

**Derivatives Reform: Comparison of Title VII of the
Dodd-Frank Act to International Legislation**

*Prepared by CFTC Staff for the
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Topic	European Commission	Title VII of U.S. Dodd-Frank Act	Japan Financial Instrument and Exchange Act ¹
Instruments covered	Generally applies to OTC derivatives that are not traded on an exchange, including: physically-settled and cash-settled options, swaps, and other derivative contracts on securities, currencies, interest rates or yields, or other derivatives instruments, financial indices, or financial measures; credit derivatives; and cash-settled options, swaps, and other derivatives contracts on commodities.	Generally applies to swaps, options (other than options on futures), and security-based swaps; the Secretary of the Treasury may determine to exclude foreign exchange swaps and forwards.	Generally applies to all financial derivatives.
Entities covered	Financial counterparties (investment firms, credit institutions, insurers, reinsurers and assurers, institutions for occupational retirement provision, undertakings from collective investments in transferable securities (UCITS) and fund managers) are subject to all provisions. Non-financial counterparties (any entity established in the EU that does not meet the above definition of a financial counterparty) may be subject to some or all of the provisions if their net non-hedged positions exceed certain thresholds.	Creates 2 new registration categories: Swap dealer -- a person who: i) holds itself out as a dealer in swaps; ii) makes a market in swaps; iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps; Major swap participant -- a non-dealer: i) who maintains a substantial position in any major swap category, excluding positions held by pension plans or for hedging or mitigating commercial risk; or ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or iii) who is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by a Federal banking agency, and maintains a substantial position in any major swap category.	

¹ The information in this column is based on publicly available summaries of the legislation that are prepared in English.

Exemptions for central banks	Central banks and multilateral development banks, including the World Bank, are exempted.	General extra-territoriality provision: The Dodd-Frank Act swap provisions do not apply to activities outside the U.S. unless those activities: i) have a direct and significant connection with activities in or effect on U.S. commerce; or ii) contravene CFTC rules prescribed to prevent evasion of the new law.	No similar exemption.
Effective date	20 days after publication in the Official Journal of the EU. Technical standards must be completed by ESMA by June 30, 2012.	Generally, the later of: 360 days after enactment (July 16, 2011); or, if a provision requires a rulemaking, 60 days after publication of the final rule to implement the provision. The deadline for most rulemakings is July 2011.	Regime for foreign CCPs and strengthening infrastructure of CCPs must be enforced within 1 year after promulgation of the law. Regime for mandatory clearing and reporting of trade data must be enforced within 2.5 years after promulgation of the law.
Clearing requirement	Financial counterparties, and any non-financial counterparties whose net non-hedged positions exceed a clearing threshold, must clear all eligible derivatives contracts concluded with another financial counterparty or with such a non-financial counterparty.	Financial entities (generally swap dealers, major swap participants, commodity pools, hedge funds, pension plans, and banks) generally must clear all swaps that are subject to the mandatory clearing requirement. Non-financial entities that use swaps to hedge or mitigate commercial risk and notify CFTC how they meet their financial obligations associated with non-cleared swaps are not subject to the mandatory clearing and exchange-trading requirements.	

