise to registration (*e.g.*, the senior officers of the branch or division of a non-U.S.-domiciled registrant conducting the U.S. swap dealing business would be responsible as principals).
 - *Examinations and Audits.* Commission and NFA examination authority would be co-extensive with the extent to which Title VII requirements apply (*e.g.*, for a non-U.S.-domiciled registrant, the Commission and NFA would examine the location(s) from which the registrant solicits or accepts swaps with U.S. persons).
 - *Registration Transfer.* So that firms can continue to comply with respect to their ongoing business as that business is reorganized to come into compliance with the final cross-border guidance, a registrant’s transfer of registration to another entity would become effective upon filing with the NFA, subject to subsequent NFA review (similar to the Commission’s provisional registration rules).