



## Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

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# Derivatives Clearing Organization Registration Options

	Original Registration Framework	Alternative Compliance Framework (Subpart D)
Clearing Organization, Jurisdiction, and Clearing Activity	<ul style="list-style-type: none"> <li>▪ U.S. DCO</li> <li>▪ Non-U.S. DCO clearing F&amp;O executed on DCM</li> <li>▪ Non-U.S. DCO clearing swaps for U.S. persons, and poses a substantial risk to the U.S. financial system</li> <li>▪ Any non-U.S. DCO that is eligible for subpart D registration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Non-U.S. DCO clearing swaps for U.S. persons, and does not pose a substantial risk to the U.S. financial system</li> </ul>
Registration Requirement	Section 5b(a) of CEA & § 39.3(a)(2)	Section 5b(a) of CEA & § 39.3(a)(3)

# Eligibility

## Alternative Compliance Framework (Subpart D)

- A non-U.S. DCO clearing swaps for U.S. persons is eligible for registration under Subpart D if:
  1. The CFTC determines that a non-U.S. DCO's compliance with its home country regulatory regime constitutes compliance with the DCO Core Principles in section 5b(c)(2) of the CEA;
  2. A DCO is in good regulatory standing in its home country;
  3. A DCO does not pose a substantial risk to the U.S. financial system;  
and
  4. A memorandum of understanding is in effect between CFTC and the DCO's home country regulator.
- CFTC may, in its discretion, grant registration subject to conditions to address core principles less related to risk if DCO's home country regulatory regime lacks legal requirements

# Substantial Risk Test

- The Test: A non-U.S. DCO poses substantial risk to the U.S. financial system if:
  - (1) it holds 20% or more of the required IM of U.S. clearing members for swaps across all registered and exempt DCOs; and
  - (2) 20% or more of the IM requirements for swaps at that DCO is from U.S. clearing members.
  - “U.S. clearing member” means an FCM, a clearing member organized in the U.S., or whose ultimate parent company is organized in the U.S.
- Commission Discretion: Where a DCO is at or near the 20% thresholds.
- Re-assessment:
  - Periodic Commission reassessments of DCOs’ risk profiles; and
  - Grace period for a DCO to change its registration status in the event the Commission determined that its risk profile had changed.

# Non-U.S. DCO Registration Compliance Requirements

	Original Registration Framework	Alternative Compliance Framework (Subpart D)
Regulatory Requirements	<ul style="list-style-type: none"> <li>Part 39 subparts A and B</li> <li>Part 39 subparts A-C (if FSOC designated DCO as SIDCO or DCO elected to be subject to subpart C)</li> </ul>	<ul style="list-style-type: none"> <li>Part 39 subpart D</li> </ul>
	<ul style="list-style-type: none"> <li>CFTC customer protection regime</li> </ul>	<ul style="list-style-type: none"> <li>CFTC customer protection regime</li> </ul>
	<ul style="list-style-type: none"> <li>Part 45 Swap data reporting</li> </ul>	<ul style="list-style-type: none"> <li>Part 45 Swap data reporting</li> </ul>
	<ul style="list-style-type: none"> <li>Part 40 rule filings</li> </ul>	<ul style="list-style-type: none"> <li>Part 40 exemption unless rule changes related to customer protection or swap data reporting</li> </ul>

# U.S. Customer Protection for Swaps

- Same swaps customer protection regime for all DCOs registered pursuant to original registration or alternative compliance frameworks
  - Section 4d(f)(1) of the CEA requires swaps customer funds to be held by a registered FCM
  - Section 4d(f)(2) requires swaps customer funds to be segregated from the FCM's own funds
  - An FCM must deposit customer funds with a bank, trust company, or DCO in order for the funds to be protected under the U.S. Bankruptcy Code.
  - U.S. customers must clear through an FCM and the DCO must comply with:
    - Section 4d(f) of the CEA;
    - Parts 1 and 22 of Commission regulations; and
    - Commission regulation 39.15 (treatment of funds).

# DCO Registration Application

	Original Registration Framework	Alternative Compliance Framework (Subpart D)
Application Documents	<ul style="list-style-type: none"><li>▪ All Form DCO exhibits (approximately 40 exhibits including subcomponents)</li><li>▪ Subpart C election form (if SIDCO or DCO elects to be subpart C DCO)</li></ul>	<p>Only select Form DCO exhibits:</p> <ul style="list-style-type: none"><li>▪ Regulatory compliance chart;</li><li>▪ Proposed rulebook;</li><li>▪ Proposed clearing activities;</li><li>▪ Detailed business plan;</li><li>▪ Organizational structure;</li><li>▪ Legal status and good regulatory standing certificate;</li><li>▪ Pending legal proceedings;</li><li>▪ Treatment of funds (custody, segregation, investment, &amp; service provider agreements);</li><li>▪ Ring-fencing memorandum</li></ul>

# Conditions

- Applicable requirements of CEA & CFTC's regulations
- Open access
- Consent to jurisdiction; designated agent
- Compliance
- Inspection of books and records
- Representation of good regulatory standing
- Other conditions



# General Reporting Requirements

- **Daily Reporting:**
  - Total IM requirements for all clearing members;
  - IM requirements and IM on deposit for each *U.S. clearing member*, by house origin and by each customer origin, and by each individual customer account; and
  - VM, separately listing the mark-to-market amount collected from or paid to each *U.S. clearing member*, by house origin and by each customer origin.
- **Quarterly Reporting:** List of U.S. clearing members that clear swaps at DCO
- **Event-Specific Reporting:** Provide notices of:
  - Any change in home country regulatory regime;
  - Any examination report or findings, or the commencement of any enforcement or disciplinary action by a home country regulator;
  - Any change with respect to the DCO's licensure, registration, or other authorization to act as a CCP in its home country;
  - An event of default by clearing member; and
  - Action taken against U.S. clearing member by the DCO.
- **Part 45 Reporting:** All part 45 swap data reporting requirements for DCOs

# Modification of Order of Registration

- Commission has discretion to modify an order of registration for a Subpart D DCO if it determines there are:
  - Changes to or omissions in facts and circumstances pursuant to which order was issued; or
  - The terms and conditions of order are not met, including § 39.51(a) eligibility
- Commission provides written notice to DCO that it is considering a modification;
- DCO has 30 business days to respond in writing following receipt of notice;
- After Commission receipt of the DCO's response or the expiration of the permitted response time, Commission may:
  - Issue an order requiring the DCO to comply with all requirements applicable to DCOs in the CEA and Commission regulations (includes all part 39 implementing regulations) by a specified date;
  - Issue an amended order of registration that modifies the terms and conditions of the order; or
  - Notify DCO in writing that the order of registration will not change.

# Questions