Clearing eligibility	<p>i) A CCP requests authorization from its national regulator to clear a class of derivatives; if the regulator approves, the regulator will inform ESMA of its decision; ESMA will decide within 6 months, after conducting a public consultation, if clearing should be made mandatory for that class of derivatives; ESMA will publish any discussion on the class and authorized CCPs for that class in a public register; ii) On its own initiative, and in consultation with the ESRB, ESMA must identify and notify the EC of classes of derivatives for which the clearing obligation should apply, but for which no CCP is authorized.</p>	<p>A derivatives clearing organization (DCO) shall submit to CFTC its intention to clear a swap or class of swaps, and the CFTC will decide whether clearing should be required. Separately, the CFTC is required to review other classes of swaps to determine if clearing should be mandatory for that class of swaps, even if no DCO currently clears it or has submitted it to CFTC.</p>	<p>Certain derivatives transactions, as designated by the cabinet office ordinance, will be required to be cleared on domestic CCPs. Other derivatives transactions, as designated by the cabinet office ordinance, must be cleared but may be cleared on foreign CCPs.</p>
Clearing obligation factors	<p>ESMA must base its decision on:</p> <ul style="list-style-type: none"> - The reduction of systemic risk in the financial system; - The liquidity of contracts; - The availability of pricing information; - The ability of the CCP to handle the volume of contracts; and - The level of client protection provided by the CCP. 	<p>CFTC must take account of the following factors in making a determination:</p> <ul style="list-style-type: none"> - The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data; - The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract; - The effect on the mitigation of systemic risk, taking into account the size of the market and resources of the DCOs available to clear the contract; - The effect on competition, including fees and charges applied to clearing; and - The existence of reasonable legal certainty in the event of the insolvency of the DCO or its members. 	<p>The cabinet office ordinance will determine the scope. Consistency with bankruptcy provisions is one factor that will be used.</p>
CCP access	<p>A CCP authorized to clear a class of derivatives must accept such contracts on a non-discriminatory basis, regardless of the venue of execution.</p>	<p>DCOs must clear swaps on a non-discriminatory basis, regardless of the venue of execution.</p>	

Reporting requirement	Any financial counterparty, and a non-financial counterparty whose net non-hedged positions exceed an information threshold, must report to a registered trade repository the details of any derivatives contract that it has entered into, and any modification or termination, not later than the working day following the execution, clearing, or modification of the contract. If a trade repository is not able to record the details of a contract, financial counterparties must report the details of their positions in those contracts to the national regulator.	All swaps must be reported to a registered swap data repository or, if there is no repository that would accept the swap, to CFTC. Real-time public reporting required for: i) swaps required to be cleared (even if not cleared due to end-user exception); ii) swaps voluntarily cleared; and iii) swaps not cleared that are reported to a swap data repository or CFTC. Real-time reporting means to report data relating to a swap, including price and volume, as soon as technologically practicable after the time at which the swap has been executed.	Derivatives transactions, which are not required to be submitted to CCPs will be required to be submitted to domestic or designated foreign trade repositories. It is unclear if some non-cleared transactions will be exempted from submission to a trade repository.
Reporting fields	Reports shall contain at least the names of the counterparties and, if different, the beneficiary of the rights and obligations arising from the contract, and main characteristics of the contract, including type, underlying, maturity and notional value.	For swap data repositories, CFTC shall specify the data elements to be collected and maintained.	Not listed.

<p>Risk mitigation for bilateral trades</p>	<p>Financial counterparties and non-financial counterparties that exceed clearing threshold must ensure that arrangements are in place to measure, monitor and mitigate operational and credit risk, by at least, where possible, using electronic confirmation of the contract terms and having in place robust, resilient and auditable processes for portfolio reconciliation, to manage the risk and to identify disputes between parties early, and to monitor the value of outstanding contracts. Value determinations must be based on daily mark-to-market, and risk management procedures must require the timely, accurate and appropriately segregated exchange of collateral or the appropriate and proportionate holding of capital.</p>	<p>Prudential Regulators for banks (in consultation with CFTC and SEC) shall jointly adopt, and CFTC for non-banks shall adopt, “rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant,” imposing capital requirements and both initial and variation margin requirements on all non-cleared swaps.</p> <p>Capital and margin requirements shall help ensure the safety and soundness of the swap dealer or major swap participant, and be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant. With respect to segregation of margin collateral posted for non-cleared swaps, the segregation requirement for initial margin is imposed on a swap dealer at the request of a counterparty. The margin account must be carried by an independent third-party custodian. If a swap dealer does not segregate, it must report quarterly to the counterparty that its procedures with respect to margin collateral comply with the parties’ agreement.</p>	
<p>CCP authorization</p>	<p>To be authorized, a CCP must have access to adequate liquidity from a central bank or creditworthy commercial bank. Authorization must specify the services the CCP may offer. If a CCP wishes to extend to additional services, such as clearing in a different currency or instrument that significantly differs in risk characteristics, it must submit an extension request to its regulator.</p>	<p>To be registered and maintain registration, a DCO must comply with 18 core principles (CPs) in the Commodity Exchange Act (CEA), as well as CFTC regulations. CP (B) requires that a DCO have adequate financial, operational, and managerial resources, as determined by CFTC, to discharge its responsibilities. CP (D) requires that a DCO ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO. CP (E) requires a DCO to complete money settlements on a timely basis (at least once each business day), employ money settlement arrangements to eliminate or strictly limit the DCO’s exposure to settlement bank risks, and ensure that money settlements are final when effected.</p>	

