

**International Issues in the
Implementation of the Dodd-Frank Wall
Street Reform and Consumer Protection Act**

*Prepared by CFTC Staff for the
Global Markets Advisory Committee*

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1. Extra-Territoriality
2. Clearing and Trading
3. Swap Data Repositories
4. Foreign Boards of Trade

1. Extra-Territoriality

- **Section 722(d) – New CEA Section 2(i)**
 - New swap laws shall NOT apply to activities outside the United States UNLESS those activities—
 - Have a direct and significant connection with activities in, or effect on, commerce of the U.S.;
or
 - Contravene CFTC rules issued to prevent evasion of the Dodd-Frank Act

Extra-Territoriality (Cont'd)

- **No explicit distinction between U.S. and non-U.S. swaps, swap dealers, or major swap participants**
- **Issues Presented—**
 - When does extra-territoriality provision PERMIT application to non-U.S. persons and transactions?
 - When SHOULD requirements be applied?
 - WHAT requirements should be applied?
- **Exemptive authority from definition of “major swap participant,” but not “swap” or “swap dealer”**

2. Clearing and Trading

- **Section 723(a)(3) – New CEA Section 2(h):**
 - Clearing Requirement: “Clearable” swaps must be submitted for clearing to a derivatives clearing organization (DCO) registered with CFTC
 - CFTC to determine whether clearing is mandatory for a swap
 - Trading Requirement: “Clearable” swaps must be traded on or through an exchange (designated contract market—DCM) or a swap execution facility (SEF) that is registered with CFTC
 - Commercial end-users are excepted from the clearing and trading requirements

Clearing and Trading (Cont'd)

- **Section 725(b)–New CEA Section 5b(h)/DCOs;**
Section 733 – New CEA Section 5h(g)/SEFs
 - Exemptive Authority: CFTC may exempt a non-U.S. DCO or SEF from registration if it finds that the DCO or SEF is—
 - Subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the home country
 - Exempt DCO may be required to be available for inspection by CFTC and to make available all information requested by CFTC

3. Swap Data Repositories

- **Section 728 – New CEA Section 21**
 - All swaps must be reported (Section 727)
 - No CFTC exemptive authority for repositories as for DCOs and SEFs
 - Extra-territoriality test applies
 - Access to data by foreign regulators

4. Foreign Boards of Trade (FBOTs)

- **Section 738 – Amended CEA Section 4(b)**
 - CFTC may require registration of FBOTs that provide members or other participants in U.S. with direct access to electronic trading and order matching system
 - Including rules prescribing procedures and requirements applicable to registration of such FBOTs
 - CFTC must consider whether FBOT is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the home country
 - Including any previous CFTC findings on that question