CCP grandfathering	Existent CCPs at the time of adoption will have two years from the effective date to seek authorization.	Depository institutions and SEC-registered clearing agencies that cleared swaps prior to enactment of the Dodd-Frank Act are deemed registered. The effective date of any new DCO responsibilities under the Dodd-Frank Act will be determined according to the rulemaking schedule.	
Foreign CCP recognition	A CCP established outside of the EU may only provide clearing to entities established in the EU if the CCP is recognized by ESMA. ESMA must recognize the CCP if the EC has adopted a decision that the legal/supervisory arrangements in the foreign country ensure that the CCP complies with legal requirements that are equivalent to the EU's requirements, and the CCP is subject to effective supervision and enforcement; the CCP is authorized in, and subject to, effective supervision in its home jurisdiction; and cooperative arrangements have been established between ESMA and the relevant national regulators of the foreign jurisdiction.	CFTC may exempt, conditionally or unconditionally, a DCO from registration for the clearing of swaps if CFTC determines that the DCO is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the DCO's home country.	An existing foreign CCP may either set up in Japan or obtain a license as a Foreign Financial Instrument Clearing Organization. The foreign CCP also could enter into an alliance with a domestic Financial Instrument Clearing Organization if it has established a system to ensure secure clearing of unsettled obligations.
CCP capital requirements	For authorization, at least 5 million Euros in permanent, available and separate initial capital. Capital, along with retained earnings and reserves, must always be sufficient for an orderly winding-down or restricting of activities over an appropriate time span.	CP (B) requires that a DCO have adequate financial, operational, and managerial resources, as determined by CFTC, to discharge its responsibilities. Those financial resources shall, at a minimum, exceed the total amount that would enable the DCO to meet its obligations despite a default by a member creating the largest financial exposure in extreme, but plausible, market conditions and enable the DCO to cover its operating costs for a 1-year period.	Minimum capital requirement is not listed but will be determined by a cabinet order.

<p>CCP authorization procedure</p>	<p>A regulator may only grant authorization to a CCP if it is fully satisfied that the CCP complies with all requirements and has received a joint positive opinion from the CCP’s college of supervisors and ESMA. A decision must be made by the regulator on whether or not to grant authorization within six months of the submission of a completed application. The regulator must at least annually review the arrangements, strategies, processes and mechanisms implemented by the CCP, having regard to the size, systemic importance, nature, scale and complexities of the CCP’s activities.</p>	<p>To be registered and maintain registration, a DCO must comply with 18 core principles and CFTC regulations, and is subject to ongoing oversight by CFTC.</p>	
<p>General requirements for CCPs</p>	<p>No ownership cap. A CCP must have robust governance arrangements, including a clear organizational structure to identify, manage, monitor and report the risks to which it is or might be exposed. The CCP must maintain a separation between the reporting lines for risk management and all other operations of the CCP, must make its governance arrangements available to the public, and must be subject to frequent and independent audits.</p>	<p>CFTC shall adopt rules to mitigate conflicts of interest, which may include numerical limits on the control of, or voting rights with respect to, DCOs that clear swaps, by large banks, financial companies, swap dealers, and major swap participants. CP (O) contains governance fitness standards that must be transparent. CP (P) provides that DCOs must have rules to minimize conflicts of interest in the decision-making process of the DCO.</p>	<p>A holder of more than 5% of the voting rights of a clearing organization must notify the Prime Minister's office, and a person who intends to hold or acquire 20% or more of the voting rights must obtain the authorization of the Prime Minister's office, before completing such a transaction.</p>
<p>CCP board composition and risk committee</p>	<p>Among other requirements, board members must be of sufficiently good repute and experience and have sufficient expertise in financial services, risk management and clearing services. At least 1/3 of the board (no less than two members) must be independent. The compensation of the independent and other non-executive members of the board cannot be linked to the performance of the CCP. The CCP must have a risk committee, composed of representatives of its clearing members and independent members of the board.</p>	<p>The governance fitness standards of CP (O) require DCOs to establish fitness standards for, among others, directors, members of the DCO, and members of any disciplinary committee. CP (Q) requires that members of the governing board of a DCO include market participants. CP (D) requires that a DCO possess the ability to manage the risks associated with a DCO, including measurement of credit exposure, limitation of exposure to potential losses from defaults, and margin requirements.</p>	

CCP recordkeeping	<p>A CCP must maintain all records for at least 10 years on the services it provides to enable regulators to monitor for regulatory compliance. A CCP also must maintain all information on all contracts it has processed for at least 10 years following the termination of a contract. The CCP must make all records and information required to be kept and all information on the positions of cleared contracts, irrespective of where they were executed, available to the regulator and ESMA.</p>	<p>CP (J) requires a DCO to provide CFTC all information CFTC determines to be necessary to conduct oversight of the DCO. CP (K) requires a DCO to maintain records of all activities related to the business of the DCO in a form and manner acceptable to CFTC for a period of at least 5 years. Also, CEA Section 5b(k) requires DCOs to provide to CFTC all other information that CFTC determines is necessary for CFTC to perform its responsibilities.</p>	
CCP ownership	<p>Among other requirements, the CCP must identify its shareholders to its regulator, and the regulator is required to refuse authorization of the CCP if it is not satisfied as to the suitability of the shareholdings with qualifying holdings. If there are close links between the CCP and other persons, and if such linked persons prejudicially influence the management of the CCP, the regulator “shall take appropriate measures to terminate that situation.” The regulator may remove a board member if it finds that the conduct of the member is likely to be prejudicial to the sound and prudent management of the CCP. If an entity’s holdings would exceed (or be reduced below) 10%, 20%, 30% or 50% or if the CCP would become a subsidiary of that entity, the entity must first notify the regulator of the CCP in writing, indicating the size of the intended holding and other relevant information. A regulator may oppose a proposed acquisition only if there are reasonable grounds for doing so.</p>	<p>CFTC shall adopt rules to mitigate conflicts of interest, which may include numerical limits on the control of, or voting rights with respect to, DCOs that clear swaps, by large banks, financial companies, swap dealers, and major swap participants. CFTC also shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or major swap participant with a DCO in which the swap dealer or major swap participant has a material debt or material equity interest.</p>	

CCP conflicts	A CCP must maintain and operate effective written organizational and administrative arrangements to identify and manage potential conflicts between itself, its clearing members or their clients, or between them.	CFTC shall adopt rules to mitigate conflicts of interest, which may include numerical limits on the control of, or voting rights with respect to, DCOs that clear swaps, by large banks, financial companies, swap dealers, and major swap participants. Also, CP (P) provides that DCOs must have rules to minimize conflicts of interest in the decision-making process of the DCO.	
CCP business continuity	A CCP must establish, implement and maintain an adequate business continuity policy and disaster recovery plan that, at a minimum, allows for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and complete settlements on time.	CP (I) requires DCOs to establish system safeguards to minimize operational risk and establish emergency procedures, backup facilities, and a plan for disaster recovery that allows for, among other things, the timely recovery and resumption of operations of the DCO.	
CCP outsourcing	Where it outsources operational functions, services, or activities, the CCP will remain fully responsible for discharging all of its regulatory obligations, and must ensure, among other things, that outsourcing does not result in the delegation of responsibility, and that the service provider cooperates with the CCP's regulator and protects sensitive and confidential information.	The CEA does not address outsourcing by DCOs, but pursuant to CEA Section 5c(b), a registered entity that delegates a function remains responsible for carrying out the function.	
CCP business conduct rules	When providing services, a CCP must act fairly and professionally in accordance with the best interests of the clearing members and clients and sound risk management. The CCP must establish the categories of admissible clearing members and admission criteria, which must be non-discriminatory, transparent and objective.	CP (C) requires a DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, the DCO. The participation and membership requirements must be objective, publicly disclosed, and permit fair and open access.	
CCP price transparency	A CCP must publicly disclose the prices and fees associated with the services it provides and the price information used to calculate its end of day exposures with clearing members and volumes of the cleared transactions for each class of instruments. The CCP must inform members and clients of the risks associated with its services.	Among other things, CP (L) requires DCOs to provide market participants with sufficient information to identify and evaluate the risks and costs of using a DCO. A DCO must disclose publicly its clearing and other fees and daily settlement prices, volume, and open interest for each contract settled or cleared by the DCO.	

<p>Segregation and portability</p>	<p>A CCP must keep records and accounts to enable it at anytime and without delay to identify and segregate assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets. Each clearing member must distinguish and segregate in accounts with the CCP the assets and positions of that member from those of its clients.</p>	<p>CEA Section 4d requires that all customer futures, options on futures, and cleared swap positions, and funds and property deposited to margin such positions, be held in segregated accounts. This requirement is imposed on futures commission merchants and DCOs. In addition, CP (F) requires DCOs to hold member and participant funds in a manner so as to minimize the risk of loss or delay in the access by the DCO to the assets and funds. CP (G) requires DCOs to have procedures for the efficient, fair, and safe management of events in which members or participants become insolvent or otherwise default.</p>	
<p>Margin requirements</p>	<p>A CCP must impose margins on clearing members and CCPs with which it has interoperable arrangements, sufficient to cover potential exposures that the CCP estimates will occur, until liquidation of relevant provisions. The margins must be sufficient to cover losses that result from at least 99% of exposures movements over an appropriate time horizon. A CCP must develop models and parameters in setting margins, and must call and collect margins on an intraday basis, at least when pre-defined thresholds are breached.</p>	<p>CP (D) requires that a DCO possess the ability to manage the risks associated with operating a DCO. A DCO, through margin requirements and other risk control mechanisms, shall limit the DCO's exposure to potential losses from defaults by members and participants to ensure that operations of the DCO would not be disrupted and non-defaulting members would not be exposed to unexpected losses. The margin requirements shall be sufficient to cover potential exposures in normal market conditions. Models and parameters used in setting margin requirements must be risk-based and reviewed on a regular basis.</p>	

<p>Default fund, additional risk controls, and default waterfall</p>	<p>A CCP must maintain at least one default fund to cover losses arising from the default, including opening of an insolvency proceeding, of one or more clearing members. In addition, a CCP must maintain sufficient available financial resources to cover potential losses exceeding margin requirements and the default fund. The CCP must develop scenarios of extreme but plausible market conditions, and develop default fund requirements and other financial resources that enable the CCP to at all times withstand the default of the two clearing members to which it has the largest exposures, and must enable the CCP to withstand sudden sales of financial resources and rapid reductions in market liquidity. A CCP must use margins posted by a defaulting member prior to using other financial resources to cover losses. If insufficient, the CCP must next use the defaulting member's default fund contribution. If also insufficient, a CCP may then use default fund contributions and other contributions of non-defaulting members, but may not use margins posted by non-defaulting clearing members to cover losses from the default of another clearing member.</p>	<p>CP (B) requires that a DCO shall have adequate financial, operational, and managerial resources, as determined by CFTC, to discharge its responsibilities. Those financial resources shall, at a minimum, exceed the total amount that would enable the DCO to meet its obligations despite a default by a member creating the largest financial exposure in extreme, but plausible, market conditions and enable the DCO to cover its operating costs for a 1-year period. CP (G) requires DCOs to have procedures for the efficient, fair and safe management of events in which members or participants become insolvent or otherwise default.</p>	
<p>Collateral requirements</p>	<p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover its exposures to clearing members, applying adequate haircuts that reflect the potential for values to decline over time. A CCP may accept, where appropriate and prudent, the underlying of the derivatives contract as collateral to cover margin requirements.</p>	<p>CP (D) requires that a DCO possess the ability to manage the risks associated with operating a DCO. A DCO, through margin requirements and other risk control mechanisms, should ensure that operations of the DCO would not be disrupted and non-defaulting members would not be exposed to unexpected losses. The margin requirements shall be sufficient to cover potential exposures in normal market conditions.</p>	

CCP investment	A CCP may only invest its financial resources in highly liquid financial instruments with minimal market and credit risk, and shall not invest its capital in its own securities or those of its parent or subsidiaries.	CP (F) requires that funds and assets invested by a DCO be held in instruments with minimal credit, market, and liquidity risks.	
Default procedures	A CCP must have procedures in place for when a clearing member does not comply with participation requirements and must outline procedures in the event the insolvency of a clearing member is not established by the CCP. The CCP must take reasonable steps to ensure that its procedures are enforceable, must take prompt action to contain losses, and must promptly inform its regulator.	CP (C) requires DCOs to establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the DCO. CP (G) requires DCOs to have procedures for the efficient, fair, and safe management of events in which members or participants become insolvent or otherwise default.	
Models/testing	A CCP must regularly review the models and parameters adopted to calculate margin requirements, default fund contributions, collateral requirements and other risk controls. A CCP must inform its regulator of the results of the tests, obtain validation before making changes to its models, and publicly disclose key information on its risk management model and its underlying assumptions.	CP (D) requires that each model and parameter used by a DCO in setting margin requirements be risk-based and reviewed on a regular basis.	
Settlement	A CCP must use central bank money to settle its transactions, where available, and if not available, steps must be taken to strictly limit credit and liquidity risks.	CP (E) requires DCOs to complete money settlements on a timely basis (not less frequently than once each business day) and employ money settlement arrangements to eliminate or strictly limit exposure of the DCO to settlement bank risks (including credit and liquidity risks).	

Interoperability	ESMA must report to the EC on the extension of the scope of the rules on interoperability arrangements, beyond equities, to derivatives by September 30, 2014. The EC must draft an annual report to the European Parliament and Council of the EU, assessing possible systemic risk and cost implications of interoperability arrangements, including any relevant proposals. The European System of Central Banks (ESCB) must provide the EC with an assessment of possible systemic risk and cost implications of interoperability arrangements.	No comparable provision.	
Trade repository registration	For purposes of the reporting requirement, a trade repository must register with ESMA and be established in the EU. Registration with ESMA is effective for the entire EU. A trade repository that wishes to register must submit an application to ESMA, and ESMA must make a decision within 40 working days once it has given notice to the applicant that the application is complete.	To be registered and maintain registration, a swap data repository (SDR) must comply with core principles and various additional duties.	Certain derivatives transactions shall be stored and reported to the Prime Minister through trade repositories or designated foreign trade repositories. A system for trade repositories will be established in rulemaking.

<p>Foreign trade repository recognition</p>	<p>The EC must submit proposals to the Council of the EU for the negotiation of international agreements with foreign jurisdictions regarding mutual access to, and exchange of information on, derivatives contracts held in trade repositories established in foreign jurisdictions, where the information is relevant to the exercise of an EU regulator’s duties.</p> <p>A trade repository established outside of the EU may only provide services to entities established in the EU if the repository is recognized by ESMA. ESMA must recognize a repository from a foreign jurisdiction if:</p> <ul style="list-style-type: none"> o The repository is authorized in and subject to effective surveillance in that foreign jurisdiction; o The EC has adopted a decision determining that the legal and supervisory arrangements of the foreign jurisdiction ensure that trade repositories authorized in that jurisdiction comply with legally binding requirements that are equivalent to the requirements in the EU, and that the repository is subject to effective supervision and enforcement in that foreign jurisdiction; o The EU has entered into an international agreement with the foreign jurisdiction; and o Cooperation arrangements have been established to ensure that EU authorities have immediate and continuous access to all the necessary information. 	<p>On a confidential basis pursuant to CEA Section 8, upon request and after notifying CFTC, an SDR shall make all data, including individual counterparty trade and position data, available to various regulatory authorities. CEA Section 8 permits CFTC to also share information with foreign regulators acting within the scope of their jurisdiction. Title VII of the Dodd-Frank Act shall not apply to activities outside the U.S. unless those activities have a direct and significant connection with activities in, or effect on, commerce of the U.S. or contravene CFTC anti-evasion rules.</p>	<p>The legislation discusses the ability for foreign trade repositories to be recognized as Designated Foreign Trade Repositories. These repositories are not required to report to Japanese authorities, but a system will be established to exchange information internationally with the supervisory agencies of each trade repository.</p>
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Fines/penalties	<p>At the request of ESMA, the EC may impose a fine on a trade repository if the repository intentionally or recklessly infringes one of its duties under the regulations. The fine cannot exceed 20% of the annual income or turnover of the repository from the preceding business year. At the request of ESMA, the EC may impose periodic penalty payments on any persons employed by or for a trade repository. The periodic penalties cannot exceed 5% of the average daily turnover in the preceding business year. Prior to making its decision, the EC must give the concerned parties an opportunity to be heard and the parties must have full access to the EC's files, subject to business secrecy. In addition, the European Court of Justice (ECJ) has unlimited jurisdiction to review decisions by the EC on fines and penalties.</p>	<p>Failure to comply with the SDR provisions of the CEA would be subject to the enforcement procedures and penalties provisions of CEA Sections 6 and 9.</p>	
Trade repository surveillance	<p>ESMA must monitor trade repositories for compliance with their regulatory duties. ESMA must be empowered to access any document in any form and to receive or take a copy, to demand information from any person and, if necessary, to summon and question a person to obtain information, carry out on-site inspections with or without announcement, and require records of telephone and data traffic.</p>	<p>An SDR shall be subject to inspection and examination by any representative of CFTC. An SDR must provide direct electronic access to CFTC.</p>	

General requirements for trade repositories	A trade repository must have robust governance arrangements, including a clear organizational structure with transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures to prevent the disclosure of confidential information. The repository must have objective, non-discriminatory and publicly disclosed requirements for access and participation. Access may only be restricted to control the risk to the data maintained by the repository.	CP (2) requires SDRs to establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the government, owners, and participants. An SDR must maintain the privacy of swap transaction information that it receives. Also, an SDR must designate a chief compliance officer, whose duties include reviewing compliance with the core principles and preparing an annual report regarding compliance with the CEA and CFTC regulations.	Trade repositories are required to store information with respect to certain derivatives transactions that are not subject to clearing in CCPs. The trade repositories must demonstrate robust governance arrangements as well as procedures to prevent the disclosure of confidential information.
Trade repository fee transparency	The repository must publicly disclose prices and fees associated with services, including prices and fees of single services and functions provided separately, including discounts and rebates. Prices and fees must be cost-related.	No comparable provision.	
Trade repository operational reliability	A repository must identify sources of operational risk and minimize them through appropriate systems, controls and procedures, and establish, implement and maintain adequate business continuity policies and disaster recovery plans to ensure the preservation of its functions, timely recovery of operations and fulfillment of its obligations. This should at least provide for the establishment of backup facilities.	An SDR shall establish emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the SDR.	
Public-reporting	A repository must publish aggregate positions by class of derivatives for all contracts for which it receives data. All necessary information must be made available to ESMA, relevant regulators and relevant European central banks. ESMA must share necessary information for the exercise of duties with other relevant authorities.	An SDR must provide information in such form and frequency as CFTC may require in order to comply with the real-time public reporting requirement. On a confidential basis pursuant to CEA Section 8, upon request and after notifying CFTC, an SDR shall make all data, including individual counterparty trade and position data, available to various regulatory authorities. CEA Section 8 permits CFTC to also share information with foreign regulators acting within the scope of their jurisdiction.	

<p>Trade repository safeguarding/ recording data</p>	<p>A repository must ensure the confidentiality, integrity and protection of information it receives, and must promptly record information and maintain it for at least 10 years following the termination of the relevant contracts.</p> <p>A repository must calculate positions by class of derivatives and by reporting entity based on details of contracts reported.</p> <p>A repository must allow parties to access and correct information on the contract at all times.</p> <p>A repository must take all reasonable steps to prevent misuse of information maintained in its systems and prevent the use of the information held for other business activities.</p>	<p>An SDR must maintain the privacy of information it receives and maintain the data in such form, in such manner, and for such period as CFTC may require.</p>	
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